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REPORT

HUMAN RIGHTS IN MOLDOVA

2014 RETROSPECTIVE

CIVIL RIGHTS DEFENDERS

EMBASSY OF SWEDEN

Chisinau

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LIST OF ACRONYMS

APEL	Electronic Press Association
ASD	Autism Spectrum Disorders
ASEM	Academy of Economic Studies
BCC	Broadcasting Coordinating Council
BEM	JSC "Banca de Economii"
CC	Civil Code
CCET	Center for Continuous Electoral Training
CContr	Contravention Code
CEC	Central Electoral Commission
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	The Committee on the Elimination of Discrimination against Women
CHRM	Center for Human Rights of Moldova
CIO	Criminal Investigation Officer
CIS	Commonwealth of Independent States
CNPAC	National Center for Prevention of Child Abuse
CO	Council of Observers
CPC	Civil Procedure Code
CPEDEE	Council on the Prevention and Elimination of Discrimination and Ensuring Equality
CPT	European Committee for the Prevention of Torture
CrC	Criminal Code
CrPC	Criminal Procedure Code
CReDO	Resource Center for Human Rights
CSDS	Civil Society Development Strategy
CSO	The Civil Status Office
DEC	District Electoral Councils
DO	District Officer
dPI	district Police Inspectorate
DPI	Department of Penitentiary Institutions
EC	Election Code
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EOM	OSCE/ODIHR Election Observation Mission
EU	European Union
FIDH	International Federation for Human Rights
GA	Governmental Agent
GPC	General Police Commissariat
GPI	General Police Inspectorate
GRECO	Group of States against Corruption
GRT	Public radio and TV company from the Gagauz autonomy
IDOM	Moldovan Institute for Human Rights
IEP	Individual Educational Program
IJC	Independent Journalism Center
IPA	Independent Press Association
ISS	Information and Security Service
JCC	Journalist's Code of Conduct
JSRS	Justice Sector Reform Strategy
LGBT	Lesbians, Gay, Bisexuals, Transgender
LPA	Local Public Administration
LRCM	Legal Resources Centre from Moldova
MDG	Millennium Development Goals
MITC	Ministry of Information Technology and Communications
MLSPF	Ministry of Labor, Social Protection and Family
MOC	Moldovan Orthodox Church
MOE	Ministry of Education
MOF	Ministry of Finance
MOH	Ministry of Health
MOI	Ministry of Interior
MOJ	Ministry of Justice
MP	Member of Parliament
NBM	National Bank of Moldova
NAC	National Anticorruption Center
NCPDP	National Center for Personal Data Protection
NEO	National Employment Office
NGO	Non-governmental organization
NHRAP	National Human Rights Action Plan
NIC	National Integrity Commission
NIJ	National Institute of Justice
NPC	National Participation Council
NPI	National Patrol Inspectorate
NPM	National Preventive Mechanism
NRS	National Referral System
NSB	National Statistics Bureau
NSSH	National Social Security House
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Cooperation in Europe
PCR	PP Reformist Communist Party of Moldova
PCRM	Communist Party
PD	Democratic Party
PDI	Preventive Detention Isolator
PGO	Office of the Prosecutor General
PIT	Professional Integrity Testing
PL	Liberal Party
PLDM	Liberal Democratic Party
PLR	Liberal Reformist Party
PMAE	European Action Movement
PMSI	Public Medical Sanitary Institution
PO	Protection Order
PP MPA	Anti-Mafia People's Movement
PSEB	Polling Station Electoral Bureau
PSRM	Party of Socialists of the Republic of Moldova
REO	Registry of Electoral Officers
ROC	Russian Orthodox Church
RM	Republic of Moldova
SAFPD	Social Assistance and Family Protection Division
SAIS	State Automated Information System
SBPM	Society of Blind People from Moldova
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SRP	State Register of Population
SVR	State Voter Registry
TEO	Territorial Employment Office
TP	Tabulation Protocol
UN	United Nations
UNDP	United Nations Development Program
UNFPA	The United Nations Population Fund
USM	State University of Moldova
UTM	Technical University of Moldova

Introduction

The following Report developed by Promo-LEX association analyzes the observance of human rights in the Republic of Moldova, including in the Transnistrian region. This is the sixth edition, with the prior report covering the period between 2012 and 2013. This edition covers the entirety of 2014 and was developed by a group of 15 experts representing eight human rights NGOs from the Republic of Moldova.

This Report identifies severe problems and specific instances that accurately reflect the human rights situation in the Republic of Moldova during 2014.

The target audience for this report includes the constitutional authorities, international organizations and institutions, along with civil society organizations working with human rights issues in the Republic of Moldova, including in the Transnistrian region.

The 14 chapters of this Report focus on the following rights and areas: right not to be subjected to torture and ill-treatment; liberty and security of person; right to a fair trial and reform of the justice sector; property rights; right to information and transparency of the decision-making process; freedom of expression; freedom of thought, consciousness, and religion; freedom of assembly and association, right to education; right to labor, social protection, and health care; right to vote and to be elected; prohibition against discrimination; domestic violence; right to respect for private and family life.

The methodology of the Report for each chapter includes: the general description of the most severe problems of the reporting period, and their causes and consequences; analysis of the evolution-involution of the legal framework; analysis of the relevant national policies; analysis of statistical data (official and alternative); description of relevant individual cases from the national and international judicial practice; analysis of the implementation of the legislation and/or relevant public policies and of the behavior of central and local public authorities. In addition, each chapter contains a set of conclusions and recommendations.

Promo-LEX Association expresses its appreciation to all the persons and organizations for their contribution to the development of this Report, which was drafted under the "Supporting Human Rights in Moldova and Transnistrian region" Project, implemented by Promo-LEX Association with the financial support of Civil Rights Defenders and Swedish International Development Cooperation Agency (Sida).

The views expressed in the Report reflect only the opinions and positions of the authors. They cannot be interpreted in any way as reflecting the positions and opinions of the Civil Rights Defenders or Swedish International Development Cooperation Agency (Sida).

Executive Summary

The observance of human rights in the Republic of Moldova throughout 2014 did not see as much advancement as hoped.

Although many reforms were initiated and several regulatory acts were adopted that aimed at improving the human rights situation, their practical implementation was less than desired. As well, in some human rights areas, the situation deteriorated when compared with prior years. This all had the effect of raising general dissatisfaction from civil society organizations in human rights, as well as the overall society.

Several regulatory acts were developed in 2014, with the strategic aim of improving the guarantee of the right not to be subjected to torture and ill-treatment, which has been implemented poorly. Around this fundamental right, a number of violations were registered throughout 2014, with multiple cases being in the Transnistrian region. It must be noted that in 2014 courts of law began to issue judgments of conviction for cases of torture, with the applying of custodial sentences. Detention in penitentiaries are marked by deplorable conditions, and the rehabilitation of torture victims is still implemented in practice exclusively by non-governmental organizations, with zero Government support for victims or civil society organizations.

Observance of the right to liberty and security of person represented a major problem for the Republic of Moldova in 2014. During 2014, the number of persons deprived of liberty grew, as did penitentiary detainee numbers, with the expected result of overcrowded prisons re-emerging as a problem. As well, psychiatric sections that were supposed to be closed began re-operating, more for the interests of their employees at the expense of patient's rights.

Arbitrary deprivation of freedom saw no signs of subsiding in the Transnistrian region, with constitutional authorities not taking any practical measures to improve the situation. In 2014, the European Court of Human Rights reviewed and communicated to the Governments of the Republic of Moldova and Russian Federation 12 cases of alleged violation concerning Article 5 of the European Convention on Human Rights in the Transnistrian region.

Though the right to a fair trial on paper is guaranteed by national law, in practice it is not always respected. The frequent postponement of court hearings and retrials were one of the most severe problems of 2014 as was the security of legal relations that are negatively affected by the illegal quashing of final civil judgments by the Supreme Court.

Assurance of the right to a fair trial depends highly on the functioning of the justice sector. With this in mind authorities took several measures in 2014 to enhance the independence and integrity of the judicial system. However, even if the anti-corruption measures are positive and necessary, it is not clear whether they will be applied in practice.

The election campaign for the Parliamentary elections of November 2014 showed the concentration and political control via mass-media, and the effects on the pluralism of opinions in the society and the freedom of expression. The thematic monitoring performed revealed several items of importance. This includes the low internal pluralism of many press institutions and the promotion of media owner interests through the filtering of information prior to public consumption. In addition, the application of the legislation on the transparency of the decision-making process had been suspended for six months in 2014. It must be mentioned that the national legislation in force does not provide for efficient sanctions.

In the Transnistrian region, measures taken by the regional administration have minimized the expression of any opinions against the local power. The persecution of human rights defenders from Transnistria for exposing violations or participation in protests are perfect examples of how criticism from the population against the secessionist authorities is not accepted. The right to association is also limited in the Transnistrian region with civil society associations and groups of activists being monitored by the secret service of the region.

No methodical cases of limiting the right to practice freely religion and beliefs were identified in 2014, however, examples of public authority representatives manifesting intolerance and preventing the exercise of the rights of minority religious denominations exists. Often the central public authorities did not have a consistent reaction to statements of hate and discrimination, made by some high-ranking representatives of the major religious groups.

In the Transnistrian region, the religious groups that are not recognized by the Orthodox Church are persecuted or are forced to operate in unequal conditions.

Regarding freedom of association in the Republic of Moldova, problems of the unjustified and inconsistently applied interventions of the police must be mentioned. During 2014, the police invoked different approaches to similar assemblies, breaking up some, and leaving others free to finish. Without a clear justification from

authorities for their actions the impression of bad faith or non-professionalism by the police staff could easily be perceived.

The Parliamentary elections of November 30, 2014 were marked by a number of problems affecting people's right to vote and be elected. These problems had several different root causes that included amendments to the electoral legislation influencing the elections, management of the electoral process issues, and the persistence of some practices or social and political conditions with a negative impact on electoral rights. In addition, during the reference period, the electoral legislation was amended four times, three amendments being linked directly with the organization of the elections of November 30, 2014. The lack of financial transparency of political parties and election campaigns also remains a major problem in this field.

Banca de Economii and the current state of the financial-banking sector in the Republic of Moldova is the primary problem concerned with the protection of property rights. Property crimes are more common, and becoming a genuine challenge for the authorities. Additionally, the legal framework on rehabilitation of victims of political repressions and the recovery of the property value to persons subjected to political repressions did not improve significantly in 2014.

In the Transnistrian region, the following problems should be mentioned: the de facto authorities of the region periodically blocking, limiting, or obstructing the access of farmers and owners from the Dubasari district to their agricultural lands, and the seizing of goods by the "customs bodies" of the region, which is in direct violation of property rights.

The Republic of Moldova saw a decrease in unemployed people in 2014, however, cases existed concerning the violation of the right to labor and labor protection amongst pregnant women and mothers with many children. Vulnerable groups, including people with disabilities, and Roma people continued to face discriminatory situations along with difficulties in excising their right to labor.

A survey performed in 2014 by the Institute for Public Policy shows that the poor, the elderly, people with mental and physical disabilities, and the LGBT community are the most discriminated groups of people in the Republic of Moldova.

The legislative, institutional, and administrative barriers that negatively affect the activity of the Council on the prevention and elimination of discrimination and ensuring equality poses significant problems in combating discrimination. The Council is not empowered to apply sanctions, which are still at the discretion of courts of law, where the situation has not progressed. The application of sanctions is inadequate given the terms for complaint resolution and enforcement of court judgments.

A number of drawbacks and problems regarding the legal framework implementation pertaining to the issue of domestic violence must be mentioned. Domestic violence cases are not investigated appropriately, protection measures for victims are often not issued, or respected by the perpetrators leaving victims without effective protection. The authorities continue to apply unevenly both the legislation on administrative sanctioning of perpetrators for breaking protection measures, and the legislation sanctioning domestic violence that results in minor injuries or a small health impact. Placement centers for victims of domestic violence are too few in the Republic of Moldova, and protection and support services available to victims of domestic violence are inadequate along with rehabilitation services for perpetrators. Victims of domestic violence from the Transnistrian region are unable to access protection measures, as there is no "law" to regulate this issue.

Education reforms continued in 2014 with authorities making efforts to ensure physical access, and to organize school transport options, however, this only further revealed issues with local and institutional resources along with the mismanagement of these resources. The inclusion of children with special needs in mainstream schools did continue, but important aspects of their inclusion remain unresolved.

Latin-script schools in the Transnistrian region had numerous issues, which saw possible resolutions postponed again. The Tiraspol administration continued their pressure in these eight Latin-script schools, whose student size in terms of numbers has decreased by three times, since 1990.

In 2014, the number of access and withdrawals of personal data significantly decreased, with accountability beginning to take hold for those who have violated the legislation. Traffic has begun to be monitored by public authorities during 2014, however a control mechanism and the appropriate legal framework is still missing that would justify private life interference.

Lastly, media institutions continued to publish materials that increase the vulnerability of juveniles. This would typically be done through the disclosing of personal data and information that allows for simple identification of the persons concerned, without any consideration of the psychological and social effects.

CHAPTER 1

THE RIGHT NOT TO BE SUBJECTED TO TORTURE AND ILL-TREATMENT

Author: Pavel Postica

Executive Summary

The torture and ill-treatment applied by employees of the Republic of Moldova (RM) law enforcement bodies constitute one of the primary flaws of RM society, as these actions lead to negative outcomes for both victims and those that engage in such actions as part of their duties. Combating this issue should be a primary priority of the Government's, which still has the duty to take all the necessary actions to not accept torture, inhuman, and degrading treatments. Throughout 2014, multiple violations of the right guaranteed by Article 3 of the European Convention on Human Rights (ECHR) were identified. Even if authorities developed a series of strategic regulatory documents (The National Human Rights Action Plan (NHRAP) and the Justice Sector Reform Strategy (JSRS)) meant to strengthen the guarantee and adherence of this right, their implementation was not adequate. Many times, prosecutors refused to start the criminal prosecution cases where bodily injuries were confirmed. Also, the opening of criminal prosecution in cases of torture was deliberately delayed. Additionally, the courts of justice became more active in fighting the issue of impunity. During 2014, a significant growth in the number of custodial sentences for torturers was registered, compared to previous years. The rehabilitation of victims of torture and ill-treatment is mainly supported by non-governmental organizations (NGOs) with assistance from international donors and is without Government support. The high number of torture cases in the Transnistrian region should worry the entire society on both the right and left banks of the Nistru River, as well as get the attention of international monitoring. Investigative journalists and civil society from the Transnistrian region require technical and methodological support to provide support to victims of torture. The conditions of detention are still deplorable and a motive for authorities to continue their efforts of implementing penitentiary construction and reconstruction projects.

1.1. Rehabilitation of victims of torture and ill-treatment

Rehabilitation of the victims of torture has always drawn the attention of RM civil society, and to a lesser extent the Government. The high discrepancy between the number of registered victims compared to the limited possibilities of civil society to support them puts more emphasis on the issue of torture. The projects implemented by NGOs[1] with the support of European partners, offered the opportunity to provide complex medical-social rehabilitation and legal services to only a limited number of victims of torture and ill-treatment, facilitating their social reintegration and highlighting the need for authorities to make a decision on the issue.

In February 2012, nearly three years after the events of April 7, 2009, the authorities understood the extent of the problem and set up for the first time, a Government commission[2] with the aim to identify civil persons and representatives of law enforcement bodies who suffered in the aftermath of the events of April 7, as well as to recover from the damage inflicted on them. In this context, we can discuss the first case of a centralized approach and rehabilitation to victims of torture.

First, authorities adopted two strategic human rights documents that include actions related to the rehabilitation of victims of torture and ill-treatment. The first document, NHRAP for 2011–2014,[3] was adopted by the Parliament Decision of May 12, 2011. This national instrument reflects the Government policies aimed at strengthening human rights protection. The Action Plan has a separate chapter entitled "Prevention and combating of torture and other cruel, inhuman or degrading punishment and treatment", where action No 31 envisions:

1 http://www.memoria.md/p/6/40/Proiecte-%C3%AEn-ac%C5%A3iune:-Reabilitarea-Victimelor-Torturii-din-Republica-Moldova-2010-%E2%80%93-2012
2 http://www.justice.gov.md/tabview.php?l=ro&idc=233&
3 http://lex.justice.md/md/339395/

Table 1. Excerpt from the Human Rights Action Plan for 2011-2014

31. Rehabilitation of victims of torture and ill-treatment	1) Develop partnerships for the medical-psychological rehabilitation of victims of torture and ill-treatment	Ongoing	Within the budgetary allocations	Ministry of Health (MOH); Ministry of Labor, Social Protection and Family (MLSPF)	NGOs	Number and categories of developed and implemented programs; number of assisted beneficiaries
	2) Strengthen the institutional capacities of using civil repair resulting from cases of torture and ill-treatment	2013	Within the budgetary allocations	Ministry of Justice (MOJ); Lawyers Association; Superior Council of Magistracy	NGOs	Number of compensated victims

By the end of 2013, Government authorities themselves assessed that action No 1, within action No 31 concerning the development of partnerships for medical - psychosocial rehabilitation of victims was not achieved[4]. There are specialized NGOs, such as RCTV "MEMORIA", that provide this type of support under various projects funded by development partners.

Table 2. Expected results of the Rehabilitation of Victims of Torture in RM Project for 2010-2012, implemented by RCTV "MEMORIA"

The activities implemented under this project will contribute to:
1) The improvement of the health and social status of victims of torture;
2) Access to recovery, including adequate and specialized rehabilitation services for victims of torture and other forms of inhuman and/or degrading treatment *(provision of at least 7,500 free medical, psycho-social, and legal consultations to about 400 victims of torture and their families).*

It would be beneficial for the constitutional authorities to find solutions and the needed funds to expand the good practices of this NGO. Unfortunately, during 2014 the authorities did not make any efforts to improve the situation and achieve the actions stated in the Action Plan.

Action No 2 within action No 31 is assessed as achieved, on the basis that a Government Commission was established to be in charge of identifying the civil persons and representatives of law enforcement bodies who have suffered in the aftermath of the events of April 7, 2009 and recovering from the damage inflicted on them. Though the role and importance of this commission cannot be ignored, it is regrettable that the authorities have not undertaken any actions to extend its scope to cover other cases of torture and ill-treatment, besides those related to the events of April 7, 2009. As a result, it can be stated that this section of the Action Plan was not implemented, and the success statements made by authorities were merely declarative, lacking any real substance. The check-marked implementation of this plan has not contributed to any means of the rehabilitation of victims of torture and ill-treatment. The MOH and MOJ are the primary institutions in charge of implementing these two sub-actions.

Besides the above-mentioned NHRAP, the authorities approved the JSRS[5], another policy document that "intervenes with an innovative approach and aims at integrating all reform efforts and intentions in a unified framework to ensure the coherency, consistency, and sustainability of the reforms in the justice sector overall." The strategy was intended to establish an institutional framework that coordinates the reform actions and supports the development partners in the justice sector, covering both donors and specialized NGOs from the country.

The strategy stipulates that the implementation of action 6.4.6, "establish efficient mechanisms for the rehabilitation of victims of torture and ill-treatment". To implement this action, the authorities were meant to develop and approve a draft law that would amend the legal framework and facilitate the establishment of a fund for the

4 http://www.justice.gov.md/public/files/drepturile_omului/Raport_PNADO_2013_APC.pdf
5 http://lex.justice.md/md/341748/

recovery of victims, as well as to allocate the necessary resources, which would have increased the number of people that could benefit from rehabilitation services. All actions were planned to be implemented by the end of 2014.

Table 3. Excerpt from the Action Plan for JSRS implementation

Specific area of intervention	Indicators of the implementation level	Deadline	Institutions in charge
6.4.6. Establish efficient mechanisms for the rehabilitation of victims of torture and ill-treatment	1. Draft law amending the regulatory framework developed and implemented 2. Fund for the rehabilitation of victims established and the necessary resources allocated 3. Number of persons who benefited from rehabilitation services	2014	Ministry of Finance, MOH, MLSPF, MOJ

No	Action	Deadline																			Outcome indicators	Institutions in charge
		2011	2012				2013				2014				2015								
		IV	I	II	III	IV	I	II	III	IV	I	II	III	IV	I	II	III	IV	I				
1	Develop the necessary regulatory framework for the rehabilitation of victims of torture and ill-treatment																					Draft regulatory document developed and submitted to the Government for review	MOJ, MLSPF
2	Develop services for the rehabilitation of victims of torture and ill-treatment																					Services established	MOJ, MLSPF

Regrettably, only in late October 2014, the authorities in charge finished and then opened the public debates on the draft Law on the Rehabilitation of Victims of Crime[6]. It is ambiguous and raises suspicions. Many terms and provisions of the draft law seem merely declarative and are able to minimize the number of victims with the right to rehabilitation while being able to limit the support services. It is troublesome that several provisions seem to "legalize" the use of torture in cases when the recovery of victims of various crimes is analyzed together with other categories of victims of crime. For example, analyzing the above-mentioned draft law (see the table below) we notice that not all victims have the right to financial compensation, which in some circumstances may favor the use of torture.

6 http://particip.gov.md/public/documente/131/ro_1918_Proiect-de-lege.pdf

Excerpt from the draft Law on Rehabilitation of Victims of Crime

"(3) The victim does not have the right to financial compensation by the Government for the damage caused by the crime if:

a) The crime for which compensation is requested was committed with the voluntary participation of the victim, except for the case when the victim is not subject to criminal liability according to Article 21 paragraphs (1) and (2) of the Criminal Code of RM;

b) The crime was committed in one of the circumstances that eliminates the criminal nature of the act according to Article 35 of the Criminal Code of RM;

c) The victim did not inform the criminal investigation bodies about the crime, if the criminal investigation was initiated only on the basis of the preliminary complaint of the victim, according to Article 276 of the Criminal Procedure Code of RM;

d) The victim, on the date of the crime for which financial compensation is requested, was convicted and had outstanding criminal convictions for a severe, particularly severe or exceptionally severe crime or for a crime committed by participation in an organized criminal group or criminal organization;"

In fact, the authorities delay the settlement on the issue of rehabilitation of victims of torture and ill-treatment. It is difficult to predict when the first victims of torture will be rehabilitated under this draft law or from the rehabilitation fund to be established, since at the end of 2014 the law was only under development. As in the case of NHRAP, the MOJ, which is in charge of implementing the draft law, is responsible for the failure to implement this action.

1.2. Use of torture in the Transnistrian region

Civil society has presented public opinion on numerous occasions situations and individual cases when torture and ill-treatment were used in the Transnistrian region. Unfortunately, use of torture by representatives of regional administration seems to have become commonplace, and the tolerance to this issue fosters its development. The quote below, taken from an interview with Vasile Kaliko, the regional "ombudsman", best reveals the situation in the region, where the employees of the regional "law enforcement bodies" and their interests are above the guarantee and observance of human rights.

Who will defend representatives of Government bodies? The Law on Militia also refers to the employees of the Ministry of Internal Affairs. What should an employee of law enforcement bodies, a representative of power do if someone offends him and tries to hit him? Is this inadmissible[7].

It goes without saying that the role of the "ombudsman" in the Transnistrian region is to defend human rights in relation with public authorities. Unfortunately, in terms of torture, the activity of the regional "ombudsman" is limited to visits of "institutions of detention", to analysis, and to description of conditions of "detention" in these institutions. The annual reports developed by the regional "ombudsman"[8] reveal and confirm that the use of torture is basically not sanctioned in the Transnistrian region, though these reports reveal inhuman conditions of "detention", lack of necessary health care and other situations that, according to the jurisprudence of the European Court of Human Rights (ECtHR), constitute acts of torture, inhuman, or degrading treatment.

In 2014, ECtHR communicated to the Governments of RM and the Russian Federation, at least eight cases of torture and ill-treatment in the Transnistrian region. The content of communications indicate similarities among the cases, with most involving inadequate conditions of "detention", poor or lack of quality of health care from the regional administration, and the duration and legality of detention, which can be qualified as inhuman or degrading treatment under the circumstances.

7 http://pan.md/news/Vasiliy-Kaliko-V-Pridnestrovie-ponyatie-pitki-zakonodatelino-ne-opredeleno/52105
8 http://ombudsmanpmr.org/doclady_upolnomochennogo.htm.

Table 4. List of cases communicated in 2014 by ECtHR to the Governments of the RM and Russia, including allegations of violation of Article 3 of the ECHR

No	Case title and registration number	Communication date	Date when the application was submitted
1.	3020/13 Vadim POGORLETCHI	May 19, 2014	December 24, 2012
2.	5349/02 Alexandru DRACI	July 11, 2014	September 24, 2001
3.	45464/13 Dumitru SCVARCENCO	September 2, 2014	June 14, 2013
4.	29182/14 Vitalii BESLEAGA and Serghei BEVZIUC	September 29, 2014	April 3, 2014
5.	3368/12 Pavel BELOZIOROV and Nadejda MOLODTOVA	October 8, 2014	January 3, 2012
6.	8064/11 Ivan SAMATOV	November 18, 2014	January 20, 2011
7.	33446/11 Valeriu MITUL and Iurie COTOFAN	November 18, 2014	April 19, 2011
8.	3445/13 Ghenadie NEGRUTA	December 18, 2014	December 7, 2012

It is necessary to mention that civil society from this region has become more and more interested in the adherence to human rights in the region [9]. It is of paramount importance that civil society organizations make efforts to get involved in the activities performed by regional "state organizations" to help victims of abuse.

Investigative journalists that participated in trainings on human rights have become more active as of late. They publish various articles[10] of individual cases of ill-treatment against "detained" persons and on the mechanisms in place. These articles draw readers' attentions and are used by other publications from the Transnistrian region[11]. Much work is still needed until the torturers will be brought to justice and sanctioned, and more active involvement from civil society in the fight against torture is welcome. Only by analyzing the journalists' articles on torture and ill-treatment[12], and the formal reports of the regional "ombudsman" can we can get a clear, general picture on the adherence of this right in the Transnistrian region. Statements on the use of ill-treatment in the Transnistrian region were made from the visits of international experts, who had the possibility to discuss confidentially with those deprived of liberty. The above-mentioned articles reveal that the use of ill-treatment to obtain self-incrimination is wide-spread in the region, and these statements are often the only evidence of the prosecution.

A young man, Evghenii Antonov, was sentenced to prison for many years for the murder of a young girl. He served 4 years in prison. By chance, the real murderer was found and convicted and Evghenii was acquitted and released from prison. The grounds for Evghenii's sentencing was the self-statement of the accused. How the self-statement of having committed the crime Evghenii had never even heard about was obtained remains a secret of the investigation.	A plastic bottle full of water was one of the weapons used by the investigators. If one knows how to use it, the beatings will cause unbearable pain, but leave no trace or bruises on the body of the victim. This can affect internal organs, cause hematomas, and later neoplasms, including cancer. Under the circumstances, the victim will write down everything as dictated.

9 http://mediacenter.md/proekti_seichas/euundp_gp-2014/359-prava-zaklyuchennyh-budet-otstaivat-i-grazhdanskoe-obschestvo.html
10 http://mediacenter.md/posolstvo_niderlandi/
11 http://news.rambler.ru/25344143/
12 http://dniester.ru/node/10661, all the information from the tables below are taken from this article.

Another common practice is to place the person accused of the crime in "education centers", with other detainees who are spurred by employees of "law enforcement bodies" to use physical and sexual violence against the accused person to determine their acknowledgement of the alleged crime.

The young people suffered bodily harm. One person who was particularly intense during interrogations, and has a high-ranking public function, would strike detainees over the head excessively. The young people confessed their guilt only when they were threatened to be placed in joint cells together with certain inmates, where they would have been raped and afterwards accused of murder anyway.	Our investigators are abusing the informal relations between the detainees and suspects, and place them in joint cells. After being raped these persons are traumatized for life.

An unjustified arrest on the street and the disproportionate and intense violent treatment of the arrested person, and the subsequent accusation of "having resisted" used to provide cover for the inexcusable violence. This is widespread in the region.

They thought that a young woman was stealing apples. They decided to forcefully arrest her. Elena disagreed and was forced into a vehicle and during they broke one finger and dislocated her shoulder. In the aftermath, it was found that the apples were from the orchard of the young woman's grandmother. Regardless, a criminal case was opened, with the young woman being accused of having resisted law enforcement bodies.

It is important for the Transnistrian region administration to acknowledge the consequences of ill-treatment and torture, as well as the fact that these actions cannot be hidden forever. They have to recognize that human rights violations cannot be kept quiet, because eventually they are revealed. They must be aware of journalistic investigations, reports produced by the European Committee for the Prevention of Torture (CPT), ECtHR judgments, as well as the possibility of individual criminal accountability and sentencing.

1.3. Investigation of cases of torture

Information presented by the Office of the Prosecutor General (PGO)[13] concerning torture and ill-treatment confirm that these actions continue to be applied by law enforcement bodies. According to the above mentioned information, 663 complaints were received from citizens during 2014 regarding torture and ill-treatment, compared to 719 complaints registered in 2013, i.e. only 56 fewer cases. After the examination of the registered complaints, the prosecutors started the criminal prosecution of 118 cases, compared to 157 criminal cases last year, or 39 more cases.

Analyzing data submitted by PGO, we find that criminal investigations were only initiated on 17.79% of recorded complaints, a low number that raises questions. The resolution of the other complaints is not clear. In addition, it is not known if the prosecutors followed the legal requirements when taking the decisions. It is almost impossible to establish what causes and conditions were used to justify the refusal to start a criminal prosecution. These questions appear because the analysis presented by the prosecutors confirms the initiation of criminal prosecution in 118 cases. On the other hand, the same analysis states that the existence of bodily injuries on the victims' bodies was confirmed in 251 cases, of which 194 were regarded as insignificant bodily injuries. Based on this information we conclude that a large number of notifications that confirm the existence of bodily injuries are essentially rejected by prosecutors, issuing orders of refusal at the start of the criminal prosecution.

13 http://procuratura.md/md/newslst/1211/1/6052/

Table 5. Number of cases, and severity of the injuries sustained by victims[14]

Persons suffered insignificant bodily injuries	194
Persons suffered light injuries	42
Persons suffered bodily injuries of medium severity	12
Persons suffered severe bodily injuries	2
The victim died	1
Total cases involving confirmed bodily injuries	251
Total criminal cases initiated	118

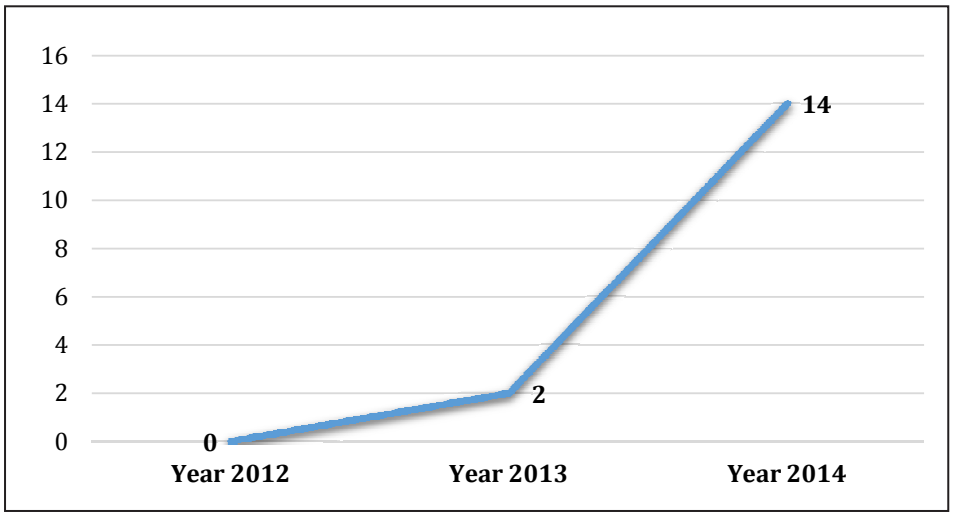
As for the profile of the victims, violence was used against suspects accused of a crime. However, violence is also used against other categories of people. In 85 cases ill-treatment was applied against offenders, in 29 cases, against other participants in the criminal process, and in 166 cases, against other people who were not involved in the crime and didn't have any procedural status. The data suggests that the employees of law enforcement bodies are excessively aggressive and do not have the appropriate professional training.

In 2014, prosecutors sent 46 criminal cases to courts of law, compared with 49 criminal cases sent in 2013. The above statistics show that the number of cases of torture, inhuman, and degrading treatment that reach the courts are much smaller than the number of criminal cases initiated on this type of crime. The causes and conditions that delay the criminal prosecution of such cases are not clear, but need to be analyzed in order to understand the real causes of delay and avoid the assumption of purposeful delay.

During 2014, slight progress was made with regards to the sanctioning of torturers, and judges ruled 43 sentences on conviction of 62 persons (torturers). Of the total number of persons acknowledged as guilty of committing torture and other ill-treatment, 14 were sentenced to custodial punishments. By comparison, in 2013, the same punishment was applied against only two people.

According to the Report on Human Rights Observance in RM for 2012, developed by Center for Human Rights of Moldova (CHRM)[15], in 2012 the courts of law pronounced 13 sentences against 30 people based on Article 309/1 of the Criminal Code (CrC) (currently 166/1 CrC). Of them, five conviction sentences were pronounced against 10 employees of the police. All condemned persons were issued conditionally suspended sentences and one person was fined.

Diagram 1. Number of custodial sentences issued for acts of torture



14 *Ibidem*

15 http://ombudsman.md/sites/default/files/rapoarte/raport2012-final.pdf, p. 80.

Analyzing the number of condemned torturers during the past three years, we notice that as a result of the efforts made to prevent and combat torture, fewer complaints against cases of torture, inhuman, and degrading treatment were made during 2014, and judges convicted a higher percentage of people. These developments should lead to a lower impunity towards torture and ill-treatment applied by employees of law enforcement bodies.

1.4. Conditions of detention in custodial institutions

Conditions of detention constitute one of the most pressing problems of the legal system of RM. Though the situation has improved recently, it is still understood that people are kept in poor conditions, while in the custody of law enforcement bodies.

The existence of this problem is confirmed by CHRM reports[16], from visits to detention centers, along with statements made by detainees and authorities. These reports reveal that the drawbacks related to respectable living conditions of detainees are relatively unchanged from previous years. With that being said, we believe it appropriate to highlight the main findings of the monitoring reports and urge authorities to take corrective measures.

Insufficient natural light in rooms. This problem persists in Penitentiary No 2 of Lipcani, where the dormitory windows are made of glass blocks, and prevent the penetration of daylight.

In Penitentiary No 15 of Cricova, the unrepaired cells are dark, because the windows are small and are covered by metal bars, which limit considerably the access to natural light. The cells located on the left side of the penitentiary do not have any natural light at all, and the access is blocked by an external wall.

The three detention rooms of the Police Inspectorate from the Ciocana district, meant for short-time detention, also suffer from the problem of natural and artificial lighting. These three cells do not have any windows at all.

Poor sanitary-hygienic conditions. In Penitentiary No 2 of Lipcani, the toilet is located in the yard and does not ensure the most basic of privacy. In Penitentiary No 15 of Cricova, the cell has a sanitary block, which is a source of infections. The water is supplied via a faucet without a sink, and uses the toilet to discharge the waste water. The inmates use this faucet for drinking water, to wash themselves, and laundry. They use the same toilet for their physiological needs. The cells of the Temporary Detention Center of the Police Inspectorate of Basarabeasca are not supplied with water, and the sewerage system is out of order.

Provision of health care. The Temporary Detention Center of the Police Inspectorate of Basarabeasca does not have a medical office. However, Penitentiary No 13 of Chisinau municipality is still the most relevant problem of the penitentiary system. This is also proved by ECtHR judgments and rulings, which recognized the Government of RM accountable for the violation of Article 3 of ECHR. Though the authorities in late 2013 announced the undertaking of construction of a new penitentiary, which would replace Penitentiary No 13, the construction works are expected to be completed by only 2018. During 2014, the authorities did not publish any information on the progress of the work, but during the reporting period there were no active construction works.

16 http://ombudsman.md/sites/default/files/rapoarte/raport_cpdom_2015redactat.pdf

CONCLUSIONS

The authorities have developed a number of strategic regulatory acts aimed at enhancing the guarantee and observance of this right. However, these regulatory acts were implemented in a perfunctory manner by the central Government institutions - MOJ and MOH - failing to fulfill the assumed commitments.

Courts of law started condemning actions of torture by applying custodial sentences.

The rehabilitation of victims of torture and ill-treatment is primarily supported by civil society organizations and the support of international donors, without any assistance from the Government.

The high number of torture cases in the Transnistrian region should worry the entire society on both banks of the Nistru River, and also obtain the attention of international monitoring.

Investigation journalists and civil society from the Transnistrian region require technical and methodological support to provide support to victims of torture.

The conditions of detention in penitentiaries are still deplorable, and a reason for authorities to continue their efforts of implementing penitentiary construction projects.

RECOMMENDATIONS

1. Review the strategic documents and implement the NHRAP and JSRS, in particular the rehabilitation of victims of torture;
2. Provide Government support to NGOs specialized in the rehabilitation of victims of torture;
3. International organizations visit places of detention in the Transnistrian region and discuss and identify with those detained all causes that led to the use of torture and ill-treatment;
4. MOJ shall review the draft Law on Rehabilitation of Victims of Crimes, taking into account the specific situation of victims, whose rights were violated;
5. Courts of law to observe the provisions of Article 90 CrC to avoid the application of suspended sanctions for crimes of torture;
6. Additional analysis on all cases of refusal to start criminal investigation, particularly if the existence of bodily injuries (even minor) are confirmed;
7. Strengthen professional training of employees of law enforcement bodies on the situations and cases when the use of physical violence and special equipment is allowed;
8. Speed up construction of the penitentiary that will replace Penitentiary No 13 of Chisinau.

CHAPTER 2

LIBERTY AND SECURITY OF PERSON

Author: Pavel Postica

Executive Summary

The right to liberty and security of person remained a major problem in 2014, despite being guaranteed by the Constitution and the laws of the Republic of Moldova (RM), in addition to international conventions to which RM belongs. Civil society did offer recommendations and present multiple proposals on amendments that sought to clarify and establish rules that would provide guarantees, however, authorities only implemented or partially implemented two out of the ten recommendations outlined in the previous Report.

During 2014, a visible and troubling increase in the number of submissions to apply and extend custodial preventive measures was registered. This in turn led to an increased number of detained persons and the number of detainees in prisons throughout the country. Although the causes that led to this cannot be fully explained at present, the increase that was seen in 2014 goes against the trend of decreasing submissions in previous years.

Overcrowded prisons has been gaining increased public attention and, although general legislative regulations were adopted that compel prison administrations and the Department of Penitentiary Institutions (DPI) to take effective measures to manage this issue, these regulations are not implemented in practice. As a result, at minimum four of the seventeen prisons are overcrowded, with two others close to reaching the allowed maximum. The consequences of not tackling this issue could bring the government multiple cases before international courts, and significant sums to be paid as compensation for the violation of the right to liberty and security. In addition to prisons, psychiatric institutions are seeing similar issues. For example, when it comes to admissions, negative aspects have been noted in the previous Report for 2012-2013 which have not been eliminated. As well, several psychiatric wards that were to be closed continue to work, and the interests of employees of these institutions are considered more important than the rights of their patients.

In the Transnistrian region, the issue of the inconsistent and arbitrary depriving of liberty is not stopping. Constitutional authorities take few effective measures to remedy the situation or even adopt a clear mechanism for the rehabilitation of victims. Nevertheless, in 2014, the right to liberty and security of person in the Transnistrian region caused great concern for the European Court of Human Rights (ECtHR), as they communicated 19 cases with the RM Government, including cases of alleged violation of Article 5 of the European Convention on Human Rights (ECHR). Of these 19, 12 are focused on Transnistria and persons deprived of liberty in that region. These 12 cases were also shared with the Russian Government, which exercises its effective control over the separatist administration in Tiraspol.

Promo-LEX believes that the constitutional authorities should make more consistent efforts that would guarantee the right to liberty and security of person. While the recommendations in the Report for 2012-2013 were largely ignored, the recommendations in this report need to be implemented

2.1. Implementation of recommendations from the 2012-2013 Report

The Human Rights Report for 2012-2013 formulated ten recommendations for the liberty and security of persons, intent on improving this field in RM. Below is the outline of the two recommendations that were partially or fully implemented:

1. On September 6, 2014 the adoption of an explanatory decision[1] made by the Plenary of the Supreme Court of Justice (SCJ) on the application by courts of certain provisions of the ECHR. In this explanatory decision, the SCJ Plenary mentioned, *inter alia* the courts' obligation to implement ECHR provisions directly:

1 http://jurisprudenta.csj.md/search_hot_expl.php?id=181

This results from the contents of Article 53 of the European Convention, of which nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

Both the Civil Procedure Code and Criminal Procedure Code state that international treaties have priority over internal legislation, which requires judges to apply directly the provisions from international treaties.

In this sense, the historic application of provisions from the European Convention falls to national courts. Thus, courts must verify that applicable laws that concern specific rights and liberties provided by the European Convention are compatible with its provisions.

In case of incompatibility, courts will directly apply the provisions of the European Convention, and this should be mentioned in the pronounced court decisions.

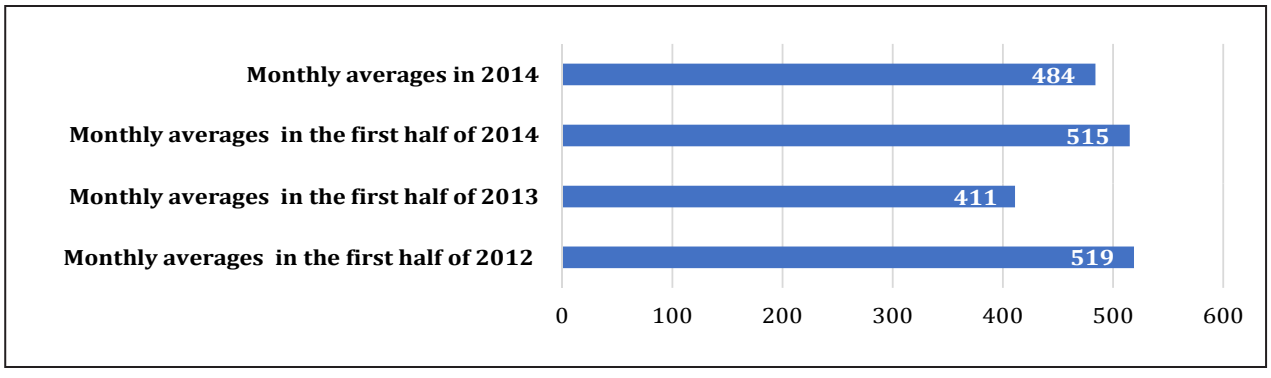
2. On May 29, 2014, Parliament passed a series of amendments to the Enforcement Code, which specifies and clarifies aspects of the execution of custodial sentences. This includes the rule of ensuring a housing area of at least 4m^2 per detainee. As well, other amendments compelled the prison administrations to notify DPI management when the legal maximum capacity of the prison is reached. Additionally, the new provisions call for actions to be taken by prison administrations and DPI to transfer convicted persons to other detention facilities when overcrowding occurs.

2.2. Increase in the number of submissions for the application of preventive arrest and increase in the number of persons detained in penitentiaries

When compared to 2012, 2013 saw a decrease in the number of submissions to apply custodial preventive measures to persons suspected or accused of committing crimes. In 2012, courts of common law examined 6,223 submissions[2] for the application or extension of preventive detention, and in 2013, only 4,929 submissions were examined[3], or roughly a 21% decrease.

In the first half of 2014, courts of common law examined 3,090 submissions for the application or extension of preventive detention, according to statistics[4] provided by the Superior Council of Magistracy. These statistics also point to 5,804 submissions made during the entirety of 2014, showing a clear increase in the number of submissions for the application or extension of preventive detention. Breaking these numbers down to their monthly averages shows approximately 519 during 2012, then a decrease to 411 in 2013, followed with an up-tick to 515 cases in the first six months of 2014[5], or by 25.3% more than the previous year. For the second half of 2014, the monthly average did decrease to 484 cases per month, still above the 2013 monthly averages.

Diagram 1. Monthly averages of submissions for the application and extension of preventive measures in 2012-2014



2 http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/pilonstudiu1/Raport_activitatea_CSM-_2012.pdf
3 http://www.csm.md/files/Statistica/2013/12%20luni/Generalizare.pdf
4 http://csm.md/files/Statistica/2014/6%20luni/Activitatea_2014_I.pdf
5 See Table 1 "Monthly averages of submissions to apply and extend preventive measures".

The primary concern from these numbers rests in the fact that the number of crimes committed in RM, only increased by 7.62%[6]. Furthermore, exceptionally serious crimes saw a 6.6% decrease, while very serious crimes registered RM went up 6.8%. These are types of crimes that most frequently require preventive detention.

The substantial increase in the number of submissions in RM coincides with only a moderate increase in crimes committed, which may lead to concerns on the increasing number of unjustified deprivations of liberty.

Concerns about the increasing number of persons deprived of liberty are also based on the increasing number of people in detention. According to official information published on the official website of the DPI[7], the number of people held in preventive detention rose from 2,431 at the beginning of 2014 to 2,456 at the end of the year.

Table 1. Total number of persons detained in penitentiaries and preventive detention isolators

Institution	Maximum number of detainees allowed in penitentiaries	Registered		+/- pers.	+/- %
		on 01.01.2015	on 01.01.2014		
Total penitentiaries:	6019	4861	4422	+439	+ 9.9%
Total isolators of preventive detention	2635	2456	2431	+25	+1.02%
TOTAL:	8654	7317	6853	+464	+ 6.7%

The concerns that are raised above on the submission increase in monthly averages for application or extended preventive detention are confirmed by the increase of the number of people arrested when compared to the previous year.

A similar situation can be observed on court decisions on the application of custodial measures, which saw a 6.7% increase compared to the beginning of 2014, or a net rise of 464 persons detained in 2014. Since 2004, there has been a steady decrease in the number of inmates in RM[8], raising concerns that in 2014 this trend reversed and the number of people serving sentences in prisons went up.

2.3. Overcrowded penitentiaries

The problem of overcrowded penitentiaries was not highlighted in the report for 2012-2013, but the increase in the number of people in prisons and preventive detention makes it necessary to mention in this report. Prison administrations and the DPI were obliged to identify solutions on the overpopulation of prisons, but the practical implementation of this remains unresolved.

Looking at statistics on the total number of persons who are in detention and the *capacity* of the country's *prisons*, it can be concluded that enough space to hold people in detention is more than possible, given the $4m^2$ minimum rule that is guaranteed by law. However, it must be mentioned that 7,317 people were detained in prison system institutions at the end of 2014, which can hold 8,654 people. When statistical information provided by DPI is reviewed and analyzed, we note that there are at least four overcrowded prisons and two that are at or near the capacity limits in RM. Since the increase in the number of people sentenced to prisons may be maintained, the risk of overcrowding in other prisons could easily be an issue in the future.

The data given in the table below shows an overcrowding by how much in the following penitentiaries: 32 people in Penitentiary No.1 in Taraclia, seven people in Penitentiary No.6 in Soroca, by 12 people in Penitentiary No. 11 in Balti, and by 203 people in Penitentiary No.13 in Chisinau. The capacity in Penitentiaries No.7 in Rusca and in No.15 in Cricova is close to being met.

6 http://mai.gov.md/content/27947
7 http://penitenciar.gov.md/ro/statistica
8 http://www.prisonstudies.org/country/moldova-republic

Table 2. Overcrowded or near overcrowded penitentiaries

Institution	Maximum number of detainees allowed in penitentiaries	Registered		+/- pers.	+/- %
		on 01.01.2015	on 01.01.2014		
Penitentiary No. 1 – TARACLIA (closed type)	400	432	357	+75	+21%
Penitentiary No. 6 – SOROCA (closed type)	800	807	744	+63	+8.4%
Penitentiary No. 7 – RUSCA (for women)	310	299	284	+15	+5.2%
Penitentiary No. 15 – CRICOVA (closed type)	600	599	558	+41	+7.3%
Penitentiary No. 11 – BĂLȚI (preventive detention isolator)	520	532	514	+18	+3.5%
Penitentiary No. 13 – CHIȘINĂU (preventive detention isolator)	1000	1203	1082	+121	+11.1%

2.4. Admission and situation in psychiatric wards

The Human Rights Report for 2012-2013 raised the issue of procedural safeguards for victims of forced confinement in psychiatric institutions. In this context, there were no procedural changes in this area during 2014, and no legislative changes were made more precisely regulating confinement in psychiatric institutions. Accordingly, several situations occurred during 2014 that were previously classified as arbitrary detention, such as the inability of withdrawal of consent for admission and treatment, impossibility to voluntarily leave the hospital unless accompanied by relatives or after completion of treatment, confinement without signing an informed consent, hospitalization for prophylaxis, and inability to challenge the judicial decision that imposes treatment.

In contrast, some medical institutions are run without adequate equipment, creating doubt on the legality of holding patients in these institutions, and on the observance of the right not to be subjected to inhuman or degrading treatment.

The psychiatric unit of Pavlovca had roughly 50 people hospitalized and a staff of 100 at the start of 2014, provides an example. In 2013, Magdalena Sepulveda, UN Special Rapporteur on extreme poverty and human rights[9] visited and strongly recommended the closure of this institution, noting that serious violations of human rights were occurring, including the right to liberty and security of person. As a result of this autumn 2013 visit the Ministry of Health transferred inmates to other psychiatric hospitals and the institution was shut down. However, in an interview in early 2014,[10] the Ministry of Health admitted that the institution was not closed "because of strong resistance from the staff and that the only solution to maintain the staff was to transform that section." Instead of closing the institution at the end of 2013, it was reorganized for palliative care services[11]. It is worth noting that the maximum capacity of the respective section is for a maximum of 30 people / beds and the 50 patients undergoing treatment at the beginning of 2014 raises doubts concerning their rights. For this reason, it can be concluded that patients' rights in this section were considered less relevant compared to the interests of the institution's staff.

Reasonable doubts about the respect of the right to liberty and security of person were confirmed when on December 18, 2014, the ECtHR communicated the Case of Ion Rotaru against RM (application no. 2111/13[12]), calling constitutional authorities to explain the imprisonment of the applicant by confinement in a psychiatric institution and the consistency of this measure with the requirements of Article 5 of the ECHR.

9 http://www.ohchr.org/EN/Issues/Poverty/Pages/CountryVisits.aspx
10 http://e-sanatate.md/News/2058/spitalul-de-psihiatrie-din-pavlovca-pacienti-care-se-plang-ca-le-este-frig-si-cer-de-mancare
11 http://ms.gov.md/sites/default/files/legislatie/ordin_1569_as.psihiatrica.pdf_2.pdf
12 http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-150752

2.5. Deprivation of liberty in the Transnistrian region contrary to national legislation

The right to liberty and security of person continues to not be guaranteed and protected by RM throughout its territory, including the Transnistrian region. A serious concern is that the Tiraspol administration, with the direct support of the Russian authorities, maintain and further develop the local system of "law enforcement bodies" and other institutions that directly affect the right to liberty, and security of person - police, prosecution, courts, prisons, etc.

Analyzing the information[13] published by the enforcement department in Transnistria, on July 1, 2014 2,840 people were held in places of "detention", 2,236 of which were "convicted" and 461 held in "preventive detention". This situation has seen no noticeable changes at the end of 2014. According to media sources in the region[14], as of December 31, 2014, in places of "detention" in the region 2,907 people were detained, including 2,388 "convicted" and 519 in "preventive detention".

Table 3. Change of the number of persons deprived of liberty by institutions subordinated to the Tiraspol regime

	Total number of persons deprived of liberty	"Conviction"	"Preventive detention"
Situation on January 1, 2014	2,909	2,137	580
Situation on July 1, 2014	2,840	2,236	461
Situation on December 31, 2014	2,907	2,388	519

In the process of "retention, arrest, and detention", the separatist administration does not ensure even the minimum of guarantees provided by Art 5 of the ECHR. Victims of abuse have no available recourse at the local or national level and the ECtHR becomes their only chance for rehabilitation and remedy. Accordingly, the ECtHR's response to a growing number of cases of alleged violation of Art 5 of the Convention is understandable. The number of cases communicated to the Governments of RM and the Russian Federation is alarming. During 2014, the ECtHR communicated to the RM Government[15] 19 cases of alleged violations of Art 5 of the ECHR, of which 12 cases relate to violations of individual liberty in the Transnistrian region and are directed against both, RM and the Russian Government.

Table 4. List of cases communicated by the ECtHR to the Governments of RM and Russia, including alleged violations of Article 5 of the ECHR

No.	Title and registration number	Date of communication	Date of application
1.	3020/13 Vadim POGORLETCHI	May 19, 2014	December 24, 2012
2.	22200/10 Ernest VARDANEAN and Irina VARDANEAN	June 13, 2014	April 20, 2010
3.	5349/02 Alexandru DRACI	July 11, 2014	September 24, 2001
4.	75813/12 Denis SCHIDU	July 11, 2014	November 16, 2012
5.	28750/11 Andrei VERSILOV	August 25, 2014	May 3, 2011
6.	45464/13 Dumitru SCVARCENCO	September 2, 2014	June 14, 2013

13 http://ovrpress.narod.ru/new_news/2014/6mes.html
14 http://ovrpress.narod.ru/new_news/2015/kollegija.html
15 The information is analyzed based on the cases that were made public on the ECtHR's website during 2014.

7.	6151/12 Mihail PETIS and Alţii	September 29, 2014	January 18, 2012
8.	29182/14 Vitalii BESLEAGA and Serghei BEVZIUC	September 29, 2014	April 3, 2014
9.	3368/12 Pavel BELOZIOROV and Nadejda MOLODTOVA	October 8, 2014	January 3, 2012
10.	8064/11 Ivan SAMATOV	November 18, 2014	January 20, 2011
11.	33446/11 Valeriu MITUL and Iurie COTOFAN	November 18, 2014	April 19, 2011
12.	3445/13 Ghenadie NEGRUTA	December 18, 2014	December 7, 2012

During the reporting period, the constitutional authorities did little to ensure the right to liberty and security in the Transnistrian region. Even if the National Human Rights Action Plan (NHRAP) for 2014 provides for the introduction of rehabilitation for persons arbitrarily deprived of liberty in the Transnistrian region, there was no public information available on the implementation of this action. The institutions responsible for implementing this mechanism are the State Chancellery (Bureau for Reintegration), the Ministry of Justice, and the Ministry of Finance.

CONCLUSIONS

The respect of the right to liberty and security of persons remained a large problem throughout 2014. Authorities did not make any visible progress in implementing the recommendations put forth by civil society, and only two of the 10 recommendations presented in the previous Promo-LEX Report were partially or fully implemented.

During 2014, a visible and worrying increase in the number of submissions to apply and extend custodial preventive measures was registered. This increased the number of detained persons and the number of inmates in prisons, and as a result the problem of overcrowded prisons reemerged in 2014. At least four of the 17 prisons are overcrowded, and another two are nearing their capacity limit. Certain Departments of psychiatry continue to operate in the interests of employees at the expense of patients' rights.

The arbitrary deprivation of liberty in the Transnistrian region continues. The constitutional authorities do not take effective measures to improve the situation nor in the adoption of at least a clear mechanism for rehabilitation of victims. The violation of the right to liberty and security of person in the Transnistrian region was examined by the ECtHR, and 12 cases of alleged violations of Art 5 of the Convention were communicated to the Governments of RM and the Russian Federation.

The constitutional authorities must strive to ensure a consistent and practical realization of the right to liberty and security of persons, along with following through on recommendations made by civil society and international partners.

RECOMMENDATIONS

1. The authorities need increased responsiveness to the recommendations made by civil society, especially those of the 2012-2013 Report;
2. As much as possible Prosecution bodies must reduce the number of submissions to apply custodial preventive measures, which are required only in exceptional cases and are relative to the individual circumstances of the case;
3. The prison administrations must implement the provisions of Art 225 para 6 of the Enforcement Code by informing the DPI of the need to transfer detainees when they reach the maximum admitted number of detainees;
4. DPI must closely monitor the number of detainees in prisons, and take active measures, including sanctioning prison management in order to prevent cases of overpopulation of prisons;
5. Given the constant and massive overcrowding of Penitentiary no. 13 in Chisinau, the construction of an alternative prison is urgently needed;
6. Immediate closure of the psychiatric hospital ward in village Pavlovca, d. Briceni, and the transferring of patients to nearby health facilities with adequate treatment conditions;
7. Observing the positive obligation to investigate all the individual circumstances of the arbitrary detention of persons in the Transnistrian region, and to sanction those responsible if a final judgment is made in court;
8. Streamlining the actions proposed in the NHRAP to establish a mechanism for the rehabilitation of victims of arbitrary detention in the Transnistrian region;
9. Intensify diplomatic efforts to force the separatist administration in Tiraspol and, indirectly, the corresponding authorities of the Russian Federation, to ensure implementation and observance of the right to individual liberty. A possibility for effective remedy in a recognized court in all situations that require the application of custodial preventive measures.

CHAPTER 3

THE RIGHT TO A FAIR TRIAL AND JUSTICE SECTOR REFORM

Authors: Nadejda Hriptievschi, Sorina Macrinici, Pavel Grecu

Executive Summary

The legislation of the Republic of Moldova (RM) guarantees the right to a fair trial but, in practice this right is not always observed. Two main aspects are presented in this chapter, and were chosen to be analyzed and monitored during the reference period. These include the duration of court proceedings and the security of legal relations. The length of the court proceedings is primarily affected by frequent postponements of court hearings and retrials. The security of legal relations is affected by the illegal quashing of final civil court judgments by a supreme court. This chapter ends with recommendations aimed at overcoming these two problems.

Assurance of the right to a fair trial highly depends on the functioning of the overall justice sector. RM initiated a wide reform of the justice system back in 2011-2012, with the implementation of the Justice Sector Reform Strategy for 2011-2016 (JSRS) and authorities took several measures to enhance the independence and integrity of the judicial system. Judges' salaries were raised, leading to a proportional increase of pensions of all retired magistrates and of one-time retirement benefits. Professional integrity was tested and the sanctions for corruption were harshened, among other anti-corruption measures. This chapter ends with recommendations regarding these issues.

3.1. Postponement of hearings, retrial of cases and illegal quashing of final civil judgments

3.1.1. Postponement of hearings and retrial of cases

RM did not and does not have chronic problems with the length of court proceedings,[1] but delayed court proceedings are an exception. Thus, both in civil and criminal cases, the first hearing is held within six weeks after notification of the court. Analysis of a case of average complexity at all free levels of jurisdiction (first instance, appeal, and second appeal) does not take more than 18-24 months, which is below the average in West European countries.[2]

Although the duration of a case proceeding is generally acceptable, the persistent problem of the RM system is that court hearings are frequently postponed and cases are remanded for retrial. The result is that the examinations of simple cases are delayed and complex cases end up examined superficially. This problem was also mentioned in the previous report and remains a constant problem within the judicial system, and as a result affects the right to a fair trial.

Frequent postponement of hearings

In 2008, court hearings were postponed because the arrested defendant was not brought to court, or there was no indication of having notified the defendant about the hearing. Contributing factors also include judges' perfunctory and inconsistent attitude regarding the postponement requests, absence at the hearing by the prosecutor, the lawyer, or even the judge on occasion, or the fact that there were difficulties with bringing the witnesses in the court room.[3] This finding was also true in 2012. Those interviewed for the report of the Legal

1 See, for instance, the Report entitled "Enforcement of the Judgements of the European Court of Human Rights by the Republic of Moldova, 1997-2012", published in 2012, developed by the Legal Resources Centre from Moldova (LRCM), available on: http://crjm.org/wp-content/uploads/2014/04/Executarea-hotararilor-CtEDO-de-catre-RM-1997-2012.pdf (*hereinafter referred to as LRCM Report of 2012*), (accessed on April 15, 2015).

2 According to the statistics on the activity of the courts in 2014, out of the total number of civil case backlogs at the end of 2014 (20,354), 8.9% (1,827) took more than 12 months long, 7.8% (578) - more than 24 months long and 1.6% (321) - more than 36 months long. Out of the total number of criminal case backlogs at the end of 2014 (6,539), 10.6% (694) took more than 12 months long, 3.1% (207) - more than 24 months long and 1% (69) - more than 36 months long (data available on http://www.justice.gov.md/pageview.php?l=ro&idc=56& (the web-page of he Ministry of Justice (MOJ), Department of Judicial Administration), (accessed on March 23, 2015).

3 The Final Report of the OSCE Trial Monitoring Programme for the Republic of Moldova, particularly p. 60-61.

Resources Centre from Moldova (LRCM) in 2012 said that there were many true reasons behind the postponement of the hearings such as the judges were afraid that their judgments would be quashed, delay of the case by the parties to it, the fact that there were no witnesses, late preparation of the expert review reports, or the fact that the judges lacked the skills to examine a case.

The amendments to the Civil Procedure Code (CPC), which entered into force on December 1, 2012 (Law No 155 of 5 July 2012), gave judges the possibility to prepare the examination of civil cases without convening court hearings, and the rules on the presentation of evidence were tightened. The goal of these amendments was to reduce the number of hearings and to ensure quicker examination of cases. The judges, however, did not fully harness the changes introduced by Law No 155. The interviewed legal experts for the LRCM Report on the enforcement of judgments of the European Court of Human Rights (ECHR) by RM during 2013-2014[4] stated that some judges did start to apply those provisions, but many still continued to allow the postponement of cases awaiting for new pieces of evidence to be presented, even if the parties had the possibility to present the evidence before. As well, some judges do not prepare the cases for trial properly, which further delays the court proceedings. Thus, the aforementioned amendment did not have a visible effect. The fact that witnesses do not show up in the court room, especially for criminal cases, is a severe problem in RM. Usually, the courts of law presume that witnesses want to appear in court, however it often happens that the witnesses do not come because they do not want to or cannot, and cases end up postponed. This problem must end.

Remanding cases for retrial

In the *Mazepa*[5] and *Gusovschi*[6] judgments, ECtHR criticised both retrials. The LRCM Report of 2012 found that the higher courts of law in RM used to remand cases for trial extremely often.

Until December 1, 2012 civil cases were possible to remand for retrial both by the Supreme Court of Justice (SCJ) and by appellate courts.[7] Law No 155 of July 5, 2012 amended Article 385 of CPC by limiting the possibility of the appellate court to remand cases for retrial for two instances: if the jurisdiction was violated, or if the court rules a judgment on the rights of persons not involved in the trial. The appellate court can also remand cases for retrial if the subpoena procedure is violated and the parties demand the case to be remanded for retrial. The same law limited the right of the SCJ to remand cases for retrial in courts of first instance. SCJ can remand cases for retrial in courts of first instance only in the cases in which this can be done by the appellate courts. The persons interviewed for the LRCM Report of 2012, which include judges, declared that cases are remanded for retrial because of errors made by the courts of law, and because judges are hesitant to take a decision in complex or delicate cases.

Table 1 contains data on civil cases remanded for retrial by the SCJ in 2012[8], 2013[9], 2014[10]. The statistics show that in the past three years the Collegium for Civil, Commercial, and Administrative Cases of the SCJ remanded about 35% of the civil cases for retrial, for which the second appeal against the judgments was admitted. In 2009, this coefficient was 53%, i.e. 18 p.p. lower than 5 years ago. This downward trend of cases remanded for retrial remained constant through 2012-2014. During this period the rate of second appeals against the admitted civil judgments decreased as well.

4 LRCM, Report "Enforcement of Judgements of the European Court of Human Rights by the Republic of Moldova, 2013-2014", March 2015, Chisinau, available on: http://crjm.org/al-doilea-raport-crjm-privind-executarea-hotararilor-ctedo-de-catre-moldova/ (*hereinafter referred to as the LRCM Report of 2015*), (accessed on April 15, 2015).

5 ECtHR, Mazepa v.the Republic of Moldova, May 10, 2007.

6 ECtHR, Gusovschi v.the Republic of Moldova, November 13, 2007.

7 The appellate courts were forced to remand cases for retrial when they found that the procedural rules were not observed (Article 385 (1) (d) CPC). In three cases, however, on parties' request, they could still examine the appeal without remanding the case for retrial. Where SCJ finds that the judicial error cannot be corrected in the second appeal, it could remand the case for retrial both in the court of first instance and in the appellate court (Article 445 (1) (c) CPC).

8 Data taken from the Judgement of SCJ Plenary No 4 of 21 January 2013 on the Activity of SCJ in 2012, p. 23-24.

9 Data taken from the Judgement of SCJ Plenary No 1 of 20 January 2014 on the Activity of SCJ in 2013, p. 36-38.

10 Data taken from the Judgement of SCJ Plenary No 1 of 23 February 2015 on the Activity of SCJ in 2014, p. 27-32.

Table 1. Examination by the SCJ Collegium for civil, commercial and administrative cases of the second appeals against judgments

	Administrative court (Section 2)		Civil cases (Section 2)			Commercial cases (Section 2)			Insolvency cases	Total
	2013	2014	2012	2013	2014	2012	2013	2014	2014	
Total examined	1,673	1,621	2,506	3,812	3,535	245	606	611	200	**14,809**
Admitted	524	352	833	1,078	928	115	206	159	84	**4,279**
% of the total	31.3%	21.7%	33.2%	28.3%	26.2%	46.9%	34%	26%	42%	**28.9%**
Remanded for retrial	195	82	136	456	368	48	96	67	65	**1,513**
% of the admitted	37.2%	23.3%	32.2%	42.3%	39.6%	41.7%	46.6%	42.1%	77.4%	**35.3%**

Until October 27, 2012, the appellate court could not remand criminal cases for retrial and SCJ could remand cases for retrial only to the appellate court. After the amendment of the Criminal Procedure Code (CrPC) that entered into force on October 27, 2012 (Law No 66), courts of law were given more opportunities as far as remanding of cases for retrial is concerned. Thus, the appellate court can remand the case for retrial, but only if the defendant was not served with a subpoena. This also applies if he/she was not granted the right to an interpreter, was not assisted by a lawyer, or if the provisions on judge incompatibility were breached (Article 415 (1) p. 3 CPC). The second appeal against the judgment of the appellate court can be admitted only if it corresponds to the grounds set forth in Article 444 of CPC. It seems that this second appeal was regarded by the legislator as a remedy in favor of the accused (see Article 444 (2) of CPC); and the appellate court, in principle, cannot make his/her situation worse. For this reason, SCJ remands many criminal cases for retrial.

Table 2 contains data on the criminal cases remanded for retrial by the SCJ in 2012[11], 2013[12], 2014[13]. The statistics show that during 2012-2014, SCJ remanded more than 70% of the admitted second appeals on criminal cases for retrial. According to the Report on the Activity of SCJ for 2011, in that year the Criminal Collegium of SCJ admitted second appeals regarding 292 persons, of which appeals concerning 198 persons (i.e. 68%) were remanded for retrial. In 2014, SCJ remanded for retrial 79.8% of the criminal cases, for which it admitted second appeals against court judgments. This increase can be explained by the lower share of admitted second appeals.

Table 2. Criminal cases remanded by SCJ for retrial in 2012, 2013 and 2014

	Second appeals following the ordinary procedure			Second appeal against unappealable judgments			Total
	2012	2013	2014	2012	2013	2014	
Totally examined (persons)	1,630	1,432	2,152	27	31	67	**5,339**
Admitted (persons)	529	392	560	19	6	7	**1,513**
% of the total	32.4%	27.4%	26%	70.4%	19.3%	10,4%	**28.3%**
Remanded for retrial (persons)	375	230	447	13	3	2	**1,070**
% of the admitted	70.9%	58. 7%	79.8%	68.4%	50%	28,6%	**70.7%**

The Plenary Decision No 4 of January 21, 2013 acknowledged that cases are primarily remanded for retrial due to the poor examination of cases by lower courts. Thus, the problem found in 2012 concerning the large number of cases remanded for retrial and, thus, the lengthy duration of court proceedings, is still relevant in 2015.

11 Data taken from the Judgement of SCJ Plenary No 4 of January 21, 2013 on the Activity of SCJ in 2012, p. 12-13.
12 Data taken from the Judgement of SCJ Plenary No 1 of January 20, 2014 on the Activity of SCJ in 2013, p. 18-19.
13 Data taken from the Judgement of SCJ Plenary No 1 of February 23, 2015 on the Activity of SCJ in 2014, p. 15-17.

In the *Matei and Tutunaru* Judgment[14] ECtHR criticised the failure to expedite the proceedings after the cases are remanded for retrial. Once remanded for retrial, those cases were examined according to the general order. Although, formally, certain cases (see Article 192 (1) CPC) should be examined as a matter of priority, the judicial system in RM lacks a functional priority case examination mechanism.

Law No 88 of April 21, 2011 (in force since July 1, 2011) introduced the accelerated second appeals in the CPC (Article 192 was completed). According to the new amendments, if during the trial of a particular case there is a danger of exceeding the reasonable period, the participants in the trial can ask the court examining the case to accelerate the trial procedure, which shall be examined by another judge within 5 business days. If the request is admitted, the judge working on the case is obliged to undertake certain actions and, if needed, establish the deadline for the examination of the case. The judicial system does not collect statistical data for this category of cases, which is why it was not possible to analyze them. As well, no analysis of the efficiency of this mechanism was carried out and it is unknown whether this mechanism is efficient in practice.

Law No 87 of April 21, 2011 (in force since July 1, 2011) introduced compensatory second appeals for failing to meet the reasonable deadline for retrials. Law No 87 gives the right to any natural or legal person to ask in court material and psychological damage for the failure to meet the reasonable deadline for the criminal prosecution, case trial or enforcement of the court judgment. The law foresees that it is the Ministry of Justice (MOJ) that is summoned to court.[15] These actions are under the competence of Buiucani Court, Chisinau municipality[16] and will be examined in a court of first instance within 3 months after the submission. The judgment of the court of first instance is not enforceable. It can be challenged by appeal or second appeal[17], however the law does not prohibit the remanding of these cases for retrial[18] nor does the law set out special deadlines for the examination of appeals and second appeals in the cases initiated on the basis of Law No 87.

In 2014, LRCM assessed the practical efficiency of the mechanism introduced by Law No 87. Against this background, the judgments on 262 cases initiated on the basis of Law No 87 were analyzed.[19] These cases accounted for more than 90% of all procedures initiated on the basis of Law No 87, for which a final judgment was adopted during September 2012 - October 2013. The analysis of the judicial practice shows that compensation from the damage caused by non-compliance with the reasonable term has serious gaps that have to do with how quickly actions initiated on the basis of Law No 87 are examined, with the quality of the substantiation of the judgments, and the amount of compensation awarded as material and psychological damage. Likewise, the expenses for legal aid are typically completely or to the maximum extent incurred by the plaintiffs even if the action is entirely admitted and the lawyer's involvement does not seem to be excessive.[20]

3.1.2. Unlawful quashing of final cases judgments

ECtHR resolved in its constant jurisprudence that the principle of legal certainty means that when the courts of law deliver a final judgment in a case - it stays out of discussions.[21] At the same time, according to ECtHR, the procedure of re-visitation cannot be considered a camouflaged appeal.[22] Illegal quashing of final court judgments can contravene Article 6 of the European Convention on Human Rights (ECHR) and Article 1 Protocol

14 ECtHR, Matei and Tutunaru v. the Republic of Moldova, October 27, 2009.

15 Until October 6, 2012, these actions were taken against the Ministry of Finance (MoF). Law No 96 of May 3, 2012 amended the Law No 8 and stated that the actions shall be taken against the MOJ.

16 Until October 6, 2012, the request of legal action because of the failure to enforce or delayed enforcement of the court judgement shall be submitted to the Riscani Court, Chisinau municipality (where the MoF is situated), and after that - to the Buiucani Court, Chisinau municipality (see Law No 96 of May 3, 2012). Until November 30, 2012, the claim regarding the non-compliance with the deadline during the criminal prosecution or the trial was supposed to be submitted to the Chisinau Court of Appeal. Law No 155 of July 5, 2012 excluded the appellate courts' competence to examine cases as a first instance, and all the requests of legal action are examined by the sector courts.

17 The submission of the appeal request suspends the enforcement of the judgement before the pronunciation of the judgement of the appellate court. The second appeal is not suspensive, but Article 6 (1) of Law No 87 foresees that these court judgements shall be enforced after they become final. More than that, Article 6 (4) of the Law No 87 foresees that the MoF shall execute the enforcement writ within the term foreseen by the Law No 847 of May 24, 1996 on the Budget System and Budget Process. Article 36^1 of this Law prohibits the forced execution of these enforcement writs during six months beginning with the date starting with which the judgements stay final.

18 Until December 1, 2012, when the amendments to CPC entered into force, the judgement of the first instance court could be challenged only by second appeal, while remanding the case for retrial was not allowed. Law No 155 of July 5, 2012 foresees that all the judgements are examined by courts of first instance, the judgements of which can be challenged by appeal, and then by second appeal. Starting with December 1, 2012, CPC does not prohibit to remand for retrial the cases initiated on the basis of Law No 87.

19 More than 262 cases were studied, out of which 143 focused on the length of the court proceedings, while 119 - on failure to enforce or delayed enforcement of judgements.

20 For more details see LRCM, the policy document entitled "The Mechanism for the Reparation of Damages Due to the Non-Compliance with the Reasonable Term - Is It Efficient?", 2014, available on: http://crjm.org/wp-content/uploads/2014/09/Document-de-politici-nr1-web.pdf, (accessed on April 15, 2015).

21 ECtHR, Brumarescu v. Romania, October 28, 1999, (61).

22 ECtHR, Rosca v. the Republic of Moldova, March 22, 2005, (25).

1 of ECHR. Until December 31, 2014, ECtHR delivered 24 judgments that dealt with violation of legal certainty by the unlawful quashing of final judgments in civil procedures by appeal for annulment or by inappropriate reconsideration. The new CPC, in force since June 12, 2003, no longer foresees the appeal for annulment as a remedy in civil procedures. Regardless, the issue of unlawful quashing of judgments in civil procedures did not vanish because of improper reconsideration.

Most of the admitted violations by inappropriate reconsideration occurred because national courts annulled final judgments on the basis of new pieces of evidence. They did not substantiate why the reviewers did not know and were not able to find out about pieces of evidence in the initial procedures, or if all available measures were taken to find out, in accordance with Article 449 (b) of CPC, or upon the admission of the revision request outside the three-month time-limit (Article 450 CPC). For instance, in one of the last cases relevant for this issue, *Lipcan v. Moldova*, the Chisinau Court of Appeal admitted the revision request of Calarasi Council on the basis of a decision from which it annulled its previous decision. ECtHR mentioned that allowing an authority to obtain the revision of a final judgment by citing as a new circumstance its own decision invalidating one of its previous decisions would be contrary to the principle of legal certainty. Moreover, the revision request was admitted by the national court even though it was submitted outside the three-month time-limit.[23]

Statistics show that the rate of upholding revision requests was quite low in 2014 (3.5% requests upheld, out of all examined), compared to previous years (11.9% upheld requests out of all examined in 2006). Nevertheless, in order to establish how case-law developed in terms of revision procedures, a survey published in March 2015 analyzed the resolutions delivered in 2014 by SCJ, where it acknowledged the revision requests.[24] In other words, resolutions with a potential risk violated the legal certainty principle and were analyzed.

The March 2015 survey showed that SCJ case-law has problems with regard to the admission of revision requests. For instance, only 8 of the 21 resolutions examined in the survey[25] do not raise significant questions for the solution for the case. Most of the seemingly appropriate admitted requests deal with the reconsideration of final judgments on the basis of a conviction of a person for committing a crime or offence, which essentially affected the initial procedure (Article 449 (a) of CPC) and the revision of a judgment because the court delivered a judgment on the rights of persons who were not involved in the proceedings (Article 449 (c) of CPC).

On the other hand, several gaps were found in the resolutions on the admission of revision requests. For instance, in resolutions No **2rhc-18/14, 3rh-82/1, 2rhc-47/14,** and **2rh-286/14,** SCJ did not provide grounds for reconsideration as foreseen under Article 449 of CPC, although according to the law, the reconsideration can be admitted only on the basis of an exhaustive list of grounds envisaged in the aforementioned Article (Article 451 (1) of CPC). In these cases, SCJ only made a reference to the grounds set out in Article 449 and invoked ECtHR standards. This did not justify the reconsideration if there was no ground foreseen by law. For example, in the case **2rhc-47/14**, which was on the re-opening of a procedure due to a mistake committed by SCJ when it rejected a late second appeal, even though it was submitted on time, SCJ declared that it admits the revision request *"in order to avoid a violation of the provisions set out in Article 6 (1) of ECHR".* In the cases **2rh-214/44** and **2rh-286/14**, SCJ invoked the ECtHR standards, which either were not applicable to the cases concerned or were not among the quoted ECtHR judgments.

The analysis of the resolutions No **3rh-87/14**, **3rh-82/14** and **3rh-100/14** points to a questionable practice of SCJ to reconsider final judgments because they would have been in conflict with the new practice of SCJ. First, Article 449 of CPC does not foresee uneven practice as grounds for reconsideration. In one of these resolutions, SCJ affirms that the new SCJ judgment, in which the exact opposite solution was provided compared to a previous judgment of SCJ, would be a new circumstance under the context of Article 449 (b) of CPC. However, in practice, ECtHR clearly stated that the public documents cannot be new circumstances in the context of these grounds.[26] Also, SCJ did not prove that there is a uniform practice, and only made reference to a sole judgment that seemed to have been in conflict with the reconsidered judgment.

23 ECtHR, Lipcan v. the Republic of Moldova, December 17, 2013, (16-21).

24 LRCM, Report entitled "Enforcement of Judgements of the European Court of Human Rights by the Republic of Moldova, 2013-2014", March 2015, Chisinau, available on: http://crjm.org/al-doilea-raport-crjm-privind-executarea-hotararilor-ctedo-de-catre-moldova/, (accessed on 15 April 2015).

25 All the resolutions from 2014, which admitted revision requests and that were found on the SCJ website, were analyzed: resolutions No 2rh-7/14 of January 15, 2014, No 2rh-1/14 of January 29, 2014, No 2rhc-18/14 of February 14, 2014, No 2rh-2/14 of February 19, 2014, no 3rh-39/14 of March 12, 2014, No 2rhc-47/14 of April 9, 2014, No 2rh-145/14 of April 30, 2014, No 3rh-71/14 of May 21, 2014, No 2rh-168/2014 of May 28, 2014, No 3rh-65/14 of June 4, 2014, No 2rhc-70/14 of July 9, 2014, No 2rh-222/14 of July 30, 2014, No 2rh-214 /14 of August 6, 2014, No 3rh-87/14 of August 6, 2014, No 2rh-219/14 of August 6, 2014, No 2rh-250/14 of September 17, 2014, No 3rh-100/14 of October 1, 2014, No 3rh-82/14 of November 12, 2014, No 2rhc-100/14 of December 3, 2014, No 2rh-286/14 of December 10, 2014, No 2rh-404/14 of 24 December 24, 2014.

26 ECtHR, Judgement on Popov (No 2) v. Moldova, December 6, 2005 (51).

Another two resolutions, No **2rh-1/14** and **2rh-2/14,** are about two cases that raised many discussions in the mass media, and among journalists. Precisely the cases *Andrei CHIRIAC v. "Vinis-NLG"* and *Andrei CHIRIAC v. "Aroma Floris*, S". These cases are about the collection by the RM lawyer - Andrei Chiriac - of certain debts from enterprises from abroad as payment for the provided legal services. In both cases, the Government Agent (GA) of RM submitted revision requests on the basis of the initiation of amiable regulation procedures between the Government of RM and ECtHR. The GA in both cases contended that the appellate court admitted without reason to the delayed requests of appeal submitted by the defendant enterprises and against the judgments that were favorable for the plaintiff, and thus, the plaintiff was unlawfully deprived of the property granted by the judgment from the first instance. This was in violation of Articles 6 and 1, Protocol 1, ECHR. SCJ admitted to both revision requests and deposited to the account of Mr. Chiriac over MDL 5 million. Afterward, resolution No **2rh-2/14,** delivered in the case *"Aroma Floris*, S", was reconsidered and annulled upon the request of the Ministry of Finance (MOF), citing that the judge Ion Druta examined the case two times (in the first instance in the court and within the review procedure in SCJ), after which he kept the original judgment. For this, the Disciplinary Collegium of the Superior Council of Magistracy (SCM) imposed a disciplinary sanction on Mr. Druta, as it found that he violated the principle of impartiality.[27]

In general, the two initial resolutions delivered in the cases involving Mr. Chiriac (No 2rh-1/14 and 2rh-2/14) raised several questions over their rationality and over the revision requests submitted by the GA. For instance, it is not clear in these cases whether Mr. Chiriac had any objections to late requests of appeal in the appellate court, even though the law ascribes this duty,[28] and ECtHR found in its jurisprudence the violation of ECHR by unreasonably rejecting the objections of the plaintiffs regarding the actions taken with delay.[29] It is also noteworthy that after the appellate court admitted the requests of appeal of the foreign enterprises and remanded the cases for retrial in the court of first instance, Mr. Chiriac gave up action in a case, and in the other case he failed to show up and the request was removed. It is unclear to what extent Mr. Chiriac's claims are justified concerning the violation of the ownership right, if he did not keep his claims at the national level until the delivery of a final judgment, as happened in the cases in which ECtHR found such violations.[30] Furthermore, the MOF[31] and the Judicial Inspection[32] found that in the *"Aroma Floris*, *S*" case, the appeal request was submitted on time, i.e. the defendant was informed about the substantiated judgment on February 11, 2011, with the request of appeal being filed on February 28, 2011, i.e. in compliance with the 20 day term for appeal. The ECtHR is now re-examining the request that dealt with the collection of debts from*"Aroma Floris*, S". For more details on them and other analyzed resolutions see the report on the enforcement of ECtHR judgments of March 2015.

3.2. Justice Reform - measures taken to enhance the independence of the judicial body

3.2.1. Judges remuneration and social insurance

During 2013-2014 judges' salaries were raised, which automatically lead to the proportional raise in the pensions of all retired magistrates and in the one-time retirement benefits. The increase of salaries was a long overdue measure. The provisions of the pensions and the one-time retirement benefits for judges also leave room for improvement.

27 The Disciplinary Collegium of SCM, Decision No 18/3 of March 27, 2015, available on: http://csm.md/files/Hotarirele_CDisciplinar/2015/18-3.pdf, (accessed on April 15, 2015).

28 According to Article 271 of CC "the action concerning the defence of the violated right shall be rejected on the grounds of the expired period of limitation of actions only upon a request submitted by the person to the benefit of whom the period of limitation of action filed before the debates on the merits ended. In case of appeal or second appeal, the limitation of action can be objected against by the one entitled to do it only when the court decides on the merits.

29 For example, the ECtHR Judgement, Melnic v. Moldova, November 14, 2006 (15); the Judgement Ceachir v. Moldova, of 15 January 2008, (45) the Judgement Grafescolo v. Moldova, of July 22, 2014, (23).

30 For example, the ECtHR Judgement, Parnau v. Moldova, of January 31, 2012; the Judgement Melnic, the Judgement Ceachir and the Judgement Grafescolo.

31 SCJ, Resolution No 2rh-286/14 of December 10, 2014, available on: http://jurisprudenta.csj.md/search_col_civil.php?id=15629, (accessed on April 15, 2015).

32 The Disciplinary Collegium of SCM, Decision No 18/3 of March 27, 2015.

Increase in judges' salaries

The increase in judges' salaries was included in JSRS,[33] to prevent and fight corruption, as well as in the Action Plan of the Government for 2012-2015.[34] Until January 1, 2014, the judges in RM had the smallest salary among member countries of the Council of Europe. The Law on Judges' Salaries No 328 of December 23, 2013 was adopted and entered into force on January 1, 2014. Salaries now include: Judges from courts of first instance – 3 to 3.5 times the average salary per economy established by the Government[35]. Judges from appellate courts – 4 to 4.3 times. SCJ judges – 4.8 to 5 times. SCM President – 5 times. Assistant judge of the Constitutional Court – 4 times. Judge of the constitutional court – 5 times

The Law foresees a salary increment for Presidents and Deputy-Presidents of courts. The Parliament approved the gradual increase in judges' salaries, with these being paid in proportion of 80% between January 1, 2014 and April 1, 2015, and 90% between April 1, 2015 and April 1, 2016, with the full amount to be paid afterwards.

Nonetheless, on July 17, 2014, the Parliament adopted Law No 146 that changed the formula for the accrual of judges' salaries, which had been related to the forecast amount of the average salary per economy and replacing it with the average monthly salary per economy from the year prior to the reporting one.[36]This decreased the judges' salaries. On September 29, 2014, SCJ asked the Constitutional Court to declare Law No 146 unconstitutional.[37] On November 6, 2014, the Constitutional Court declared Law No 146 constitutional,[38] provided that the difference in the salary for the judges in office upon entry into force of Law No 146 is compensated. Thus, Law No 146 shall only apply to judges appointed after the enactment of the law.

In addition to salary increases, starting on January 1, 2014, the judges also receive annual material aid corresponding to the quantum lump sum of a monthly salary and one-off bonuses that should not exceed one monthly salary during a year. The judges against whom a disciplinary sanction was imposed cannot receive bonuses during that year in which they were sanctioned.[39] It is not clear, however, what constitutes "material aid" given to the judges. After the significant increase of judges' salaries, it is not clear why judges still receive bonuses, as in the past they were used to compensate the small salaries. These payment destinations may either lead to the unsound spending of public money, or risk that judges might end up depending solely on the decision of the court President, who decides on the distribution of material aid and bonuses. The Venice Commission deters the award of bonuses, as it believes they contain elements of discretion, which must be excluded to guarantee judges' independence.[40]

Judges' pensions and benefits

Prior to January 1, 2014, judges had smaller salaries, but significant pensions and benefits. The judge's pension was paid regardless of whether the judge resigned or continued to serve, and was recalculated if the salaries of serving judges increased.[41] The judges were also entitled to a one-time retirement benefit, an amount equal to the average monthly salary multiplied by years worked as a judge.[42] Starting with January 1, 2014, the Law on Judges' Salaries increased the judges' salaries substantially, but the Parliament did not change any rules concerning the judges' pensions and retirement benefits.

On April 4, 2014, the Parliament adopted Law No 60, in force since May 16, 2014, to adjust judges' social protection in light of the considerable increase of their salaries. Law No 60 maintains most of the judges' benefits and cuts

33 JSRS 2011-2016, approved by Law No 231 of November 25, 2011, p. 4.1.1.
34 Government's Action Plan for 2012-2015, approved by Government Decision No 289 of May 7, 2012, p. 14.
35 According to Government Decision No 1000 of December 13, 2013, the average salary per economy in 2014 was MDL 4,225.
36 Information Note to the Draft Law No 285 on amendments and addenda to some legislative acts states that "the forecast average salary per economy is established by the Government and shall be used for the forecast of the revenues to the social insurance system, and during the year, the Ministry of Economy reviews this indicator, which usually becomes smaller, as it happened in 2013 when the forecast one was of MDL 3.850, while the actual one was of MDL 3,765.1" available on http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2392/language/ro-RO/Default.aspx, (accessed on April 15, 2015).
37 SCJ, Notification No 52a of 29 September 2015 on the control of the constitutionality of Article III (7), Article V (1) and Article VI (2) of the Law No 146 of July 17, 2014 on the amendment and completion of some legislative acts, available on http://www.constcourt.md/ccdocview.php?tip=sesizari&docid=303&l=ro, (accessed on on April 15, 2015).
38 The Constitutional Court, Judgement No 25 of November 6, 2015 on the control of the constitutionality of certain provision set out in the Law No 146 of 17 July 2014 on amendments and addenda to some legislative acts (remuneration of the public servants working in courts of law and of judges), available on http://www.constcourt.md/ccdocview.php?l=ro&tip=hotariri&docid=514, (accessed on April 15, 2015).
39 Article 6 of the Law No 328 on Judges' Salaries of December 23, 2013.
40 Venice Commission, Report on the Independence of the Judicial System, Part I: The Independence of Judges, CDL-AD (2010)004, March 12-13, 2010, para. 46, available on http://www.venice.coe.int/webforms/documents/CDL-AD(2010)004.aspx, (accessed on April 15, 2015).
41 Article 32 (1) of the Law No 544 of July 20, 1995 on the Status of the Judge.
42 Article 26 (3) of the Law No 544 of July 20, 1995 on the Status of the Judge, in the version that was in force before the Law No 60 of April 4, 2014 entered into force.

few. When reaching the age of 50 years, the judges, depending on the number of years worked in the system, are entitled to a pension for their length of service in the amount of 55% to 80% of the average monthly salary of a serving judge. The serving judges, who were already receiving the pension of magistrate upon the date when Law No 60 entered into force, shall receive both the salary and the pension, unlike the judges who will reach the retirement age after the given Law entered into force. The latter shall receive their pensions only after they resign from the position of judge, a provision which we accept to be fair. Law No 60 keeps the automatic recalculation of the judge pensions every time there is an increase in the salaries of the serving judges.[43] Considering that judges' salaries shall gradually increase until January 1, 2016, and also depending on the average salary per economy established by the Government on an annual basis - judges' pensions must also be recalculated every year. After the substantial increase in judges' salaries began at the start of 2014, judges' pensions increased considerably as a result. This added increase makes for a great burden on the social insurance budget. Thus, in 2014, the amount needed to cover judges' pensions was MDL 35.6 million, [44] compared against MDL 18.5 million in 2013.[45] This amount was planned neither in the state social insurance budget, nor in the state budget for 2014.[46] For this reason, the National Social Security House in the beginning did not pay the recalculated pensions according to the new salaries, and many retired judges demanded the recalculation of the pensions by taking into account the new salaries, a case they won in court.[47]

Law No 60, the one-time retirement benefit of the judge (equal to the average monthly salary multiplied by the number of years worked as a judge) was reduced by 50%. The reduction of the benefit on May 16, 2016, i.e. 5.5 months after judges' salaries were substantially increased, lead to a massive wave of resignations in the system (39 judges) in order to obtain the larger benefits. These resignation benefits amounted to more than MDL 10 million.[48] The substantial number of resignations of judges jeopardized the activity of certain small courts of law from which had 2-3 judges left (e.g. Briceni and Rezina Courts). The activity of Comrat Court of Appeal was totally blocked. The entry into force of Law No 60 appears to have been delayed in order to allow all the judges who wanted to leave the system to avail them of the retirement benefit calculated in line with the older legislation. Thus, although the law was adopted on April 4, 2014, it was announced by the President no earlier than May 8, 2014 and from there was published in the Official Gazette on May 16, 2014.

3.2.2. Other anti-corruption measures

On December 23, 2013, the Parliament approved Law No 326[49] which adopted a new set of amendments meant to stop corruption, justice sector included. Among them are the stricter sanctions for corruption, limitation of communication between judges and parties involved in the trial and others concerning a pending file that is being examined (*ex-parte* communication), lie detector testing of candidates to the position of judge, institution of extended seizure, and the inclusion of a new crime referred to as "illicit enrichment". On the same day of December 23, 2013, the Parliament adopted Law No 325 on Professional Integrity Testing or PIT, with the courts of law being included on the list of public entities subject to the testing.

After the increase in the sanctions foreseen by the Criminal Code (CrC) for passive corruption (Article 324 CrC), judges may be imprisoned for 7 to 15 years and forced to pay a fine amounting between MDL 160,000 and MDL 200,000, with the removal of the right to serve in public office for 10 to 15 years. The sanctions for other corruption crimes in the public sector were also increased, including influence peddling (Article 326 CrC), abuse of power or abuse of official position (Article 327 CrC), excess of power or excess of official authority (Article 328 CrC), negligent performance of duties (Article 329 CrC), and forgery of public documents (Article 332 CrC).

Regarding *ex-parte* communication, the judges do not have the right to talk to the participants of the trial or to others about a pending file, except the conversations foreseen by the rules of procedure. *Ex-parte* communication is prohibited from the moment the file is registered with the court of law and until the final judgment is delivered. If a lawful communication concerning the file being examined took place outside court hearings, then the judges

43 The Parliament rejected the draft law forwarded by MLSPF which proposed to index judges' pensions according to the general rules established by the Law No 156 on state social insurance pensions.

44 Law No 175 of July 25, 2014 amending the Law on the State Social Insurance Budget for 2014, p. 2.

45 According to the information provided by the National Social Security House on July 18, 2014.

46 According to Article 32^2 of the Law No 544 of July 20, 1995 on the Status of the Judge, 50% of the amount that has to be paid as judges' pensions is taken from the state social insurance budget, and the other 50% - from the state budget.

47 See, for instance http://adevarul.ro/moldova/actualitate/bomba-judecatorilor-sistemul-national-pensii-1_532287eb0d133766a8e24d38/index.html, http://adevarul.ro/moldova/actualitate/pensia-judecatorilor-republica-moldova-ajunge-20000-lei-1_53d21b3e0d133766a8b9d82b/index.html, (accessed on April 15, 2015).

48 According to the information provided by SCM, the necessary amounts to pay for the benefits in 2014 were partially paid by the courts of law in 2014 within the limits of the courts' budgets for 2014.

49 Law No 326 of December 23, 2013 on amendments and addenda to some legislative acts.

must write it out and annex it to the file.[50] If unlawful, or an attempt of unlawful communication with the judge took place under the above circumstances, the judges must inform SCM in writing, the same day.[51] SCM then must either inform the General Prosecutor's Office or the Disciplinary Collegium within 15 days after the registration of the information on the *ex-parte* communication or inform the institution who allowed for the prohibited conversation with the judge to take place works.[52] Although this is a strong initiative, the public was not informed during 2014 whether the judges notified SCM about the *ex-parte* communications or not. Further, SCM did not initiate any disciplinary procedure for not being informed by the judges who allowed for *ex-parte* communication to take place.[53]

The lie detector testing is an additional condition to be met by those running for the position of judge. It was introduced by Law No 326, that was to be included in Article 6 (1) (g) of Law No 544 on the Status of the Judge.[54] The lie detector testing of candidates to the position of judge was going to be applied after January 1, 2015.[55] On June 19, 2014, the Government adopted the Regulation "On the Organization and Operation of the State Commission for Lie Detector Testing".[56] The President of SCM, Mr. Micu, was appointed member of this Commission on behalf of SCM.[57] On July 1, 2014, SCM set up a working group to draft documents and forms concerning the testing procedure using the lie detector.[58] In 2014, SCM did not post these regulations on the website. As of January 1, 2015, none of the candidates to the position of judge underwent the lie detector test. The costs associated with this measure amount up to roughly USD 9,000 and includes the price of the lie detector, a suitable monthly amount for the salary of the lie detector tester, and the costs for his/her training.[59] The number of persons who annually run for the position of judge is not very large. This way, the temporary or permanent use of the lie detector of the Information and Security Service (ISS) is possible, on the basis of the questions and regulations worked out to this end by SCM.

Law No 326 introduced an additional measure that allows extended seizure[60]of goods obtained as a result of various unlawful activities, including corruption crimes in the public sector. For the extended seizure measure to be applicable, the following needs to be proved: (a) that the value of the goods acquired by the convicted person, during 5 years before and after the crime was committed, and until the sentence was pronounced, substantially exceeds the legally obtained revenues by him/her and that (b) the court of law finds, on the basis of the evidence presented in the file, that the concerned goods came from criminal activity. The second condition attributes to the authorities the duty to prove the origin of the goods and the connecting relationship between the committed crimes and the goods mentioned. This rule will put the prosecution in great difficulty, as it will be extremely difficult, almost impossible, to prove the fact that the goods come from criminal activity, even if taking into account the interpretation by the Constitutional Court of the Article 46 (3) of the Constitution regarding the presumption of the legal nature of the assets.[61]

Another anticorruption measure was the introduction of a new criminal offence in Article 330^2 of the CrC – illicit enrichment. It incriminates the "ownership by an official in position of accountability or public official, personally or via third parties, of goods, the value of which significantly exceeds his/her financial resources", provided it was "revealed by evidence that it couldn't have been earned lawfully by any means". The punishment foreseen for illicit enrichment for judges is either a fine ranging from MDL 160,000 to MDL 200,000, or imprisonment for 7 to 15 years. In both cases it is prohibited to hold public office for 10 to 15 years. The introduction of the sentences that says "personally or via third parties" is positive development. Regardless, the phrase "significantly exceeds" financial resources is far too vague and easily could be interpreted differently by courts of law. Not even one file was delivered to court against such crimes committed by judges in 2014.

50 Article 8 (3^1) of the Law No 544 on the Status of the Judge.
51 Article 15 (2) of the Law No 544 of July 20, 1995 on the Status of the Judge.
52 Article 22^1 of Law No 947 on SCM.
53 There was a situation involving a footage of a lawyer going up to the third floor of Chisinau Court of Appeal - where judges' offices are - holding a bag which he/she no longer had when coming out of there; a member of SCM declared at a TV show that this was nothing serious and that there was no footage of the lawyer entering any of judges' offices; http://www.jurnaltv.md/ro/news/2014/9/8/berlinski-cu-punga-la-judecatori-10057080/, http://www.jurnal.md/ro/news/cazul-berlinski-la-cac-e-posibila-o-intorsatura-in-dosarul-norma-1176683/.
54 Article I (1) of Law No 326 of December 23, 2013.
55 Article VIII (1) of Law No 326.
56 Government Decision No 475 of June 19, 2014On some measures to implement Law No 269-XVI of December 12, 2008 on Applying the Testing on the Simulated Behavior Detector (Lie Detector).
57 SCM, Judgement No 671/21 of August 5, 2014.
58 SCM, Judgement No 577/19 of July 1, 2014.
59 See the Information Note to the Draft Law No 326.
60 See Article 106^1 of the Criminal Code.
61 The Constitutional Court, Judgment of 20 October 2011 on the interpretation of Article 46 (3) of the Constitution.

On December 3, 2014, the Ombudsman Tudor Lazar challenged in the Constitutional Court Article 106^1 (extended seizure) and Article 330^2 (illicit enrichment) of the CrC.[62] The author of the notification substantiated *inter alia* that the implementation of those norms violates the principle of non-retroactivity of the law, presumption of innocence, and presumption of the legal nature of the assets, envisaged by the Constitution. On April 16, 2015, the Constitutional Court rejected the notification as unsubstantiated, acknowledging Articles 98(2)(e), 106^1 and 330^2 of the CrC as constitutional.[63]

One of the measures stated to be important for fighting corruption in the public sector was professional integrity testing (PIT). In June 2014, four Members of Parliament[64] asked for the control of the constitutionality of the provisions laid out in Law No 325 concerning the PIT of judges from courts from all levels and the Constitutional Court. Upon the request of the Constitutional Court, on December 15, 2014, the Venice Commission (further on referred to as the Commission) apppointed anappointed an *amicus curiae* on this issue [65]. The Commission believes that Law No 325 allows for a potential interference in the principle of the independence of the judiciary system, separation of powers in the state, and the rule of law. The Commission also believes that under Law No 325, the integrity testers may intervene in an excessive manner into the private life of judges. During the research by the Commission, the National Anticorruption Center (NAC) articulated that Law No 325 does not apply to judges.[66] Nevertheless, in 2014, the judges received statement forms in which they agreed to undergo PIT and denounced inappropriate influences in NAC as NAC did not clarify to them that they are not compelled to do it. In 2014, NAC developed a new draft law that, *inter alia*, that included judges from the courts of law at all levels in the list of public agents subject to PIT and excluded the Constitutional Court from that list.[67]

On April 16, 2015 the Constitutional Court examined the notification on the constitutionality of the Annex to Law No 325, taking into account the opinion of the Venice Commission on Law No 325.[68] The court ruled that guarantees of a fair trial on a criminal case shall be applied to the procedure foreseen by Law No 325, given the severity of the allegations against the public agent, severe applicable consequences, and precisely - the loss of the job (para 60 of the Judgment). The Court also found several gaps in Law No 325. For instance, the Court established that Law No 325 does not clearly state against whom it shall be applied (para 73-78). The PIT procedure cannot be initiated if there aren't any preliminary, objective, and well-founded reasons to suspect that a specific public agent is inclined to commit acts of corruption, and thus, authorities must prove that there are characteristic factors according to the offence that was committed by the tested public agent, even without the involvement of state authorities (para. 79-80). The integrity testers have unlimited discretionary powers to carry out the testing (para. 82), and the public agent cannot defend himself/herself unless he/she was disciplined and thus, the benefit of the doubt is disregarded (para. 88). The tested public agent does not have access to the primary pieces of evidence and Law No 325 does not endow the disciplinary bodies with any decision-making, discretionary power. They are compelled to dismiss the public agent any time he/she "allowed" a violation of his/her anti-corruption duties (para. 89-95). The language used with regard to the misbehavior of the public agent and precisely the phrase "allowed violations ..." is not predictable nor clear (para. 96-100). The mandatory dismissal of the public agent who "allowed for" the violations set out in Article 6 (2) of the law "does not guarantee the observance of the principle of proportionality between the offences committed and the sanction imposed." (para. 101-105). The Constitutional Court also established that the assessment of employees' professional activity is under the competencies of the public entity they work for, as this is a duty that does not fit with the NAC (para. 107); the "professional integrity testing plan", which is confidential and approved by NAC, does not meet the minimum requirements for the official authorization of the activity of an agent under cover (para. 110). The Court found that Law No 325 of December 23, 2013 allows integrity testers to use a false identity and admits the instigation of public agents to commit offences.

As for the violation of the right to private life, the Court mentioned that the use of technical means, including audio/video recordings to obtain certain data for the testing of integrity is, in essence, one of the special investigation

62 Notification of December 3, 2014, available on: http://constcourt.md/ccdocview.php?tip=sesizari&docid=323&l=ro, (accessed on April 15, 2015).

63 The Constitutional Court, Judgement of April 16, 2015 on the Control of the Constitutionality of Certain Provision of the Criminal Code and the Criminal Procedure Code.

64 Galina BALMOS, Maria POSTOICO, Artur REEETNICOV and Igor VREMEA.

65 The Venice Commission, Notification No 789 / 2014 of December 15, 2014, CDL-AD(2014)039, available on: http://www.constcourt.md/download.php?file=cHVibGljL2NjZG9jL3Nlc2l6YXJpL3JvLWFtaWN1c2N1cmlhZXRlc3RhcmVhLWludGVncml0YXRpaXRyYWRuZW9mOTU1YjIucGRm, (accessed on April 15, 2015).

66 The Venice Commission, Notification No 789 / 2014 of December 15, 2014, CDL-AD(2014)039, p. 3.

67 Draft Law available on http://www.cna.md/sites/default/files/proiecte_decizii%20/pr.legerepetat18defin.pt_.consultare.pdf, (accessed on April 15, 2015).

68 The Constitutional Court, Judgement of April 16, 2015 on the Control of the Constitutionality of Certain Provision of Law No 325 of December 23 on Professional Integrity Testing.

methods according to Article 132/2 of the CPC. The use of technical means to obtain information under cover, without an authorization given by a judge, is equal to the insufficiency of the procedural guarantees necessary to protect the right to private life (para. 136-145). The Constitutional Court also highlighted that "the appointment as a national authority in the field of integrity testing of an executive body working in the field of intelligence generates the risk of misapplying the Law on PIT, i.e. the duties assigned by this law to the intelligence services to obtain information and data might have the consequence of violating the constitutional right to intimacy, family, and private life". Thus, after the duties assigned by the regulatory act subject to control are examined, the legislator's intention to ascribe to NAC and ISS the collection of all data related to the professional activity of public agents, regardless of their nature, is clearly seen. As NAC and ISS are made up of militarized, hierarchical structures subordinated to the management of these institutions, and hence under direct military-administrative control, it is clear that such entities do not meet the conditions of the guarantees necessary for the observance of the fundamental right to intimacy, family, and private life (para. 148). The Court concluded that Law No 325 does not foresee a valid control mechanism that would ensure a permanent and effective control on whether the legal provisions are observed and being carried out in these institutions to make it easy to stay informed on the cases in which NAC and ISS violate the legal provisions. This could include the type of data collected, their storage time, and their destruction in cases foreseen by the law or entities and institutions that have access to this data (para. 153). As for the separation of powers in the state, the Court established that NAC - the head of which is appointed and relieved of position upon the suggestion of the Prime-Minister - is a body under the control of the Government, and thus, cannot meet the requirements with regard to its independence. Therefore, the involvement of this institution in judges' integrity testing is in direct conflict of Articles 116 (1) and 123 (1) of the Constitution. The same conclusion is true, mutatis mutandis, in the case of ISS when they are testing the NAC members.

The Court concluded that all the categories of public agents can be subject to PIT, provided that the rights to a fair trial and to private life are respected, along with the separation of powers and judges' independence. In the current wording, certain provisions of Articles 2, 4, 9, 10, 11, 12, 14, 16 "not only limit the fundamental right to private life and the right to a fair trial, but also deprive these rights of their content. More than that, these provisions allow for the discretionary and uncontrolled intervention of a Government body in the activity of justice, which is inadmissible and contravenes the Constitution."

CONCLUSIONS

Although there are generally no uncommon troubles with the duration of court proceedings in the RM, the frequent delay of court hearings and the frequent remanding of cases for retrial are problems of which no clear solution was found. For example, there are no provisions in the current system that would ensure the examination according to priority of cases remanded for retrial. The mechanism introduced by Law No 87 for the non-compliance with the reasonable trial term seems to be inefficient; even cases initiated on the basis of this law are examined beyond the deadline foreseen by the law. Although Article 192 of CPC foresees the accelerated second appeal, no statistical data was collected to convince the judiciaries to use this mechanism.

Even if the number of revision requests admitted annually by SCJ is low, many of the resolutions by which the revision requests were admitted seem to not follow the reconsideration procedure established by law. The practice of admitting revision requests only on the basis of ECtHR standards seems to be widespread. Nevertheless, the standards applied by SCJ for the admission of the revision requests do not support the admission of the revision requests unless they are based on the grounds set out in Article 449 of CPC. SCJ resorts extensively to the grounds foreseen in Article 449 (b) of CPC, invoking the recently uniformed practice as a new circumstance. The revision requests submitted by the GA and admitted by SCJ in 2014 reflect the involvement of a number of public dignitaries in procedures of compliance with the law of RM and ECHR, which is questionable.

The increase in judges' salaries was a necessary and welcome measure. At the same time, the simultaneous maintenance, after the substantial increase in salaries, of certain additional financial facilities in favor of the judges (material aid and one-off bonuses) is not justified in terms of public money spending and the fact that the judges may end up heavily depending on the mercy of the President of the court of law, who has the power to make decisions in this area. We recommend the annulment of judges' right to receive material aid and bonuses.

Along with the substantial increase in judges' salaries, the simultaneous payment of the magistrate salary and pension is no longer justified. There is also no justification for the recalculation of judges' pensions, which is done every time there is an increase in serving judges' salaries. We believe that judges' pensions should be paid after resignation and indexed in line with the general rules established by the Law on State Social Insurance Pensions. After the substantial increase in salaries, the payment of one-time retirement benefits to judges is no longer justified. It does not contribute to the assurance of judges' independence while they are in office, and it generates the risk that they become more obedient when the system lacks integrity.

Although the anti-corruption measures are positive and needed, it isn't yet clear if they will be applied in practice. The maximum sanction that only prohibits officials convicted of corruption to not hold public offices for at most 15 years is too mild. The sanction must either be longer or last the rest of their lives. The prohibition against *ex-parte* communication seems to stay mostly on paper. It is important for SCM to take action by itself when relevant information appears in the mass media and inform the public about it. Considerable financial and human support is needed for the lie detector testing of candidates for the position of judge. This testing could be carried out inside the headquarters of state institutions that already have the equipment, trained staff according to the regulation, and questions worked out by SCM. Extended seizure may remain a dead letter by forcing authorities to prove and find that the goods subject to extended seizure come from criminal activity for which it is applied. For an effectual application of this rule, the burden of proof must be divided between the prosecution and the defence. Convictions for illicit enrichment and extended seizures may be hindered because of too vague of wording of the phrase "exceeds significantly" financial resources. The phrase "exceeds significantly" of financial resources used in the extended seizure measure in Article 106^1 CrC and in the illicit enrichment offence foreseen in Article 330^2 CrC must be further explained or interpreted. The law that foresees the PIT does not provide enough guarantees for the public agents subject to the testing and is going to be repealed or amended according to the Judgment of the Constitutional Court.

RECOMMENDATIONS

Recommendations to reduce the number of delayed court hearings and the retrial of cases:

1. Judges must substantiate any delay of hearings for long periods of time. In civil cases, judges should use the new opportunities introduced by Law No 155 that allows them to prepare the examination of civil cases without convening court hearings, and to discipline the presentation of evidence by the parties;
2. Reduce the number of cases remanded for retrial and exclude the practice of remanding cases for retrial by the appellate court and SCJ;
3. Amend Article 444 CPC so as to remove the need of SCJ to remand for retrial the criminal cases if the case can be heard in a fair way by SCJ, even if the settlement might be made against the accused;
4. Introduce in the courts of law, practices by which the cases remanded for retiral have priority of examination;
5. Introduce in the Integrated File Management Program the possibility to collect statistical data on the examination by courts of law of the accelerated second appeal (Article 192 CPC).

Recommendations to reduce the incidence of unlawful quashing of final civil judgments:

1. When admitting the revision requests, SCJ is to clearly identify what is the basis envisaged in Article 449 CPC, and what is the concrete piece of evidence brought by the reviewer to support the revision request. Considering that the grounds set out in Article 449 CPC are exhaustive and cannot be extensively interpreted, the practice that admits revision requests that do not correspond to the legal grounds should be curbed;
2. SCJ shall stop annulling final judgments because of the risk to violate ECHR, a risk which does not represent it as a basis for reconsideration. This nonuniform practice is an unconvincing reason to annul a final judgment, and the annulment of the previous judgments is not justifiable, as they are against the judicial practice that was later uniformed;
3. The GA shall abstain from initiating amiable regulation procedures and from submitting revision requests in cases in which the ECHR violation is not obvious.

Recommendations for judges' remunerations and social insurance, and the anti-corruption measures:

1. Annul bonuses and material aid given to judges;
2. Pay pensions to judges only after resignation;
3. Replace the recalculation of judges' pensions with their indexation, according to the general rules established by the Law No 156 on the State Social Insurance Pensions;
4. Annul one-time retirement benefits or the payment of a symbolic amount of money such as a monthly salary of a the judge;
5. SCM should inform the public about the judges' *ex-parte* communications and the number of disciplinary procedures initiated against judges for failing to fulfill this obligation;
6. Test candidates for the position of judge using the lie detector;
7. Introduce in Article 324 CrC (passive corruption) and Article 330^2 CrC (illicit enrichment) sanctions that deprive public servants and public dignitaries (including judges) for the rest of their lives of the right to hold public offices or carry out a particular activity;
8. Repeal or amend Law No 325 on PIT to implement the Judgment of the Constitutional Court of April 16, 2015.

CHAPTER 4

PROPERTY RIGHTS

Author: Mariana Kalughin

Executive Summary

The Report "Human Rights in Moldova (2012-2013 Retrospective)"[1] outlined several issues focusing on the respect for property rights. That included the problem of former deportees and political prisoners, paying compensation following the confiscation of assets in the Soviet era, expropriation for causes of public utility, the problem of management of land shares and value shares, corruption and raider attacks, and indexation of savings. From the analysis several recommendations were developed: establishing a simplified and cheaper procedure for inheriting the right to farm land, particularly in rural communities; establishing sanctions for the lessees' failure to register land lease contracts with local government bodies; revisiting the regulatory framework on expropriation for public utility purposes that ensures a fair procedure for expropriated persons; facilitating access to district commissions by informing the Transnistrian region population about the possibility of addressing requests for recovery of confiscated, nationalized, or otherwise taken assets; developing strategies and a unified approach to cases of expropriation of common assets in the Transnistrian region; eliminating discriminatory provisions from the Law on indexation of savings with respect to depositors of the Banca de Economii S.A. (BEM) branches in Transnistria.

During 2014, the authorities made no progress of note in resolving these issues and several violations of property rights were found, including the periodic blocking, limitation or obstruction of access from the de facto Transnistrian administration[2] to owners and farmers from Dubasari to their farmland; and the violation of the right to property as a result of confiscation of goods by the "customs bodies" from the Transnistrian region (Case Pădureţ v. Moldova and Russia.[3])

The legal framework for the rehabilitation of victims of political repression, and on the restitution of the value of goods to victims of political repressions was not improved. The only completion[4] refers to pt. 11 of the Regulation on the restitution of the value of goods by paying compensation to victims of political repression and compensation in the case of death due to political repression, approved by Government Decision no. 627 of June 5, 2007[5]. The completed Regulation states that the payment of compensation to victims of political repression and rehabilitated, who have reached the age of 75 years, shall be made in a single payment. Otherwise, the rules remain unchanged.

Law no. 488 of July 8, 1999 on the expropriation for public utility purposes[6] was not improved. The Contravention Code (CContr)[7] was not completed with sanctions on the failure to register land lease contracts with local government bodies. Law no. 1530 of December 12, 2002 on the indexation of savings in the BEM[8] was not amended either. Art 9 of the Law continues to stipulate that the indexation and payments to the Republic of Moldova (RM) citizens from the bank deposits in BEM branches on the left bank of the Nistru will be examined after the restoration of these localities' financial-budgetary relations with the state budget of RM.

1 Promo-LEX Association Report: Human Rights in Moldova (a retrospective of the years 2012-2013), Chisinau: Depol Promo, 2014, 254 p., pp. 36-43, http://www.promolex.md/upload/publications/ro/doc_1403006808.pdf, (accessed on December 21, 2014).

2 See Promo-LEX press releases: http://www.promolex.md/index.php?module=press&cat=0&&item=1447, http://www.promolex.md/index.php?module=press&cat=0&&item=1467, http://www.promolex.md/index.php?module=press&cat=0&&item=1538, (accessed on December 21, 2014).

3 See Promo-LEX press release: http://www.promolex.md/index.php?module=press&cat=0&&item=1494, (accessed on December 21, 2014).

4 Completion to Government Decision no. 853 of October 8, 2014 on the completion of the Regulation on the resitution of the value of goods by paying compensations to victims of political repressions and compensations in the case of death due to political repression, published in the Official Monitor of the Republic of Moldova, 2014, no. 319-324, art 917.

5 Government Decision no. 627 of June 5, 2007 on the approval of the Regulation on the return of the value of goods by paying compensations to victims of political repressions and compensations in the case of death due to political repression, published in the Official Monitor of the Republic of Moldova, 2007, no. 78-81, Art 656. Available at: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=325097.

6 Law on expropriation for public utility purposes no. 488 of July 8, 1999, published in the Official Monitor of the Republic of Moldova, 2000, no. 42-44, Art 311.

7 Code of Contraventions of the Republic of Moldova, no. 218 of October 24, 2008, published in the Official Monitor, 2009, no. 3-6, Art 15.

8 Law no. 1530 of 12.12.2002 on the indexation of monetary deposits of citizens in the Banca de Economii, published in the Official Monitor, 2002, no. 174-176, Art 1337.

The current state of BEM and the overall situation in the financial banking sector remains alarming, and is one of the main problems in the protection of property rights. Furthermore, the unclear, inconsistent, and disproportionate legal framework remains another issue people face when exercising and claiming their property rights. The implementation through legislative amendments of uncertain anticorruption instruments is a fine example. This includes instruments such as illicit enrichment and extended confiscation. The risk of interference with property rights is only amplified by the inability of authorities to respond adequately to crime and the level of crime against property is increasing, making it even more of a challenge for the authorities.

Keeping in mind the Report "Human Rights in Moldova (2012-2013 retrospective)", it is recommended authorities do the following: investigate the case of BEM and B.C. "Banca Sociala" S.A., fully implement the recommendations of international organizations related to the banking sector, revise the rules by which the National Bank of Moldova (NBM) and the Ministry of Justice (MOJ) were appointed central depositaries, conduct a fundamental review of the collateral aspects of illicit enrichment and extended confiscation - namely the constitutional presumption of legality of property, reversing the presumption of innocence and burden of proof, and the right not to incriminate oneself, build the capacity and resources of the Ministry of Interior (MOI) in preventing and combating crime against property, and increase reform of the Prosecutor and the justice sector.

4.1. Alarming situation in the financial and banking sector

The financial banking sector remains particularly vulnerable. According to a recent report by the International Monetary Fund[9], the reported data on banking performance indicators are controversial and raise doubts regarding their accuracy. Several banks are in extremely poor standing and require attention from the authorities and while legislation has been improved, compliance with the law is still not ensured.

The vulnerability of the sector was on display in the way the authorities handled the situation at BEM. The lack of transparency in which the Government acted at the end of 2013, in which the assets managed by state company "Chisinau International Airport" and related land was divested, was then replicated in the management of state shares in the BEM.

BEM: chronology of events

On April 25, 2014, Russian VneshEkonomBank acquired an important number of shares (24.9%) of the BEM.[10] In the perception of the public, this transaction concluded a complicated scheme in which the state lost effective control over BEM, after failing to act earlier on August 29, 2013, in a supplementary emission of shares.[11] As a result, the state lost control over a bank with a substantial network of branch offices, considerable turnover, and controlled important social payments (salaries in the public sector, pensions, allowances, etc.). Under such circumstances, experts and analysts voiced their concerns with the protection of the property rights of the beneficiaries of the bank[12].

Later, on November 27, 2014, the Supreme Court of Justice[13] announced a decision that indirectly re-entered the State in the rights of 56.1% of shares of the BEM. This was at the request of three minority shareholders, who own a total of 0.3% of the capital in the bank, and who disagreed with the supplementary share emission of August 29, 2013.

9 IMF Country Report no. 14/346, December, 2014, p. 6, https://www.imf.org/external/pubs/ft/scr/2014/cr14346.pdf, (accessed on December 21, 2014).

10 Following the transaction, a single package of over 9.8 million shares was sold at the price of MDL 5.1 per unit, while the nominal value was MDL 5. The whole package of shares cost about MDL 50.1 million.

11 http://omg.md/index.php?newsid=1113&jdfwkey=zthwi, Andrei Nastase: The privatization of BEM is a conspiracy of Plahotniuc and Filat against Moldova, published on September 10, 2013, (accessed on December 21, 2014).

12 According to the portal www.mold-street.com, on October 30, 2014, Moldovans held MDL 4.5 billion in deposits at the BEM, http://www.mold-street.com/?go=news&n=3398: Banca de Economii is out of money?! NBM introduced special administration at BEM, published on 11.29.2014, (accessed on December 21, 2014).

13 http://jurisprudenta.csj.md/search_col_civil.php?id=15185, SCJ Decision no. 2ra-2606/14 of November 27, 2014, (accessed on December 21, 2014).

At the same time, on November 27, 2014, the NBM introduced a special administration into the BEM.[14] These events generated concerns amongst public opinion and the belated NBM decision on the special administration of the bank brought criticism.[15] Analysts also pointed out to the public, hinting that what was presented as an attempt of restitution was actually a continuation of a robbery that began years ago.[16]

Despite the agitation generated by the conflicting data on the bank's liquid assets, on December 18, 2014, in a press release[17], the financial institution assured the public that the bank was functioning normally. The BEM insisted that it had sufficient cash flow to honor its financial obligations to its clients. For example, pensions and salaries are transferred to cards, companies can make transactions, and companies and individuals can open and close their deposit accounts. The financial institutions noted that only a small number of clients, in particular legal entities, hold accounts of over 500,000 MDL, and would be able to access their accounts upon confirmation established by the Government. Lastly, according to the bank, a small number of persons associated with the bank (shareholders, administrators, etc.) will have access to their funds at the end of January 2015, after the moratorium introduced on their assets.

As of November 30, 2014, special administration was introduced for B.C. "Banca Sociala" S.A.[18] and at BEM. Just like BEM, "Banca Sociala" has also been assuring the public that it is functioning as a normal establishment.[19]

On December 5, 2014, the Office of the Prosecutor General (PGO) announced that, following an application lodged by special administrators, it would begin an investigation on the legality of the previous administrations at BEM and Banca Sociala, and of the decisions taken before the NBM introduced the special administration.[20] According to the PGO, the investigation will study the information on violations presented by the special administrators, information that will be presented by the NBM, audit materials that assess the functioning of the BEM, and information from other institutions with relevant competences in the field. Appropriate legal markers will be assigned and procedural decisions will be taken after the analysis of the presented materials. The PGO also announced the completion of criminal investigations that started earlier. In this case it was referencing the violations committed by the BEM administration between 2007 and 2011, and that the Buiucani sector court examined the criminal case of fraudulent crediting in the same period, involving those with influence from the BEM.

In fact, the authorities did not effectively manage the situation at BEM during 2014, threatening the property rights of bank customers. As well, the general situation in the banking system did not improve. Despite efforts to strengthen capacities of the sector, deficiencies remain, which are determined by unsubstantiated and unbalanced legislative interventions in this area. Law no. 180 of July 25, 2014 amending and supplementing certain legislative acts[21] and adopted by the Government after assuming responsibility before the Parliament, introduced changes and additions to several laws, including Law no. 171 of July 11, 2012 on the capital market[22]. The amendments have several drawbacks, the most serious of which refers to Art 81 para (1).[23]

14 Decision of the Administration Board of the National Bank of Moldova, no. 248 of November 27, 2014, published in the Official Monitor, 2014, no. 358-363.

15 http://www.jurnal.md/ro/politic/2014/12/2/domnului-nicolae-timofti/, public letter by ex-minister of finance, Veaceslav Negruta, to Moldovan President Nicolae Timofti, published on 12.02.2014, (accessed on December 21, 2014).

16 http://www.jurnal.md/ro/economic/2014/12/2/jaful-continua-la-banca-de-economii-experti/: The robbery continues at Banca de Economii, published on December 2, 2014, (accessed on December 21, 2014) http://www.jurnaltv.md/ro/news/2014/12/2/cedarea-i-retrocedarea-un-joc-10080103/: Release and restitution, all but a game?, published on December 2, 2014, (accessed on December 21, 2014).

17 http://www.bem.md/news/2014-12-18, BEM press release, published on December 18, 2014, (accessed on December 21, 2014).

18 Decision of the Administration Board of the National Bank of Moldova no. 253 of November 30, 2014, published in the Official Monitor, 2014, no. 358-363.

19 http://bancasociala.md/news/2014-12-19, Press release on the information in the media regarding the financial situation of BC "Banca Socială" S.A., published on December 19, 2014, (accessed on December 21, 2014).

20 http://www.procuratura.md/md/newslst/1211/1/5990/, PGO press release published on December 5, 2014, (accessed on December 21, 2014).

21 Law no. 180 of July 25, 2014 on the amendment and completion of certain legislative acts, published in the Official Monitor, 2014, no. 238-246, Art 559.

22 Law no. 171 of July 11, 2012 on the capital market, published in the Official Monitor, 2012, no. 193-197, Art 665.

23 Center for Analysis and Prevention of Corruption, Expertise Report no. 630 of September 03, 2014: http://capc.md/ro/expertise/avize/nr-595.html, (accessed on December 21, 2014).

Current reading of Article 81 paragraph (1) of Law no. 171 of July 11, 2012 on the capital market.

The central depositary is a legal entity performing basic and auxiliary activities described in paras (2) and (3). Under this law, the function of the Central Depositary, with a legal form established by the Government, is held by the BNM for public interest entities, which are financial institutions, and by the MOJ for public interest entities other than financial institutions.

Assigning the MOJ and the NBM as central depositaries create adverse effects on the capital market, which cause repercussions on shareholders' ownership of public interest entities[24]. The central depositary is entitled to carry out important activities in this respect, such as deposit operations of financial instruments, maintaining the register of securities holders, and clearing operations and settlement of financial instruments. All these tasks require an increased institutional capacity and appropriate technical endowment to maintain the functioning of the systems and its resources, which include trained staff that ensure orderly and continuous activity. The NBM and the MOJ do not have the staff or resources. Moreover, central depositaries must be able match particular requirements, which guarantee the recovery of any damage caused to customers (including in the protection of property rights), such as their own guarantee and equity funds.[25] These provisions compete with those in Art 82 of the same Law, by which central depositary activity is licensed, and the mandatory legal form to obtain the license is a joint stock company. As well, new provisions are also inconsistent with the mission and legal status of the NBM and MOJ, which are regulated by special laws, such as Law no. 548 of July 21, 1995 on the NBM[26], Law no. 64 of May 31, 1990 on the Government[27], Law no. 98 of May 4, 2012 on the specialized central public authority[28], and the Regulation on the organization and functioning of the MOJ, approved by Government Decision no. 736 of March 10, 2012[29].

4.2. Use of unclear anticorruption instruments: Illicit enrichment and Extended confiscation

After the ratification[30] of the UN Convention against Corruption[31], RM undertook a tacit obligation to make substantial effort to determine if illicit enrichment is possible with its internal legal system and, and if this action can be criminalized.

Article 20 of the UN Convention against Corruption

Subject to its Constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures that prove necessary to establish as criminal offenses, if the acts were committed intentionally, illicit enrichment, that is a substantial increase in assets of a public official that he or she cannot reasonably explain in relation to his or her legitimate income.

On February 25, 2014, the new provisions entered into force[32], incriminating illicit enrichment (Art 330^2 of the Criminal Code (CrC)[33]). This offense was provided with a new safety measure, namely extended confiscation (Articles 98 para (2) lt. (e) and 106^1 of the CrC).

24 In the sense of Art 6 para (1) of Law no. 171 of July 11, 2012 on the capital market, a public interest entity is an entity that meets at least one of the following criteria: is a financial institution, an insurance company, a leasing company, a voluntary pension fund; is an issuer whose securities are admitted to trading at the request or with the consent of the issuer, on a regulated market.

25 Under Law no. 171 of July 11, 2012 on the capital market, the central depositary, in addition to a guarantee fund, should have equities in the amount equivalent in MDL calculated at the official rate of the NBM of at least 100,000 EUR a year after the enforcement of the law; 200,000 EUR – three years after; 350,000 EUR – five years after; 600,000 EUR – seven years after; 1 Million EUR – 10 years after the law entered in force.

26 Law no. 548 of July 21, 1995 on the National Bank of Moldova, published in the Official Monitor, 1995, no. 56-57, Art 624.

27 Law no. 64 of May 31, 1990 on the Government, republished in the Official Monitor, 2002, no. 131-133, Art 1018.

28 Law no. 98 of May 4, 2012 on the specialized central public authority, published in the Official Monitor, 2012, no. 160-164, Art 537.

29 Govenment Decision no. 736 of October 3, 2012 on the organzation and functioning of the Ministry of Justice, published in the Official Monitor, 2012, no. 212-215, Art 799.

30 UN Convention Against Corruption, adopted in New York on October 31, 2003, signed by the RM on September 28, 2004 and ratified by Law no. 158 of July 6, 2007 on the ratification of the UN Convention Against Corruption, published in the Official Monitor, 2007, no. 103-106, Art 451.

31 UN Convention Against Corruption, http://alianta.md/uploads/docs/1234797424_Conventia_ONU_impotriva_coruptiei.doc, (accessed on December 21, 2014).

32 Provisions of Art III of Law no. 326 of December 23, 2013 on the amendment and cmpletion of certain legislative acts, published in the Official Monitor, 2014, no. 47-48, Art 92.

33 Criminal Code of the Republic of Moldova, no. 985 of April 18, 2002, republished in the Official în Monitor, 2009, no. 72-74, Art 195.

Article 330[2] of the Criminal Code. Illicit enrichment

(1) Ownership by an official or person in a position of public responsibility, personally or through third parties, of goods whose value substantially exceeds the means acquired, if found, based on the evidence, that they could not be acquired shall be punished with a fine from 6,000 to 8,000 conventional units or with imprisonment from 3 to 7 years, in both cases with the deprivation of the right to hold certain positions, or to practice certain activities for a period of 10 to 15 years.

(2) The same actions committed by a person in a position of public dignitary shall be punished with a fine from 8,000 to 10,000 conventional units or with imprisonment from 7 to 15 years, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for a period of 10 to 15 years.

If a person is convicted for committing the crime of illicit enrichment, extended confiscation applies.

Article 106[1] of the Criminal Code. Extended confiscation

(1) Other goods specified under Art 106 shall be confiscated if the person is convicted for committing offenses under Articles 158, 165, 206, 208[1], 208[2], 217–217[4], 218–220, 236–240, 243, 248–253, 256, 260[3], 260[4], 279, 280, 283, 284, 290, 292, 302, 324–329, 330[2], 332–335[1], and if the actions were committed to meet a material interest.

(2) Extended confiscation is applied if the following conditions are met:

a) The value of assets acquired by the convicted person for 5 years before and after the offense, until the date of judgment, substantially exceeds the legal income received by the person.

b) The court finds, based on the evidence in the case file, those assets derived from criminal activity of the kind referred to in para (1).

(3) The value of the assets transferred by the convicted person or by a third person to a family member, legal entities over which the convicted person has control or to other persons who knew or had to know about the illicit acquisition of assets, will be considered for the application of para (2).

(4) In determining the difference between the legal income and the value of acquired assets, the value of assets at the date of acquisition and the expenses incurred by the convicted person, including by persons referred to in paragraph (3) will be taken into account.

(5) If the goods to be confiscated cannot be found or were merged with the assets acquired from legitimate sources, money and other goods covering their value shall be confiscated instead.

(6) The goods and money obtained from the exploitation or assets set for confiscation shall also be confiscated, including goods in which the assets proceeding from criminal activities have been transformed or converted, and income and benefits derived from such assets.

(7) Confiscation cannot exceed the value of assets acquired during the period referred to in para (2) letter a) minus the legitimate income of the convicted person during the respective period.

In May and October 2014, two criminal cases were initiated under Art. 330[2] of the CrC illicit enrichment, according to the head of the Anticorruption Prosecution.[34] Both cases targeted local government officials, with the criminal investigation being underway, and linked to the findings of the National Integrity Commission. However, efforts made in the prosecution could remain without resolution. On December 3, 2014, an ombudsman filed an application at the Constitutional Court to examine the constitutionality of the provisions related to illicit enrichment and extended confiscation.[35] The ombudsman stated that these two provisions are inconsistent with several constitutional norms, including Art 46 para 3 of the Constitution, which provides for the licit character of acquired wealth. The Constitutional Court has six months to decide on the matter. Norms of illicit enrichment and extended confiscation not only raise doubts of their constitutionality, but also illustrate how authorities tend to introduce anticorruption instruments without ensuring their proper application[36]. The confusing and

34 http://www.moldovacurata.md/news/view/doua-cauze-penale-pentru-imbogatire-ilicita, Viorica MANOLE, Two criminal cases of illicit enrichment, published on December 11, 2014, (accessed on December 21, 2014).

35 http://www.constcourt.md/ccdocview.php?tip=sesizari&docid=323&l=ro, Application no. 60a of December 3, 2014 regarding the contro of constitutionality of provisions of Art III p 3, p 4, p 12 and Art IV p 1 and p 2 of the Law no. 235 of December 23, 2013 on the amendment and completion of certain acts (accessed on December 21, 2014).

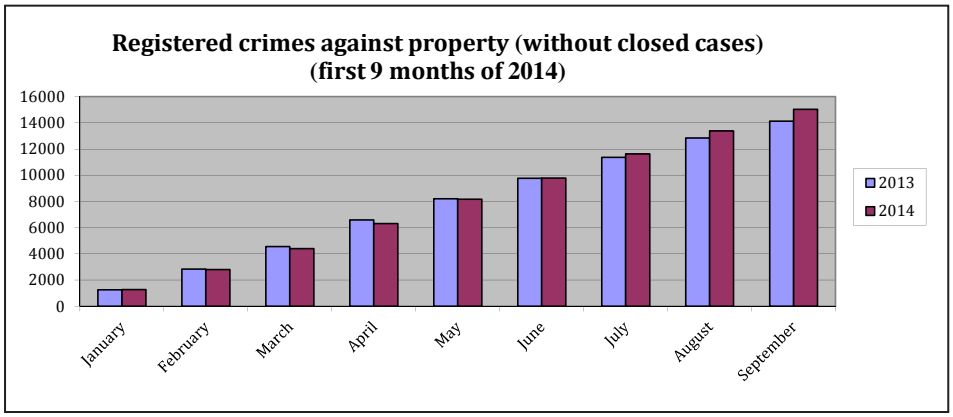
36 This is also the case of Law no. 325 of December 23, 2013 on the professional integrity testing, published in the Official Monitor, 2014, no. 35-41, Art 73, and the opinion of the Venice Commission, http://www.constcourt.md/libview.php?l=ro&idc=7&id=611&t=/Prezentare-generala/Serviciul-de-presa/Noutati/Comisia-de-la-Venetia-a-comunicat-Curtii-Constitutionale-opinia-sa-referitoare-la-Law-privind-testarea-integritatii, (accessed on December 22, 2014).

ambiguous nature of the provisions could easily lead to inconsistent practices, which would damage the property rights of individuals. For example, the provisions do not identify how the value that substantially exceeds the acquired means is established. The legal framework on the declaration and control of assets of public officials operates with the notion of *obvious difference* between acquired property and obtained revenues of the subject of the declaration.[37]

4.3. Increase in property-related offenses

A quick analysis of the operative information provided by the MOI on criminality (without closed cases) in RM,[38] shows an increase in the number of crimes against property.

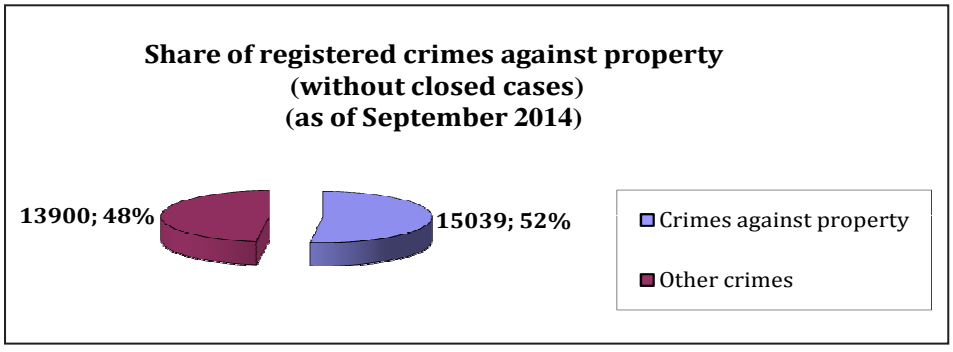
Diagram 1



According to active information on the criminality situation (without closed cases) in RM as of September 2014[39], 15,039 crimes against property were registered, compared to the previous year, when only 14,123 crimes against property were registered. Or, a 6.49% increase in such crimes, and measured per 10,000 inhabitants, this category of crime has increased from 39.67 to 42.27.

According to the same source, property offenses are much more frequent than other crimes.

Diagram 2



37 Law no. 1264 of July 19, 2002 on the declaration and control of revenues and property of persons in public office, judges, prosecutors, public servants and persons in responsible positions, republished in the Official Monitor, 2012, no. 72-75, Art 229; Law no. 180 of December 19, 2011 on the National Integrity Commission, published in the Official Monitor, 2012, no. 1-6, Art 2.

38 http://mai.gov.md/content/26714: operative information on the status of infractions (without closed cases) on the territory of Moldova in 2014 (accessed on December 22, 2014).

39 http://mai.gov.md/content/28613: operative information on the status of infractions (without closed cases) on the territory of Moldova in September 2014 (accessed on December 22, 2014).

As shown in the analysis of crimes committed during the first eight months of 2014[40], offenses against property are usually serious crimes. Many of them are committed in a group, frequently involve fire arms, and some are committed by those who had previously committed crimes. Public opinion is particularly concerned with cases resulting in deaths, such as the armed attack on the specialized money collection and transportation vehicle (Metro, Riscani, Chisinau, May 30, 2014) and the attack on an exchange office (bd. Negruzzi, Chisinau, June 8, 2014).

Explanations given by authorities to explain these incidents include the authority's low living standards and the vulnerability of certain categories of citizens, lack of consistent income sources and/or low wages, the social crisis, etc. [41] Other explanations cited include the full recording of complaints to the police, and the need to increase the level of public confidence in the police. [42]

However, one of the causes of this issue is the authorities' reduced effectiveness in combating crime, determined by either late, slow, inconsistent, or disproportionate paces of reform of the law enforcement.

The MOI reform continued under Law no. 320 of December 27, 2012 on the activity of the police and status of the police officer[43]. The structure and organization of the police deviated significantly from the Concept of reform of MOI and subordinated structures, approved by Government Decision no. 1109 of December 6, 2010[44].

Law no. 122 of July 3, 2014 approved the Concept of the Prosecution reform[45]. This policy document is the only example of effort by the relevant authorities in this field.

The implementation of the Justice Sector Reform Strategy for the years 2011-2016[46], approved by Law no. 231 of November 25, 2011, is slow and cumbersome[47].

CONCLUSIONS

During 2014, the authorities did not make substantial progress in solving problems identified in the Report "Human Rights in Moldova (2012-2013 Retrospective)". In this context, several violations of property rights were noted. The legal framework for the rehabilitation of victims of political repression and on the return of the value of assets confiscated from victims of political repressions was not significantly improved. The CContr was not completed to contain a sanction for the failure to register land lease contracts with local government bodies. Law no. 488 of July 8, 1999 on the expropriation for public utility purposes and Law no. 1530 of December 12, 2002 on the indexation of savings in the BEM were not improved either.

The current state of the BEM and the general situation of the banking sector remain troubling, representing one of the key problems in the protection of property rights. The unclear, uncertain, and disproportionate legal framework remains another problem that people face in claiming their right of ownership. The implementation through legislative amendments of uncertain anticorruption instruments, such as illicit enrichment and extended confiscation, serve as an example. The risks of interference with property rights are amplified by the inability of the authorities to respond adequately to crime. The level of crime against property has increased, and the seriousness of the issue has become a large challenge for the authorities.

40 http://mai.gov.md/content/28457: Analysis of infractions in August 2014, (accessed on December 22, 2014).
41 Prosecution Activity Report in 2013, p. 21: http://procuratura.md/file/Raport%20PG%202013%20final.pdf, (accessed la December 22, 2014).
42 http://gardianul.md/?p=4061: increase in the level of infractions: myth or reality?, published on May 19, 2012, (accessed on December 22, 2014).
43 Law no. 320 din December 27, 2012 on the activity of the police and status of the police officer, published in the Official Monitor, 2013, no. 42-47, Art 145.
44 Government Decision no. 1109 of December 6, 2010 on the appoval of the Concept of reform of the Ministry of Internal Affairs and subordinated structures, published in the Official Monitor, 2010, no. 247-251, Art 1233.
45 Law no. 122 of March 7, 2014 on the adoption of the Concept of Prosecution reform, published in the Official Monitor, 2014, no. 275-281, Art 593.
46 Law no. 231 of November 25, 2011 on the apprval of the Justice Sector Reform 2011-2016, published in the Official Monitor, 2012, no. 1-6, Art 6.
47 See Quarterly Monitoring Reports on the implementation of the Justice Sector Reform, produced by Promo-LEX and the Association for an Efficient and Responsible Goverrnance: http://www.promolex.md/index.php?module=publications, (accessed on December 22, 2014).

RECOMMENDATIONS

While reiterating the recommendations presented of the Report "Human Rights in Moldova (2012-2013 Retrospective)", the authorities should take the following actions:

1. Fully investigate the situation at BEM and Banca Sociala;
2. Fully implement the recommendations of international organizations related to the banking sector;
3. Review the provisions of Art 81 para (1) of the Law no. 171 of July 11, 2012 on the capital market – and return to the initial reading;
4. Implement the provisions related to illicit enrichment and extended confiscation, with the fundamental review of connected issues, such as: the constitutional presumption of legality of acquired wealth, presumption of innocence and reversing the burden of proof, the right not to incriminate oneself (right not to make statements and to not submit evidence against oneself in a criminal investigation);
5. Strengthen MOI capacities and resources to prevent and combat crime against property;
6. Streamline the prosecution reform, and the reform of the justice sector.

CHAPTER 5

RIGHT TO INFORMATION AND TRANSPARENCY IN DECISION MAKING

Author: Eugeniu Ribca

Executive Summary

Both access to information and transparency in decision making have separate thematic laws. These are the Law on the access to information[1] and the Law on the transparency of the decision making process[2]. In general, these laws establish regulations that are in line with European standards and best practices, in addition to being adapted to national realities. 2014 saw multiple efforts, including successful ones, continue to refine legislation in these areas.

The Republic of Moldova (RM) has made considerable effort in the past to introduce and establish institutional practices that are necessary for properly respecting both the legislation on access to information and on transparency in decision-making. The implementation of each law was accompanied by substantial external financial assistance that included trainings for civil servants in central and local public administration, the judiciary, journalists, representatives of non-governmental organizations (NGOs), and other beneficiaries, the development of sector bylaws, and building websites for disseminating information and/or public consultations.

The results from a number of significant general and specialized monitoring exercises conducted by civil society organizations led to a generally accepted conclusion: that legislation on access to information and transparency in decision making are generally well observed. By 2014, RM registered considerable success in each of these areas: most of the information providers informed the population (by posting public information on their websites for example), and most of the public authorities published draft laws on their websites for public consultation.

In the absence of thematic monitoring by civil society organizations in these areas during 2014, the task of overseeing the observance of these two fundamental rights fell primarily on civil society, the media, and politicians.

The traditional association of *parliamentary debates* with *democratic debates* was not valid in RM's case in 2014. Given the public disagreements between the ruling parties, the parliamentary decision-making process had a secondary role in relation to the decision making in the Government. The transfer of major decision-making from Parliament to the Government and the focus of deliberations on the election agenda created a breeding ground for multiple and serious violations.

5.1. Legislative developments

The Law on the access to information was amended for the last time in 2011, in the context of adoption of the Law on the protection of personal data[3]. In 2014, the need to amend the law in this regard was not a priority for civil society or public authorities.

Prior to 2014, the Law on the transparency of decision making was amended only once, in order to eliminate the obligation of the Central Electoral Commission (CEC) to observe the requirements concerning transparent decision making for specific urgent decisions during the electoral period.[4] Thus, in 2014, the Law on the transparency of the decision-making process was amended and completed to clarify that authorities oblige to respect the legislation in the field (Art 3), the field of application (Arts 3 and 7), the process of informing the public on initiating decision-making (Art 9), the conditions of providing access to draft decisions and afferent materials (Art 10), the obligation of public authorities to hold public consultations at the initiative of an interested party (Art 11), conditions on presenting and examining recommendations by interested parties (Art 12), public information on the withdrawal of a bill from the decision making process (Art 12/1), obligation of the public authorities to publicly inform on conducting meetings (Art 13), and the possibility to apply sanctions provided

1 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311759, (accessed on December 27, 2014).
2 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=329849, (accessed on December 27, 2014).
3 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=340495, (accessed on December 27, 2014).
4 Law 216/2010 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336160, (accessed on December 27, 2014).

by the labor law for violations to this legislation[5]. Although most of the amendments and completions have a purely editorial purpose, several new regulations were introduced including the obligation of authorities in UTA Gagauzia to respect the requirements of the Law on transparent decision making (Art 3 para. (2) letter f))[6], the express provision of the obligation of the public authorities to inform the public on initiating draft decisions (Art 9), the express provision of the obligation of public authorities to publish on their websites draft decisions and afferent materials (Art 10), a prohibition of public authorities to refuse holding consultations when they are demanded by civil society (Art 11), introducing the public authorities' obligation to inform publicly with three days notice about conducting meetings.

During the public consultations process on the bill, the National Participation Council (NPC) set forth to the Ministry of Justice (MOJ), a series of recommendations to eliminate the declarative aspect in the proposed amendments, and to streamline the application of the Law on transparent decision-making[7]. The recommendation by civil society that aimed at improving the law remained largely ignored.

Art 14 of the Law on the transparent decision-making provides an exception that requirements on transparent decision making may not be applied for emergency decisions. The amendments passed in 2014 introduced a new exception – that requirements on transparent decision-making are not applied in operative meetings. We do not doubt the need for legislative provisions and the establishment of a special regime for convening and holding operative meetings. From one perspective, it is obvious that certain information (including protocol)[8] may be recognized to have limited accessibility, however, such a possibility has been provided in Article 3. On the other hand, it is clear that public authorities need to be able to conduct internal consultations in discrete settings. In this case however, public participation with meetings of public authorities is affected, which means amendments should have been added to Article 13. This would include "Participation in public meetings", of the Law on the transparency in decision making, whereas the amendments run this year by Parliament in Article 3 para (5) involves the possibility of convening operative meetings in violation of the Law on the transparency in decision making. The negative effects of this amendment will be observed in the near future.

Law on the transparency in the decision-making process	
Old reading (2013)	**New reading (2014)**
Art 3 Field of application of the present law (5) This law does not apply to the public authorities' decision-making and meetings that are considered official information with limited access under the law.	**Art 3** Field of application of the present law (5) This law does not apply to the public authorities' decision-making and meetings that are considered official information with limited access under the law, ***and in the process of operative meetings convened by the leaders of the respective public authorities.***

UTA Gagauzia. Although Article 1 of the Law on the transparency in decision making states that the regulatory purpose of the law is the decision making process in (all) public authorities. Article 3 of that law did not explicitly cite the Gagauz authorities as subjects obliged to comply with the requirements of the law. In the context of an interpretation made through the Law on the local public administration[9], all authorities of the autonomous region were to be recognized as subjects bound to comply with legal requirements in the field of transparency in the decision making. We hope that the future amendment to Article 3, will specifically include that the authorities of the autonomous territorial unit with special status as subjects are bound to comply with said law and will contribute to the standardization of law and practice in the field.

Transnistrian region. National legislation is not enforced in the Transnistrian region. Regulations in the field of access to information are enshrined in the law on ensuring access to information on the work of public authorities and local governments.[10]

5 Law105/2014 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353700, (accessed on October 27, 2014).
6 Law 344/1994 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311656, (accessed on December 27, 2014).
7 http://cnp.md/ro/produse/avize-propuneri/drepturile-omului/item/1863-comentariile-credo-la-modific%C4%83rile-legii-privind-trasnparen%C8%9Ba-%C3%AEn-procesul-decizional, (accessed on December 27, 2014).
8 See p.24 of the Government Regulation, GD 34/2001, http://lex.justice.md/md/296154/, (accessed on December 27, 2014).
9 http://lex.justice.md/document_rom.php?id=C8E304A4:037190E8, (accessed on December 27, 2014).
10 On providing access to information about the activities of state authorities and local self-government // http://president.gospmr.ru/ru/news/zakon-pmr-no-58-z-v-ob-obespechenii-dostupa-k-informacii-o-deyatelnosti-organov-gosudarstvennoy, (accessed on December 27, 2014).

Regarding transparency in decision-making, this field is designed in line with European standards with local applicable regulations related to those petitions. The legal norms applicable to transparency in decision-making in Transnistria are general and lack enforcement mechanisms.

5.2. Legislation enforcement

5.2.1. Access to information

The training of civil servants and the numerous lawsuits concerning access to information in 2014 left their mark on the implementation process. In most cases, the information providers examine the requests and provide information in accordance with the law. At the same time, most public authorities regularly post information of public interest on their websites and actively inform the population. It has become a rule to publish court rulings on the courts' website.

Refusals for requests for access to public information usually reference "sensitive information" such as the allocation and use of public funds, corruption, etc.

From this perspective, in 2014, the case of *journalists' access in the session room of the Parliament, the transparency of ownership of broadcasters, and access to information in cases of high-level corruption* were relevant to the (non-)observance of the right of access to information.

A) *Journalists' access in the plenary session room of the Parliament*. After the renovation of the Parliament building, which was devastated during the events of April 7, 2009, journalists were denied access to the Parliament's plenary session room. A separate room is reserved for media in the renovated building, referred to by journalists as the "press rodeo". Without ability to make video recordings in the plenary hall and the Parliament halls, journalists only have access to the video transmitted from the plenary session on the monitors installed in the "press rodeo".[11] Isolated from the activity of the plenary hall and fed only censored images from the Parliament's "director", which includes the occasional suspension of sound and/or image on the monitors, journalists have often not been informed when entire parliamentary fractions have left the room[12]. Journalists and NGOs promoting media rights protested with declarations, pickets, protests, and flash-mobs against poor working conditions in Parliament in 2014 and took the response they received as a sign of contempt on behalf of the parliamentarians.

B) *Transparency of ownership of broadcasters*. In 2014, there were two legislative initiative bills registered in Parliament, which sought to promote public disclosure of information on television and radio owners. They attempted to introduce the obligation to the Broadcasting Coordinating Council (BCC) and broadcasters to provide publicly information on the owners of television and radio stations. The bills have the same purpose and similar content, and one of them was adopted in first reading.[13] Although it was clear that the MPs did not seek to pass the bill in a final reading, the anticorruption expertise report by the National Anticorruption Center[14] surprised even the authors of the bill, as they were accused of promoting corruption:

> *The first impression from the bill is that the author intended to establish a mechanism to "ensure transparency" in this field. However, we do not exclude the possibility that the author sought to introduce an instrument that could be used by certain media institutions against their competitors and, in effect, once applied, the bill will not improve the current circumstances in the field.*

C) *Access to information in cases of high level corruption.* In the absence of significant judicial practice in the field of privacy, the new Law on protection of personal data is cited most frequently by public authorities to refuse access to information of public interest. For example, in 2014, while providing legal assistance in the field of access to information, the Independent Journalism Center (IJC) repeatedly requested from Office of the Prosecutor General (PGO), information on the beneficiaries of apartments built on public

11 http://www.media-azi.md/ro/stiri/ong-urile-de-media-solicit%C4%83-revenirea-presei-%C3%AEn-sala-de-%C8%99edin%C8%9Be-parlamentului, (accessed on December 27, 2014).

12 http://www.media-azi.md/ro/stiri/problema-accesului-mass-media-la-%C8%99edin%C8%9Bele-parlamentului-nu-este-una-breslei-gazet%C4%83re%C8%99ti-ci, (accessed on December 27, 2014).

13 http://www.media-azi.md/ro/stiri/societatea-civil%C4%83-solicit%C4%83-parlamentului-s%C4%83-respecte-legisla%C8%9Bia, (accessed on December 27, 2014).

14 http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1794/language/ro-RO/Default.aspx, (accessed on December 27, 2014).

investments (free allocation land) and sold below market prices to prosecution workers. We present an excerpt from the IJC letter to the PGO[15]:

> 1. *List of prosecutors who benefited from apartments at a preferential price in the building on 4 Nicolae Sulac St, mun. Chisinau, built by individual enterprise "Tomaili ArGo" and in use in 2008.*
> 2. *List of prosecutors who signed investment contracts with the construction company "Basconslux"SRL to buy apartments at a preferential price in a building on Melestiu St, mun. Chisinau, to be put in use in 2015.*

Contrary to the law, in an attempt to deny access to information, on May 27, 2014, the PGO thought it sufficient to inform the petitioners that the documents they partially requested access to contained personal data. This is the response received by the IJC[16]:

> *The information in these lists contain personal data, such as data from identification documents, domicile, family situation, health, and registered real estate assets, and cannot be presented because their disclosure could affect the rights and interests of these persons.*

Later, to the surprise of the applicant, in a letter on July 7, 2014, the PGO changed the reason for the failure to present the requested information. Again, contrary to the law, the information provider refused access to information "on the grounds that the data was not compiled by the institution". The IJC received this reply[17]:

> *In addition to the letter no. 36-5d/14 of May 27, 2014 and in response to your letter of June 26, 2014, we inform you that the PGO cannot provide you the requested information regarding the lists of beneficiaries of housing space distributed via mortgage in the period 2008-2014 in the residential buildings on Nicolae Sulac and Melestiu St. in Chisinau on the grounds that they were not compiled by the institution.*

The public authorities preferred method to refuse access to information remains the absence of responses to requests for information, and redirecting (which is expressly prohibited by the law) written requests for access to information to other information providers. Investigative journalists note that failure of the public authorities to respond to requests for access to official information is commonplace. In the absence of projects to monitor the compliance of the right of access to information and the start of strategic litigations on this subject, we only have the passivity of the population and journalists with the possibility to file lawsuits which would compel information providers to provide public information in court. This will determine public opinion in the future and help change the perception of access to information as a rule.

UTA Gagauzia and the Transnistrian region: The implementation of legislation on access to information in Gagauzia faces the same difficulties that are encountered in other parts of the country. In the Transnistrian region, although the local applicable acts enshrine the principle of access to information, there are zero adequate mechanisms and practices that enforce these provisions.

5.2.2. Obligation to observe the provisions of the Law on transparency in decision-making

For projects initiated in Parliament, in accordance with Article 21 of the Law on legislative acts[18], public consultation on bills is suspended during the election period, except for consultation processes started prior to the campaign. The same article establishes that the working group drafting the bill must only examine the proposals and objections received during public consultations. In the Government's case, it's an identical situation. "The public consultation of a draft decision is suspended during the electoral period, except for the consultation processes that started before the campaign[19]." According to Article 1 of the Election Code, the electoral period

15 IJC letter to the PGO.
16 Response of May 27, 2014 from the PGO to the IJC.
17 Response of July 7, 2014 from the PGO to the IJC.
18 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313239, (accessed on December 27, 2014).
19 Art 38 para (5), Art 42 para (1) and Art 44 para (2) letter c) of Law 317/2003 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312810, (accessed on la December 27, 2014).

includes "the period between the public announcement of the election date, and the day the final election results are confirmed[20]."

In accordance with Article 76 para (2) of the Election Code, the date of elections was established by Parliament Decision No. 81 of May 28, 2014 for setting the date for parliamentary elections[21]. Obviously, on the day of the decision, the media made public the E-Day for parliamentary elections in 2014. Since May 28, 2014, the politicians tried unsuccessfully to convince the public that the campaign did not start because the Parliament Decision on setting the election date would enter into force only on September 15, 2014. The politicians also plainly failed to persuade public officials/representatives of public authorities that were obliged to stop initiating new public consultations on decisions that day. The Constitutional Court confirmed the results of November 30 parliamentary elections on December 9, 2014.

Given that the Government's mandate expired on December 10, in accordance with Article 103 of the Constitution, it was nearly impossible for the new Parliament to have any real activity by the end of 2014. We can safely conclude that in 2014, the Law on the transparency of the decision-making process was not applied for six months.

Given that local elections will be held in RM in 2015, and that in many localities there will be run-off rounds for mayoral elections[22], we can approximate that the application of the Law on transparency in decision making will be suspended for 4-6 months in the following year. Of further interest is the case of the application of the Law on transparency in decision making in UTA Gagauzia, where, along with the parliamentary and local elections, there are also elections for the local People's Assembly, and for the governor (Bashkan) of Gagauzia. In the period 2010-2014, only 2013 was not an election year in Gagauzia.

5.2.3. Decision-making process

Although the national legislation has satisfactory mechanisms for the legal regulation of public information on the planning and decision-making activities of the public authorities, in practice we only see a simulation of this activity. By 2014, RM gathered valuable practice in the development and adoption, and public information about various strategies, programs, action plans, etc. Recall, as an example, the Law on the adoption of the Civil Society Development Strategy for 2012-2015, the Strategy Action Plan[23], and the Government Decision on the approval of the Government Action Plan for 2014[24]. In practice however, these documents did not make up any real basis for the planning and development of the activities of drafting and public consultation of decisions in a transparent decision-making process. One example is Action 251, "Ensuring transparency of media financing and ownership" in the Government Action Plan for 2014. The bill provided for in Action 251 was developed and presented by civil society to Parliament in 2012. By the end of 2013, the bill was discussed in numerous public debates[25] where the need for the bill was publicly acknowledged, along with the lack of political will of the representatives of the ruling parties[26] to pass it into law.

In 2014, a parliamentary election year, the public debate agenda was focused on the Law on the ratification of the Association Agreement between RM, the European Union (EU), the European Atomic Energy Community, and EU Member States[27]. Outside of ratifying the EU-Moldova Association Agreement, the legislative activity of 2014 can remark on the laws adopted by the Government by assuming responsibility before Parliament, in plenary sessions on July 22, 2014[28] and September 25, 2014[29]. Although the Government assumed responsibility for significant laws on fiscal-budgetary policy, justice reform, and business activity, in most cases, advisory notes on bills were not even published on the Parliament website.

On December 12, 2014, Resource Center for Human Rights presented for public discussion a *draft Report entitled "The persistence of systemic weaknesses in the decision-making transparency of the Government of Moldova (April 2012-October 2014)*[30]*"*. To reveal the alarming state of this problem, we will present two excerpts from the Report:

20 CE, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312765, (accessed on December 27, 2014).
21 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353308, (accessed on December 27, 2014).
22 See Art 76 para (2) and Art 122 para (1) of the EC.
23 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346217, (accessed on December 27, 2014).
24 http://www.e-democracy.md/parties/docs/pldm/201309171/, (accessed on December 27, 2014).
25 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=352088, (accessed on December 27, 2014).
26 http://bloguvern.md/2012/11/20/cui-apartine-mass-media/, (accessed on December 27, 2014).
27 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353829, (accessed on December 27, 2014).
28 http://www.parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/1650/language/ro-RO/Default.aspx, (accessed on December 27, 2014).
29 http://parlament.md/SesiuniParlamentare/%C5%9Eedin%C5%A3eplenare/tabid/128/SittingId/1681/language/ro-RO/Default.aspx, (accessed on December 27, 2014).
30 http://www.credo.md/pageview?id=477, (accessed on December 27, 2014).

"The total number of subjects that did not fully comply with a transparent decision-making procedure (drafting and adoption) is at least 48% [...] Over 10% of bills were not subject to anticorruption expertise." Unfortunately, the results of monitoring compliance with legislation do not show improvements in this field in 2014, compared to prior years. Another unprecedented situation for RM is the practice of adopting Government decisions, then making a public announcement about their adoption[31] followed by failing to publish them as required by law[32].

UTA Gagauzia and the Transnistrian region: The implementation of legislation on transparency in decision making in UTA Gagauzia is faced with the same difficulties encountered in other regions of the country. In Transnistria, in absence of modern standards and international regulations on transparency in decision-making, it is too early to talk about any practices in line with the right to participate in the spirit of participatory democracy[33].

CONCLUSIONS

In 2014, in RM:

- The application of the Law on transparency in decision-making was suspended for six months. During 2015, another election year, we expect to have another 4-6 months when legislation on the transparency in decision-making will not be applicable;
- The legislation does not provide effective sanctions that can motivate compliance with the requirements of transparency in decision-making;
- During the process of amending the legislation on transparency in decision-making in 2014, the Government and Parliament neglected the civil society proposals to establish effective mechanisms to address the real problems in this area[34].

RECOMMENDATIONS

1. NGOs should promote and implement projects to monitor compliance with the right to access to information and transparency in decision-making;
2. A ban should be introduced on taking decisions that have not been subject to public consultations (before, during, and/or after the campaign), with exceptions provided in Article 14 of the Law on the transparency in decision-making;
3. Parliament shall revisit and enforce its function of parliamentary control, including in the field of access to the information and transparency in decision-making;
4. The Law on transparency in decision-making and/or other legislation shall be amended and completed to clarify the notion "operative meeting convened by the head of the respective public authority", provided for in Article 3 para (5) of the Law on the transparency in decision-making.

31 http://media-azi.md/ro/stiri/guvernul-rm-aprobat-proiectul-programului-privind-tranzi%C8%9Bia-la-tv-digital%C4%83, (accessed on 27.12.2014).
32 http://media-azi.md/ro/stiri/misterele-tranzi%C5%A3iei-la-televiziunea-digital%C4%83, (accessed on December 27, 2014).
33 http://www.publika.md/trebuie-sa-fim-vigilenti--prognoze-ingrijoratoare-privind-dificultatile-din-2015_2198941.html, (accessed on December 27, 2014).
34 See Report "Persistence of systemic weaknesses in the decisional transparency of the Government of Moldova (04.2012-10.2014)", http://www.credo.md/pageview?id=477, (accessed on December 27, 2014).

CHAPTER 6

FREEDOM OF EXPRESSION

Author: Petru Macovei

Executive Summary

In 2014, the freedom of expression and freedom of the press in the Republic of Moldova (RM) were directly influenced by the political events that took place inside the country. This includes the election campaign for Parliamentary elections, and by the continuation of the country's European path highlighted by the visa regime liberalization, the signing of the Association Agreement, and of the Deep and Comprehensive Free Trade Agreement with the European Union in June 2014, which were soon followed by the economic embargoes imposed by the Russian Federation. Also, the working environment and freedom of expression of the RM media were influenced by a regional context, the Russian-Ukrainian conflict, armed actions in some Eastern regions of Ukraine and the information war unleashed by the media controlled by Moscow authorities, and rebroadcast in the RM.

In 2014, the main problems previously highlighted by media NGOs and stated in international reports focused on democracy in RM, such as the 2013 Country Report on Human Rights Practices, developed by the US Department of State[1], remained resolved and grew worse. These problems include the non-transparent ownership and shareholder structure of media companies, excessive monopoly of the media market in general and of the advertising market in particular, as well as the lack of a regulatory framework that would encourage the economic development of independent media institutions. According to the Freedom House international organization that develops the annual survey "Nations in Transit"[2], in 2014 RM remained amongst countries with a transitional democratic governance and a "hybrid" regime, with a democratization indicator of 4.86 points out of 7, a media freedom indicator of 5 points which stayed the same throughout the past 3 years (2012-2014), having the same value as in 2005-2006 when RM was governed by the Communist Party. The "Word Press Freedom Index 2014" ranking[3], developed by Reporters Without Borders international organization, ranks RM 56th in the world in freedom of the press, one position lower than in 2013, and three positions lower than 2011-2012[4]. Among the six countries of the Eastern Partnership (Armenia, Azerbaijan, Belarus, Georgia, RM, Ukraine), RM ranks second after Georgia. The annual report on the situation of the press in RM, developed by the Independent Journalism Center (IJC)[5], found a continual step back of the public policies on freedom of expression and press, as well as deterioration of issues that affect the activity of journalists.

In May 2014, experts of media NGOs presented the survey "Mass Media Reforms during 2009-2013: Between Promises and Facts",[6] which analyzes the extent to which the authorities that came to power in 2009 lived up to their commitments on mass media. The general conclusion of the survey was that most of the political commitments on media were not met and the state of affairs did not undergo any of the necessary changes in this field. The media NGOs forwarded a set of recommendations to ensure the continuity of democratic reforms with regard to mass media, requesting a completely new approach from the governance for their implementation. These recommendations were not implemented before 2014 ended, however, a part of them were included in the Activity Program of the Government, established after the Parliamentary Elections of November 30, 2014.

During 2014, the activity of the national public broadcaster "Compania Teleradio-Moldova" was carried out without a functional Council of Observers (CO) in place, because the RM Parliament blocked the selection for

1 Moldova 2013 Human Rights Report, Freedom of Speech and Press, page 16, US State Department – http://www.state.gov/documents/organization/220520.pdf, (accessed on March 10, 2015).
2 Nations in transit 2014, Freedom House – https://freedomhouse.org/sites/default/files/18.%20NIT14_Moldova_final.pdf, (accessed on March 23, 2015).
3 Word Press Freedom Index 2014, Reporters without borders, page 30: https://rsf.org/index2014/data/index2014_en.pdf, (accessed on March 23, 2015).
4 Eastern Partnership Media Freedom Landscape 2014, page 98: http://mediafreedomwatch.org/wp-content/uploads/2015/02/EaP-MFW-Final-Publication-2015-EN.pdf, (accessed on March 23, 2015).
5 Report on the Situation of Press in the Republic of Moldova, the Centre for Independent Journalism: http://media-azi.md/sites/default/files/Raport%20FOP%202014%20final%20ROM.pdf, (accessed on March 23, 2015).
6 The "Mass Media Reforms during 2009-2013: between Promises and Facts" Survey, the Independent Press Association (IPA), Chisinau 2014 – http://api.md/upload/files/Studiu-REFORMELE-rom-WEB-FINAL.pdf, (accessed on March 23, 2015).

the six vacancies of CO members in the attempt of the governing coalition parties to appoint members based on political considerations. The political interference and influence of the public broadcaster's activity materialized even worse in the case of the public radio and TV company from the Gagauz autonomy (GRT).

In the Transnistrian region, the situation of the press and freedom of expression continued to worsen, in particular because of the direct and indirect pressures placed by the regional anticonstitutional authorities that had created concentrated politically controlled media structures. Amongst that which was deterred through administrative measures includes pluralism and free expression of opinions regarding the economic and political situation in the region on the Internet, planned staff cuts, and decreased budget allocations for state mass media.

This chapter analyzes the evolution of the regulatory framework relevant for the freedom of expression in 2014, the general situation concerning the pluralism of opinions and the independence of publishing policies in media institutions including the Gagauz autonomy and the Transnistrian region, freedom of expression on the Internet. Several instances of bullied journalists and media institutions are also presented and briefly analyzed.

6.1. Development of the regulatory framework relevant for the freedom of expression

In 2014, the national public policies that touch upon freedom of expression and press did not see any measurabe change. Although some amendments and draft laws were registered as legislative initiatives, they either remained only on paper or their adoption was delayed because of political frictions within the governing coalition. Another likely cause was due to the repositioning of parties and Members of the Parliament on the eve of the election campaign for Parliamentary Elections. Thus, the gaps and inconsistencies in the legislation were not disposed of in 2014, and in particular in the areas of the anti-cooperation measures in the field of mass media and on the advertising market, media ownership transparency, adoption of the regulatory framework needed for the transition to Digital Terrestrial Television, etc.

In the beginning of the year, some cable television broadcast services operators were excluded from their basic package, or they transferred to more expensive packages. This includes several broadcasters such as Accent TV channel - affiliated to the Communist Party from the opposition, RTR Moldova - local branch of the Russian RTR channel, and Jurnal TV channel, which frequently criticizes the governing parties, in particular the Deputy-Head of the Democratic Party of Moldova (PDM) - Vlad Plahotniuc, undeclared owner of at least four television channels and other media resources. This situation gave rise to harsh criticism and accusations that some broadcasters are "under political shelter" and are allegedly favored. Some politicians and journalists protested, media NGOs made several critical statements[7], and some ambassadors[8] along with the OSCE representative for freedom of the media - Dunja Mijatović[9], expressed their criticism, stating that this could harm media pluralism in RM. Afterward, the operators included the channels back in the retransmission packages. Following this scandal, on January 20, 2014, a group of communist Members of Parliament (MPs) registered a legislative initiative to amend several provisions of the Broadcasting Code[10], including the obligation of distributors of programs through telecommunication networks to include for free in their basic offers (packages), program services of public and private broadcasters that produce local informative and analytic shows. This draft, however, was not voted by a majority within the Specialized Parliamentary Committee and was never reached the Parliament.

On January 22, 2014, a group of MPs coming from the Liberal Party registered as a legislative initiative the draft of the new Broadcasting Code[11]. It was originally worked out by the Electronic Press Association (APEL) and passed to the Parliament in May 2011, but ultimately blocked by the governing coalition that the liberals were also a part of until 2013. The draft was never examined by the Parliament of the XIXth legislature until the end of its mandate, and thus, by the Order of the Speaker of the Parliament from January 2015, it was excluded from the legislative procedure. On March 5, 2015, the same draft was registered again as a legislative initiative[12] by the liberal Members of Parliament.

7 The statement made by the Mass Media Non-Governmental Organizations, January 13, 2014: http://api.md/news/view/ro-ong-urile-de-media-solicita-revenirea-la-grilele-de-programe-tv-retransmise-conform-situatiei-din-31-decembrie-2013-233, (accessed on March 25, 2015).

8 The release of the US Embassy in Moldova.14 January 2014. http://moldova.usembassy.gov/011414.html, (accessed on March 25, 2015).

9 The statement made by the OSCE representative for the freedom of the press, January 14, 2014: http://www.osce.org/ro/fom/110299, (accessed on March 25, 2015).

10 The draft law No 11: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2114/language/ro-RO/Default.aspx, (accessed on March 25, 2015).

11 The draft law No 15: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2118/language/ro-RO/Default.aspx, (accessed on March 25, 2015).

12 The draft law No 53: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2558/language/ro-RO/Default.aspx, (accessed on March 25, 2015).

On February 27, 2014, the liberal-reformist MP, Ana Gutu, and a few of her party members registered a legislative initiative to amend the Broadcasting Code[13], by which advertising and teleshopping on radio and television channels must be broadcast in Romanian 80% of the time. This is the same ratio being set for the number of TV/radio channels retransmitted from abroad on the territory of RM. The draft Law was never examined in Parliament's Plenary Session and was excluded from the legislative procedure.

In April 2014, a group coming from different parties from MPs that included the Liberal-Democrat Party (PLDM), *Liberal-Reformist Party (*PLR), and Liberal Party (PL) registered a draft law amending and adding to the Law on Advertising and the Broadcasting Code, in order to prohibit audiovisual political advertising except during electoral periods[14]. This initiative was not examined before the end of the legislative session and was excluded from the legislative procedure.

The initiative to enact a new Law on Advertising was also not seen through. Currently it is completely outdated and does not ensure fair competition between different actors on the market, including media institutions that provide advertising services. In May 2014[15], the Ministry of Justice (MOJ) worked out a new draft law on advertising and in June 2014, the first public debates about this draft took place, however it failed to make it to the Parliament before year's end.

The local information space safeguarding the issue grew extremely severe in 2014. Underlying factors include the escalated conflict between Russia and Ukraine, Crimea being annexed by Russia, the armed actions in Eastern regions of Ukraine, the information war set off by Russia against Ukraine, and also against Georgia and RM after the EU Association Agreement was signed. On March 31, 2014, the MP Ana Gutu openly urged the Broadcasting Coordinating Council (BCC) to have the radio and TV channel distributors that were broadcasting from the Russian Federation replace the newscast and political debate shows produced in Russia with other shows such as European, country, or local newscasts, music, or entertainment shows[16]. Based on Ana Gutu's request, BCC began to monitor several TV channels that rebroadcast informative and analytical based shows from the Russian Federation. As well, the Independent Press Association (IPA) carried out an alternative monitoring and found that the rebroadcast channels (NTV, Pervy Kanal, RTR, REN TV and Rossia 24) disseminate the idea of separatism in the South-Eastern regions of Ukraine. This is done by brainwashing the population and inoculating the false idea of aggression on behalf of Kiev against peaceful citizens in addition to the lack of will on behalf of Ukrainian authorities to peacefully settle the conflict down.[17] On July 4, 2014, the BCC report was also made public and pointed to frequent violations on the principles of balance, objectivity, and aggressive propaganda elements and manipulations through text and images. As a result of the BCC Decision[18], the rebroadcasting of Rossia 24 TV channel was suspended for half a year, while the broadcasters in RM that rebroadcast the Russian channels RTR, Ren TV, Pervyi Kanal and NTV were sanctioned along with fines and public warnings. On October 7, 2014[19], BCC revisited this topic and found after another monitoring that the violation of the principles of balance and objectivity continued in the information shows on the channels rebroadcast from the Russian Federation. The broadcasters in RM that rebroadcast the Russian channels were sanctioned with the maximum fine or with the removal of the right to broadcast advertisements for a 72 hour period.

On June 2, 2014, the Agreement between the Government of RM and the Romanian Government on cooperation in rebroadcasting of program services of public broadcasters was approved.[20] The parties to the Agreement guarantee the freedom of reception and rebroadcasting on the territory of their public broadcasters' program services, regardless of the method of broadcast or rebroadcast, without enforcing any condition, without license or prior authorization.

13 The draft law No 77: http://anagutu.net/files/2009/11/77.2014.ro_.pdf, (accessed on March 25, 2015).
14 The draft law No 138: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2243/language/ro-RO/Default.aspx, (accessed on March 25, 2015).
15 The draft law on advertising: http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/08.05.2014_proiect_transmis_spre_avizare.pdf, (accessed on March 25, 2015).
16 Request of Ana Gutu to BCC: http://anagutu.net/?p=3161, (accessed on March 25, 2015).
17 Media Institutions Monitoring Report No 1, February - April, 2014, IPA. *See* "Chapter IV. Presentation of the Conflict in Ukraine by the Russian Channels Rebroadcast in the Republic of Moldova" (page 24): http://api.md/upload/editor/Raport_nr._1_monitorizare_tendinte_de_manipulare.pdf, (accessed on March 28, 2015).
18 BCC Decision No 94 of July 4, 2014: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353796, (accessed on March 28, 2015).
19 BCC Decision No 135 of October 7, 2014: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355283, (accessed on March 28, 2015).
20 The Agreement between the Government of the Republic of Moldova and the Romanian Government on cooperation in rebroadcast of program services of public broadcasters: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353232, (accessed on March 28, 2015).

Throughout 2014, civil society continued to push for changes of the laws that ensure transparency of mass media ownership. In 2013, IJC drew up the draft amending and adding to the Broadcasting Code that foresees the obligation of broadcasters to disclose information about the owners and final beneficiaries, and on June 12, 2013[21], a group of PLDM MPs registered it as legislative initiative. On July 21, 2014, the Law was voted at the first reading, and the politicians promised to adopt it at the final reading after the parliamentary vacation, which did not happen until the end of 2014. The Law was adopted on March 5, 2015 in the final reading.

From the Law Amending and Addending to the Broadcasting Code of the RMNo 260 of July 27, 2006, adopted on March 5, 2015:

1. Article 2 shall be supplemented with two new notions:

...

"beneficiary owner - the natural person who, under the law and/or contract finds itself in one or in several of the following situations:

- earns or can earn any kind of income from the activity of a broadcaster or service distributor and does not have the obligation to hand this income over to third parties;
- controls directly or indirectly, through related persons in the meaning of Article 6 of the Law on the Capital Market, the broadcaster and service distributor;
- is a member of the management body of a non-for-profit legal entity or of a legal entity in which no individual holds an equity share equal to or bigger than the substantial share and who has the competence to revoke, by itself or together with other members, most of the councils' members, executive body or most of the members of the executive body and/or the censor or most of the censor commission members of the broadcaster or service distributor."

...

***5**. Article 66:*

para (6) is prevented in the following wording:

"(6) In order to ensure the consumers' right to form their own opinion regarding the value of the information and the views disseminated by the audiovisual program services, private broadcasters must post the following information: name and office of the management, contact data, list containing the names of the owners/ beneficiary owners, including their equity share in the share capital, list of the council's members and the name of the manager, names of program or show producers, signals of the radio station, logo of the TV station. The information shall be fully published on the website of the program service within 10 days from the date upon which the Law enters into force, for which the broadcasters obtained a broadcast license and shall also be provided within the same number of days to the BCC, which shall publish it within 30 days on its website."

the article is supplemented with a new para (6^1), with the following content:

"(6^1) Any change made to the information foreseen in para (6) shall be published on the website of the program service, for which the broadcasters obtained a broadcast license, within two days from the change if it is not subject to registration, or from the date when the change was registered; the Broadcasting Coordination Council shall be informed about it within three days, and shall immediately update the information on its website."

para (7) is worded as follows:

"(7) Private broadcasters must publish annually, until May 1, and submit to the BCC an activity report, according to the template approved by the BCC, which shall encompass at least the following:

- name, nationality of the owner/beneficiary owner;
- description of the ownership structure;
- organizational chart and capital of the broadcaster, financial sources of the program service, and information on the implementation of the program service concept in the previous year of activity."

21 The draft law No 240: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1794/language/ro-RO/Default.aspx, (accessed on March 28, 2015).

The transition to digital television should end on June 17, 2015 in line with the international commitments taken by RM (Regional Agreement, Geneva, 2006, ratified by the Parliament of RM on March 27, 2008). RM authorities, however, did not take the necessary measures to ensure the transition form analogue to digital television and the transparency of this process is not granted. Thus, after an unjustifiably long period, during which the Ministry of Information Technology and Communications finalized the *Program of Transition from Analogue to Digital Terrestrial Television* (the initial variant was published on the Ministry of Information Technology and Communications website on July 5, 2012[22]), this document was actually approved only during the Government Meeting of May 7, 2014[23]. The content of the program in its approved format however was not made public. Later, the document was withdrawn, and a new one was not approved by the Government until April 15, 2015. Under these circumstances, the media experts conclude that the process of transition to digital television in transparent and fair conditions for everyone within the media market will be jeopardized.

In 2014, litigation between BCC and several broadcasters directly supported by some politicians, including the Chairperson of the Parliamentary Committee for Mass Media at the time - Chiril Lucinschi, was brought to an end. This litigation lasted for one year and a half and contested the lawfulness of a BCC decision from September 2012 to compel broadcasters to broadcast in Romanian at least 30% of their own programs throughout the entire weeks broadcast, including half during prime time. On September 17, 2014, the Supreme Court of Justice adopted a final judgement[24], declaring the appeal of the group of broadcasters as inadmissible.

Throughout the entire year of 2014, NPAI "Compania Teleradio-Moldova" national public radio broadcaster continued to work without a CO, which was not functioning since December 2013 because the Parliamentary Committee for Mass Media did not forward to the Parliament Plenary six candidates out of the 12 who passed the contest organized by BCC. The former Deputy Chairperson of the Parliamentary Committee Valeriu Saharneanu, admitted that[25] the Parliament undermined the activity of the CO, and that the deadlock was caused by Council members being appointed based on political considerations. Four of the six vacant CO member positions were filled on March 5, 2015, when the Parliament adopted a decision to that end[26]. Mass media experts (some of whom ran for the vacant positions, but were rejected) expressed concern that the members in the regulatory and oversight structures in the audiovisual field are appointed based on political considerations[27].

The political interference and influence of the public radio broadcaster's activity also materialized in the case of GRT. Throughout the entire year, GRT's activity was disrupted by issues including when the CO fired the leadership of the company, the CO was elected by the Popular Assembly of the autonomy based on political criteria, by the appointment of Stepan Piron in the position of director of the regional public television, who is also the owner of a private broadcaster in the region, and by lawsuits in which the decision was challenged. In the context of the election campaign of the autonomy's Bashkan (March 22, 2015), and of the political rivalry at the regional level, several accusations of having attempted to subordinate the public company to the interests of certain political forces and to illegally self-ascribe the assets of the company were made. For example, the head of GRT, Ana Harlamenko stated that[28] the vote of the CO members who opted for Piron had been politically influenced by the Gagauz Popular Assembly and had aimed to destroy the public institution concerned.

On November 4, 2014, the Popular Assembly of Gagauz-Yeri ATU voted for the amendment of the local Law on Television and Radio, which amongst other changes institutes a local structure with similar components to BCC, and which contravenes the national legislation of RM. Another amendment compels program distributors through telecommunication networks to include public broadcasters in their grids, and the public broadcasters to broadcast weekly newscasts of program distributors for free. Previously, at the meeting on October 23, 2014, BCC examined this draft law and condemned the "subversive actions of the Gagauz ATU authorities", qualifying the amendments as illegal and harming the right of BCC to regulate audiovisual communication[29]. As well, NGOs

22 http://www.mtic.gov.md/ro/transparency/cu-privire-la-aprobarea-programului-privind-tranzitia-de-la-televiziunea-analogica, (accessed on March 28, 2015).
23 Excerpt from the minute of the Government Meeting of May 7, 2014: file:///C:/Documents%20and%20Settings/Administrator/My%20Documents/Downloads/7650495_md_extras_16.pdf, (accessed on March 28, 2015).
24 The judgement of the Civil, Commercial and Administrative College of the SCJ, 17 September 2014:http://jurisprudenta.csj.md/search_col_civil.php?id=12827, (accessed on March 28, 2015).
25 http://www.ipn.md/ro/special/63733, (accessed on March 28, 2015).
26 Decision of the Parliament of the Republic of Moldova No 33 of March 5, 2015: file:///C:/Documents%20and%20Settings/Administrator/My%20Documents/Downloads/33.pdf, (accessed on March 31, 2015).
27 Statement of media NGOs, March 17, 2015: http://api.md/news/view/ro-ong-urile-si-expertii-media-sunt-ingrijorati-de-mersul-reformelor-si-de-partajarile-politice-in-domeniul-mass-media-893, (accessed on March 31, 2015).
28 http://www.media-azi.md/ro/stiri/scandal-la-grt-cauzat-de-suspendarea-din-func%C5%A3ie-noului-director, (accessed on March 31, 2015).
29 BCC release, October 23, 2014: http://cca.md/news/cca-condamn-ac-iunile-subversive-ale-autorit-ilor-din-uta-g-g-uzia, (accessed on March 31, 2015).

asked the Gagauz Popular Assembly to reject this draft law[30]. The former Bashkan of the Autonomy, Mihail Formuzal, announced this law, but the State Chancellery challenged it in the court.

6.2. Media institutions' pluralism of opinions and independence of publishing policies

External pluralism, or diversity in the types of media channels, in the mass media market in RM is imbalanced and also has a low degree of internal pluralism, or diversity of media content provided to the public. This conclusion was reached by experts from RM and Romania, after analysis in April - June 2014 the information packages of 10 television stations and 30 news portals from RM with the greatest impact upon the public. Thus, the surveys that focused on external and internal pluralism[31] in RM mass media[32], found problems with the political, cultural, and geographical pluralism of media channels. Within that same vein, pluralism of political opinions, and the "diversity of voices", communication, and cooperation between them are often mimed, as the main TV channels and on-line publications remain in the hands of a few politicians who promote their own interests while minimizing their political opponents' messages.

Throughout the election campaign for the Parliamentarian Elections in 2014, several media institutions directly favored and promoted certain election contestants, resorting to information manipulations. The media NGOs that monitored the publishing behaviour of 35 media institutions during the election campaign found that[33] 8 of the 12 monitored TV stations clearly favored and/or disfavored certain politicians and election contestants, and did not inform the voters in a pluralistic and objective manner about the election campaign. One critical situation concerning the pluralism of opinions during the election campaign was registered with many monitored radio stations, newspapers, and online portals, the publishing policies that favored specific election contestants, and disfavoring others. During the election campaign, BCC imposed 27 sanctions against broadcasters who violated the Regulation on electoral coverage for the Parliamentary Elections[34] and the provisions of the Broadcasting Code that compels broadcasters to ensure political and social balance and pluralism. After the election campaign, media experts demanded harsher sanctions be imposed against broadcasters that violate the pluralism of opinions principle as the current sanctions are ineffective.

In 2014 zero cases of censorship in mass media were officially reported, however, most media experts consider RM mass media culture to censor themselves, given the politically controlled nature of the instiutions.[35] In some cases the publishing policy enforces a certain approach to reflect or benefit certain parties and politicians. The election campaign reported no cases of hindering political parties' access to airtime as foreseen under the law, however, outside the election campaign, opposing views were not always shown by mass media. A thematic monitoring carried out by the IPA during February-October 2014 pointed out[36] the information manipulation trends in some media institutions. When, for instance they analyze subjects of public interest, they give selected information depending on their likes and dislikes of specific stakeholders.

In RM, the pluralism of opinions conveyed by each mass media institution depends greatly on the ownership structure and on the owners' political and/or economic interests that they are promoted openly or covertly through their media companies. At the same time, in the absence of incentivizing conditions for the development of an independent press, media institutions controlled by governing politicians can develop and expand their broadcast area with the support of their owners, while the "politically unsheltered" mass media hardly survive and are frequently driven to the verge of bankruptcy.

30 Statement of the media NGOs, October 28, 2014: http://api.md/news/view/ro-ong-urile-de-media-cer-adunrii-populare-a-gguziei-respectarea-legislaiei-republicii-moldova-709, (accessed on March 31, 2015).

31 The "External Pluralism of Moldovan Mass Media: Between Opportunity and Reality" Survey, the Romanian Centre for European Policies and Active Watch - Romania, on the initiative of the Mass Media Program of Soros Foundation Moldova: http://soros.md/files/publications/documents/Pluralismul%20extern%20al%20mass-mediei%20din%20RM.pdf, (accessed on April 3, 2015).

32 The "External Pluralism of Moldovan Mass Media: Between Opportunity and Reality" Survey, the Romanian Centre for European Policies and Active Watch - Romania, on the initiative of the Mass Media Program of Soros Foundation Moldova: http://soros.md/files/publications/documents/Pluralismul_intern_al_mass-media_din_RM_2014.pdf, (accessed on April 3, 2015).

33 "Monitoring Mas Media during the Election Campaign for the Parliamentary Elections 2014", Final Report, October 1 - November 30, 2014, Coalition for Free and Fair Elections, Independent Press Association, the Centre for Independent Journalism, APEL: http://www.api.md/upload/files/Raport_FINAL_1_octombrie_-_30_noiembrie_2014.pdf, (accessed on April 3, 2015).

34 Regulation on Electoral Coverage for the Parliamentary Elections on 30 November 2014 in the Mass Communication Media of the Republic of Moldova: https://cec.md/files/files/regulamentreflectare_4315177.pdf, (accessed on April 3, 2015).

35 "Moldova National Integrity System 2014", Transparency International Moldova: http://www.transparency.md/Docs/SNI-2014.pdf, (accessed on April 3, 2015).

36 Media Institutions Monitoring Report concerning the Presentation of Subjects of Major Public Interest to Establish the Possible Information Manipulation Trends, No 3, August - October 2014, IPA: http://www.api.md/upload/files/Raport_de_monitorizare_nr._3_.pdf, (accessed on April 3, 2015).

In 2014, many transactions and relevant changes regarding media ownership took place on the RM media market. Most transactions point to a stronger consolidation of media outlets in the hands of a few politicians. In the second half of July, the printed version of Adevarul Moldova newspaper, owned by Romanian businessman Dinu Patriciu, ceased coming out. This newspaper was known for being an independent media source and published several headline-making investigations that involved important politicians and dignitaries. After several months, Adevarul Moldova was officially insolvent, and on September 1, 2014, the head editor, Alina Turcanu, announced that she left the organization, and was followed by most of the journalists. After a few weeks, close to the Parliamentary Elections, the newspaper went back to printing, with a new administrator and other reporters. There were unconfirmed beliefs in the journalist community that the newspaper had been acquired by Vladimir Plahotniuc, the undeclared owner of the biggest media trust in RM - "General Media Group".

On August 1, 2014, the Russian language news portal - kommersant.md, which was held as an objective media source, stopped working. According to the official statement, the website was shut down "due to financial reasons that had nothing to do with the editorial office's will", but on closer inspection, the primary reason was that the "Коммерсантъ" publishing company in the Russian Federation, under the brand of which the RM site worked, was unsatisfied with the publishing policy of the RM site. Several days after, the team of journalists of that site launched a new news portal in Russian, newsmaker.md, which gained the reputation as an objective information source.

Around the Parliamentary Elections, several transactions took place within the mass media market that lacked transparency. Some media sources contended that certain politicians are behind them such as on September 2, 2014, when Euro TV and Alt TV stations became owned by "Klassika Media" Ltd, which is said to belong to the business man Ilan Shor, who is funding certain parties and politicians.

In October 2014, the liberal-reformist MP, Valeriu Saharneanu, shareholder in the "Vocea Basarabiei" radio station - announced that the station had been taken hold of "through a raider attack" by Vlad Filat, President of PLDM, and that the Executive Director of the station, Veaceslav Tibuleac had been given by the PLDM leader a multi-story house in the capital city in exchange. Tibuleac denied the accusations, but the results of media monitoring during the 2014 election campaign decisively showed that this radio station greatly favoured PLDM. As of January 2015, "Vocea Basarabiei" expanded into a TV channel.

On December 30, 2014, "Interact Media" company, owner of several sites including unimedia.info information portal and also a leader on the RM online market - officially announced that it sold Unimedia to "Miraza" SRL fromm the city of Ungheni, and managed by journalist Cristian Jardan. The press covered this transaction during the election campaign, starting in the middle of October 2014, stating that the new owner was Vlad Filat, who does not want to publicly associate with the acquisition, and the parties involved agreed for no official announcements until after the Parliamentary Elections.

6.3. Freedom of expresion on the internet

Internet activity is not regulated by law in RM. Since 2013, several public institutions have forwarded legislative initiatives for some internet activity limits, with a stated goal of fighting extremist activity and child pornography. Each time however, civil society organizations and online press were against these attempts, stressing that they contain exaggerated provisions which would limit freedom of expression on the Internet and leave room for abuses.

The first attempt at regulating internet activity occurred in October 2013, when the Office of the Prosecutor General and the Ministry of Interior (MOI) proposed to amend certain laws and regulatory acts to combat cyber crimes, child pornography on the Internet, illegal access to computerized information, etc. This would be done through blocking sites on the basis of a "special list, drawn up and periodically updated by MOI", and compelling Internet providers to save Internet traffic and data about online users. Civil society and mass media protested against this, claiming that the amendments would affect/limit freedom of expression and give authorities the freedom to block sites that are inconvenient for governance[37]. As a result, the draft laws were taken off the agenda of the Government meetings for 2013.

The authorities on the other hand, insist that the need to amend the law to combat extremist activities and other crimes on the Internet. Thus, on July 9, 2014, a group of PDM and PLDM MPs registered a legislative initiative for an amendment and addenda to a number of laws (Law on Non-Government Organizations, Law on the

37 "Mass Media Reforms during 2009-2013: between Promises and Facts" Survey, page 83, IPA, Chisinau 2014 – http://api.md/upload/files/Studiu-REFORMELE-rom-WEB-FINAL.pdf, (accessed on March 3, 2015).

Information and Security Service (ISS), Law on Combating Extremist Activity, etc.)[38] to fight extremist activity. Several revisions of this draft law were severely criticized by the online community[39], media associations, and other representatives of civil society[40]. Earlier, in March 2014, during a study visit in RM, the OSCE representative for the freedom of the press, Dunja Mijatovic, stated that "cyber-crimes or abuses against children in the virtual space must not be used as an excuse to limit the freedom of the word and of the press nor in suppressing critical opinions"[41]. On July 17, 2014, the RM Parliament voted the draft law in the first reading, but authors of the initiative promised to reformulate provisions for the second reading that give ISS the right to temporarily block local websites containing messages of extremist or separatist in nature. At the end of 2014, the MPs had not examined the draft law in second reading.

Against the backdrop of the criticism that it would limit freedom of expression on the Internet, on July 16, 2014, a group of MPs from the governing coalition and the opposition - members of the Parliamentary Committee for Culture, Research, Youth, Sports, and Mass Media, registered a legislative initiative in which they proposed to adopt a *Declaration on neutrality and freedom of the Internet and development of the information society*, containing a few general commitments that "maintain the open and neutral nature of the Internet"[42]. This Declaration however, was also not adopted before the mandate of the Parliament of the XIXth legislature ended.

In 2015, a MOI legislative initiative emerged[43] that focused on the fight against child pornography, in which the investigative bodies are given additional qualifications to block sites and check mail. The draft is undergoing public consultations and has already given rise to criticism from mass media and civil society.

6.4. Behavior of politicians and of other persons in public offices

One of the largest problems that journalists reported in 2014 pertained to restricted access at the Plenary Sessions of the Parliament. This problem emerged at the end of 2013, when MPs returned to the renovated building of the Parliament, and the press no longer had access to the session room, being forced to stay in a separate room with a few monitors that show footages of the sessions and shot by the Parliament's cameramen. The journalists and media organizations accused the leadership of the Parliament of limiting the right of the mass media to observe the entire legislative process in full, and organized protests that repeatedly demanded for this problem to be resolved[44]. In the beginning, the Parliament's leadership and the leaders of the parliamentary majority promised solutions for the press to return to the session room, but later recanted their statements, and throughout 2014 the problem of limited access to the Parliament persisted.

Access to information of public interest is an additional problem journalists must deal with, even if slight improvements under the e-governance program were achieved. Regardless, civil servants and public institutions often fail to provide all requested information or either refuses to provide it on the grounds that it is a commercial or fiscal secret. In some cases, the public institutions deny access to information, interpreting the law incorrectly and stating that only individuals may ask for information. Investigation journalists repeatedly reported that artificial barriers are blocking the access to information that deals with the economic interests of politicians and civil servants. With this in mind, IJC developed a draft law for the amendment and addenda to the Law on Access to Information and the Contravention Code (CContr)[45], which aims to reduce the time frame involved with the access to information that would be open for mass media institutions. It would also increase sanctions imposed for violating the law in this area. On June 27, 2014, a group of liberal-reformist MPs registered the draft law as a legislative initiative, but it was not examined by the Parliament and ended up excluded from the legislative procedure.

38 Draft law No 281: http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2388/language/ro-RO/Default.aspx, (accessed on March 3, 2015).
39 Statement of Unimedia.info and Privesc.eu, July 15, 2014: http://unimedia.info/stiri/declaratia-unimedia-si-privesc-eu-cerem-excluderea-art--8-din-proiectul-de-lege-privind-extremismul--deoarece-cenzureaza-libertatea-internetului-79457.html, (accessed on April 3, 2015).
40 Statement of media NGOs, July 16, 2014: http://www.api.md/news/view/ro-ong-urile-de-media-solicita-parlamentului-sa-nu-admita-ingradirea-libertatii-internetului-565, (accessed on 3 April 3, 2015).
41 http://www.europalibera.org/content/article/25301040.html, (accessed on April 3, 2015).
42 Decision Draft on the approval of the Declaration of Parliament of the Republic of Moldova concerning Neutrality and Freedom of the Internet and Development of the Information Society: file:///C:/Documents%20and%20Settings/Administrator/My%20Documents/Downloads/293.2014.ro.pdf, (accessed on April 3, 2015).
43 the Draft Law on the Amendment and Completion of Some Legislative Acts, MOI, March 24, 2015: http://particip.gov.md/proiectview.php?l=ro&idd=2189, (accessed on April 3, 2015).
44 The statement of media NGOs demanding for the press to be let back in Parliament's session room, 19 March 2014: http://api.md/news/view/ro-ong-urile-de-media-solicita-revenirea-presei-in-sala-de-sedinte-a-parlamentului-330, (accessed on April 3, 2015).
45 Draft Law No 249: http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2356/language/ro-RO/Default.aspx, (accessed on April 3, 2015).

In 2014, several instances of journalists intimidated by representatives of certain Government bodies were registered. The greatest public resonance came from the events of June 20, 2014, when Vadim Ungureanu, a trainee at deschide.md information portal, was apprehended was triggered by by the staff of the General Police Inspectorate, on the ground that he would have blackmailed some in positions of accountability in MOI to obtain information that would discredit certain people. The editorial office qualified the incident as a "well thought and arranged action of revenge" by MOI, as the portal published several investigations about MOI and stated that "with the file arranged against Mr. Vadim Ungureanu they are trying to intimidate the editorial office of deschide.md"[46]. After 72 hours of detention, Vadim Ungureanu was released, and investigated at liberty, however, the results of the investigation were not made public.

Oleg Brega, the activist and journalist who captures footage for the portal curaj.md, reported two instances of pressure that dealt with his professional activity, including a severe case of physical violence, when a group of masked people sprayed him in the eyes and proceeded to kick him[47]. The police initiated investigations on these cases, but turned up zero results.

The investigation journalists of RISE Moldova, a local branch of the international project RISE that reveals corruption, money laundering, and organized crime schemes at the international level, reported threats against them coming from those that were investigated about money laundering schemes in Eastern Europe[48]. The editorial office of "Ziarul de Garda", a weekly investigation newspaper, made public a threat against them for publishing an article about the properties and trips of the Metropolitan Bishop of RM[49]. The authorities and law enforcement bodies did not take any action on these cases, or at least none that the public was informed of.

6.5. Freedom of expression in the Transnistrian region

In 2014, the freedom of expression and freedom of press in the Transnistrian region continued to worsen. After the end of 2013, the "prosecution bodies" from the region launched controls on media institutions regarding the "observance of the Transnistrian legislation"[50], focusing on, amongst others, funding sources of organizations that were registered to work in the region, if they paid rental fees, etc. In 2014, all media institutions in that region were verified, including the ones that already underwent this process in 2013. The controls were initiated at the order of Evgheni Sevciuk, the leader of the separatist region. As a result, several agencies that Sevciuk found inconvenient were closed down[51], while other media institutions in the region interpreted the controls as a warning coming from those in power.

In January 2014, the "communication, information, and mass media service" approved a new Regulation on the Accreditation of Foreign Journalists, in which foreign media institutions that work in the region on a permanent basis must register as legal entities[52]. This resulted in minimizing the activity of certain foreign journalists, who were upsetting the Tiraspol administration.

The Report on the Situation of Press in RM in 2014[53] attests that the absolute majority of media institutions in the region are under the control of the "authorities" and the degree of freedom of expression is low. Local providers blocked at the order of the authorities, several sites and discussion forums that were providing room for critical remarks regarding the "authorities". The leader of the administration proposed to register the discussion forums as media institutions. In 2014, the only opposition newspaper - *Celovek i ego prava*, suspended its publishing activity because of economic hardships.

The few media institutions that were not politically controled were brought to court and investigated for alleged defamation, with experts being convinced that these were arranged. Instances of this kind are ones involving the *Celovek i ego prava* newspaper that was sued by an employee of the "MOI" in the region, as well as one from the *Novaia Volna* company, the Head of which was under investigation because the representatives of a "ministry" in Tiraspol asked that he be brought to account for covering the situation in an orphanage from Parcani village.

46 The Freedom of the Press Index in Eastern Partnership countries, April-June 2014, IJC: http://media-azi.md/sites/default/files/Indicele%20Libert%C4%83%C8%9Bii%20Presei%20aprilie-iunie%202014.pdf, (accessed on April 5, 2015).
47 http://curaj.tv/no-comment/sos-oleg-brega-atacat-pe-strada-la-botanica/, (accessed on April 5, 2015).
48 http://www.rise.md/reporter-rise-moldova-amenintat-de-un-agent-proxy/, (accessed on April 5,2015).
49 http://www.zdg.md/stiri/zdg-amenintat-pentru-articolul-casa-de-lux-si-femeia-din-spatele-ips-vladimir, (accessed on April 5,2015).
50 http://nr2.ru/pmr/477997.html, (accessed on April 7, 2015).
51 http://svobodapmr.livejournal.com/, (accessed on April 7, 2015).
52 http://nr2.ru/News/world_and_russia/pridnestrove-zakrylos-ot-inostrannyh-zhurnalistov-61938.html, (accessed on April 7, 2015).
53 Report on the Situation of Press in the Republic of Moldova in 2014, IJC: http://media-azi.md/sites/default/files/Raport%20FOP%202014%20final%20ROM.pdf, (accessed on April 7, 2015).

On August 5, 2014, Sevciuk, the leader of the separatist administration in Tiraspol, issued a decree[54] forcing the "public authorities", organizations, and citizens to tell the "security bodies" of the region about cases identified on communication networks, including the Internet that can be qualified as extremist or in cases where information "urges riots, and participation in public events that violate the established order" is published.

In July - September 2014, the non-governmental media sector in the Transnistrian region was assessed[55], with the assessment measuring media NGO's capacity to strengthen the journalistic community and freedom of expression in the region. One of the conclusions of the survey was that "the Transnistrian media NGOs must continue to develop and strengthen civil society by promoting civil rights and liberties, civic journalism, online mass media, and the culture of public dialogue".

CONCLUSIONS

In 2014, the relevant legal framework for the freedom of expression and freedom of mass media did not undergo any substantial changes, although several initiatives to amend current laws were made, neither were seen through. Media NGOs and relevant experts criticized the governing parties for their lack of political will to continue the reforms initiated in 2010 and for the fact that politicians promote their party interests and their own private interest on the media market to the detriment of public interest. As well, authorities did not renounce appointing people to positions in broadcast regulating and controlling structures based on political considerations, even at the national and regional public broadcasters. As unfair competition was eliminated, more and more media outlets ended in the hands of certain politicians through intermediaries, while media ownership remains non-transparent.

The election campaign for the Parliamentary Elections of November 2014 showed how political concentration and media control actually jeopardizes freedom of expression and pluralism of opinions in society. The monitoring activities carried out by BCC and media NGOs include thematic surveys, and research which pointed to the low level of internal pluralism of media institutions and that information is filtered before being presented to the public as a way to promote the interests of the media owners.

In the Transnistrian region, which is administered by an unacknowledged separatist regime, the freedom of expression is limited, and administrative measures of the "regional authorities" severly reduced the expression of opinions able to criticize the local power.

RECOMMENDATIONS

To improve freedom of expression, including freedom of mass media, the national public authorities should:

1. Less emphasis on the declarative approach and focus on the need for media reforms. Accelerate the adoption of laws and regulatory acts needed to ensure the development of independent media institutions in conditions of fair competition and with Government support;
2. Adopt a new Broadcasting Code that would limit the monopoly of media services and eliminate any political control on the activities and decisions made by BCC, as the authority regulating audiovisual matters, and on the CO of the national public broadcaster and regional public broadcaster;
3. React correctly to any attempts by regional authorities of Gagauz-Yeri ATU to limit freedom of expression by adopting restrictive local laws and regulatory acts that impose restrictions in this area, as well as demanding their annulment, including by courts;
4. Use the existing format of negotiations and authority of foreign partners of RM to put continual pressure on the Tiraspol "authorities" when freedom of expression is limited in the Transnistrian region.

Lastly, civil society organizations and the journalistic community must jointly react to any instance when the right to free expression of opinions is violated. With that in mind, pressure on politicians should be increased to improve the current legal framework and foster free debates on issues of public interest.

54 Decree No.241 http://president.gospmr.ru/ru/news/ukaz-prezidenta-pmr-no241-o-nekotoryh-merah-napravlennyh-na-preduprezhdenie-ekstremistskoy, (accessed on April 9, 2015).

55 http://media-azi.md/sites/default/files/%D0%9C%D0%B5%D0%B4%D0%B8%D0%B9%D0%BD%D0%BE%20%D0%B0%D1%81%D1%81%D0%BE%D1%86%D0%B8%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D1%8B%D0%B9%20%D1%81%D0%B5%D0%BA%D1%82%D0%BE%D1%80%20RU.pdf, (accessed on April 9, 2015).

CHAPTER 7

FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

Author: Alexandru Postica

Executive Summary

The area of religious freedom saw general stability in 2014. During this time there were three religious denominations and 48 constituent parts registered in the Republic of Moldova (RM) in 2014. Only one religious denomination was registered in 2013, and in 2014, the number of registered denominations increased, while the number of registered component parts decreased. Thus, in 2013, there were 51 component parts registered, and in 2014, there were 48.

The problems identified in previous years have continued, but the situation has not worsened. The central authorities that register religious entities maintained a fair attitude towards religions or their parts that applied for registration. There were no instances of inappropriate behavior by the Ministry of Justice (MOJ) reported by religions or their parts. However, international experts reiterated that the central state authorities continue to favor the majority orthodox religion.

During 2014, there were several cases of religious intolerance, which manifested in hate and discrimination.

Since 2014 was an election year, there were attempts by electoral candidates to influence the choice of voters by using religious justifications and more directly by religious denominations. Note that in 2014 authorities dealing with discrimination confirmed cases of religious-based discrimination in 3 out of the 4 cases with alleged religious discrimination.

7.1. Registration of religious denominations and their activities

RM law guarantees everyone the right to freedom of thought, conscience, and religion. The normative legal framework guarantees the freedom to change religion or belief and freedom to manifest religion or belief, alone or jointly with others, in public or private, by learning, religious practice, worship, and rituals. Under the law, religions or their components must only keep track of their members, but not all followers.

Although a census was conducted in 2014, its results were not made public until December 31, 2014. The only published census information contains no data on religious affiliation of the population[1] even though the census interview questionnaire contained an entire column dedicated to religion.

Most religious denominations operating in RM are registered by the governmental body authorized to that effect: the MOJ. Denominations and component parts are registered for free after submitting a minimum set of papers, listed in full in Articles 19 and 20 of Law 125 on freedom of conscience, thought, and religion. There were no cases where the registering body demanded documents not listed in the law. At the end of 2014, according to the state registry of non-governmental organizations (NGOs), 1,053 entities were listed as religions and their parts.

One problem is the activity of religious denominations and their components in Transnistria. The constitutional authorities cannot ensure the rule of law in the Transnistrian region, and the self-proclaimed administration there restricts the exercise of the right to freedom of conscience and religion. A separate procedure has been introduced with the administration conducting a parallel registration of denominations and their component parts, without regard to their registration by the responsible body in RM. As the secessionist government is strongly attached to one religious denomination – the Moldovan Orthodox Church, the Metropolitan Church of Chisinau and all Moldova (MOC), which is subordinated to the Russian Orthodox Church (ROC), denominations that are not approved by the ROC are persecuted or subject to unequal treatment compared to the church followed by the majority. Denominations considered sectarian by the ROC are the most frequent victims of persecution.

1 Information note on the preliminary results of the census: http://www.statistica.md/public/files/Recensamint/Recensamint_pop_2014/Nota_informativa_Preliminare_Recensamint_2014.pdf, (accessed on December 31, 2014).

RM constitutional authorities favor the MOC, the denomination of the majority. The UN Special Rapporteur on freedom of religion, Heiner Bielefeldt, had an official visit to RM on May 15 through 17, 2014. On this visit he had several meetings with representatives of religious denominations and held a round table where their rights were discussed. As a result of the discussions, the Rapporteur noted improvements in the procedure of documenting foreign missionaries and the existence of a positive dialogue between most religious entities and the MOJ in the registration of Statutes and creating new component parts.

Three denominations were registered over the course of 2014, namely the Metropolitan Church of Chisinau and Eastern Moldova, the "Christian Communities Movement", and the "Lutheran Church of Augustan Confession of Moldova". As well, 48 other component parts of several religions were registered during 2014. Most parishes, institutions, and monasteries – 24 in total - were registered with the MOC, another eight component parts were registered with the Christian Evangelical Baptist Church, five with the Pentecostal Christian Church, four with the Metropolitan Church of Bessarabia and the Exarchate of the Other Lands, while other religions registered less than three component parts each[2].

The procedure for the registration of religious groups is not a problem. Accessible on the MOJ website is information on the documents necessary for registration procedure. Those interested can also request information directly from experts at the specialized Division of the MOJ.

Under Article 31 para 3 of the Constitution all religious denominations are autonomous, separate from the state and benefit from equal support. However, we have found that the MOC has important facilities that representatives of other religions do not. They receive greater support from the central government and even its leader holds a diplomatic passport, elevating the position to the rank of a public official along with the heads of central public institutions. According to Art. 3/1 letter z/1 of Law 273 of November 9, 1994 on identity documents of the National Passport System, the Metropolitan Bishop of Chisinau and all Moldova is entitled to a diplomatic passport. Note that the purpose of this document is to perform certain diplomatic, consular, or other official functions abroad, in the interest of the state[3], all being functions that obviously cannot be performed by this position.

Some public organizations have protested the introduction of religion as an optional subject in schools, arguing that these classes can lead to the religious indoctrination of children. Thus, the Ministry of Education (MOE), in its notes for the opening of the new school year, recommended avoiding religious rituals at the opening ceremony of the school year. The MOC reacted negatively to this, prompting the MOE to leave the decision to individual school administrations whether or not to use religious rituals at the beginning of the school year and other events within the educational institution[4].

Many NGOs argue that some laws contain discriminatory provisions. According to the European Commission against Racism and Intolerance (ECRI), Article 54(4) of the Moldovan Contravention Code (CContr)[5] sanctions only foreign citizens for conducting religious activities in public places without first coordinating it with local authorities[6]. Currently however, authorities do not apparently take issue with this provision, and no changes were made to this rule in the reporting period.

7.2. Cases of discrimination based on religion

The Council for the Prevention and Elimination of Discrimination and Ensuring Equality in Moldova (CPEDEE) concluded cases of religious discrimination and manifestations of intolerance by representatives of certain religions existed. The CPEDEE made three decisions that found cases of religious based discrimination.

Thus, in its decision of January 21, 2014, the CPEDEE found the Chioselia local council discriminated against the Pentecostal Church based on religion and that the local authority violated the petitioner's right to freedom of expression (readings, hymns, and other manifestations of his religion) and the right to freedom of assembly[7].

2 Please see NGO search engine: http://rson.justice.md/organizations, (accessed on December 15, 2014).
3 Please see provisions of Article 3/1 of the Law: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311641.
4 Please see Quarterly Report on Human Rights in Moldova - September-December 2014, CIDO: http://drepturi.md/en/moldova-esueaza-la-capitolul-drepturile-omului-5-noiembrie-2014, (accessed on December 15, 2014).
5 Please see provisions of Art.54 (4) of the CContr: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=330333.
6 Please see publication: *Discriminatory Provisions Found in the Legislation of the Republic of Moldova*, Doina Ioana Straisteanu, Chisinau 2014, Printing House Depol Promo, page 18 http://www.monitor.md/attachments/article/245/Brosura.%20prevederi%20discriminatorii.web.pdf.
7 Decision of January 21, 2014 in the case 029/2013, based on a complaint by the Pentecostal Cult: http://egalitate.md/media/files/files/decizia_cauza_nr_029_2013_cultul_penticostal_9910224.pdf, (accessed on December 15, 2014).

The CPEDEE also found that the case of a teacher allegedly forcing their students to perform religious rituals was also a form of discrimination.

The CPEDEE found discrimination in the case of "imposing Orthodox religion by saying prayers and performing the sign of the cross, by discussing only the Orthodox religion at moral-spiritual education classes, by organizing trips to monasteries where the child was teased by his peers for being atheist, by the lack of intervention to prevent aggression and provocations from the peers against the minor on grounds of his atheism, and by ignoring the minor at the end of the 2013-2014 school-year ceremony...The behavior described above was based solely on the fact that the child, like his parents, is an atheist, and leading to the humiliation of the dignity of the child who felt isolated and stigmatized[8]."

Lastly, the CPEDEE found that certain actions by a representative of a religion, including the celebration of religious rituals against the will of other persons, was incitement to discrimination under to Articles 1 and 2 of Law 121 on ensuring equality.

The CPEDEE found that the behavior of a representative of a religion and their statements during a live broadcast with reference to a representative of a sexual minority constitutes incitement to discrimination based on sexual orientation and belief. During a live program, the church representative performed the ritual of sprinkling holy water over other guests suggesting that homosexuals and persons who share other religious beliefs are "devils", or an embodiment of evil spirits[9].

7.3. Manifestations of religious intolerance

There were some examples of religious intolerance in 2014. In particular, these confront the attitude of some religions towards other religions and minorities.

On June 9, 2014, the Balti court issued a decision forcing the Bishop of Balti Marchel from the MOC to pay 10,000 lei in moral damage and 12,000 lei in court costs to the GENDERDOC-M Center. The bishop was also forced to issue a public apology and to withdraw his statement made in 2012 that most homosexuals are infected with HIV/AIDS[10].

In the same month, starting on June 14, 2014 several representatives of the Pro-Ortodoxia Association picketed the MOC office demanding the Bishop take a stance against the anti-discrimination laws approved by the authorities. On July 23, 2014, the members of the Association said they would go on a hunger strike if they remain unheard[11].

On September 03, 2014, the Sinod (supreme governing body) of the MOC adopted several resolutions condemning LGBT parades and the consequences of the passing of the Law on equal opportunities. In this decision, the Sinod requested the central state authorities to amend the Law on equal opportunities and limit the possibility for LGBT groups to conduct public meetings.

The Sinod adopted a resolution on the challenge of secularization of the European Union (EU), stating that the EU would face several moral issues such as same-sex marriage, euthanasia, and abortion propaganda[12].

Other religious groups, including the Protestant Church of the Annunciation, also supported the campaign against demonstrations by sexual minorities. According to several public associations, this denomination conducted a campaign promoting the family through the launching of homophobic and discriminatory messages and spreading misinformation and libel about the LGBT community.

The Metropolitan Church of Bessarabia and the Exarchate of the Lands and the religious denomination of Jehovah's Witnesses claimed that several local authorities impeded their activities through various actions such

8 CPEDEE decision of October 15, 2014 in the case 164/14 based on a complaint by Maria Toma against teacher E. M.: http://egalitate.md/media/files/files/decizie_nr_t_i__164_final_438186.pdf, (accessed on December 15, 2014).

9 CPEDEE decision of May 19, 2014 in the case 064/14 based on a complaint by Angela Frolov: http://egalitate.md/media/files/files/decizie_cauza_064_14_6276731.pdf, (accessed on December 15, 2014).

10 http://discriminare.md/episcopul-marchel-este-acuzat-pentru-incitare-la-ura-impotriva-comunitatii-lgbt/.

11 News source: http://ipn.md/ro/societate/63365, (accessed on December 15, 2014).

12 Decision of the MOC Council: http://mitropolia.md/s-a-incheiat-prima-zi-a-sedintei-sinodului-bisericii-ortodoxe-din-moldova/, (accessed on December 15, 2014).

as blocking the construction of religious buildings. Several court judgments were pending or being issued on refusals or delays to issue certificates and construction permits for building places of worship.

While there are cases of manifestation of religious hatred and intolerance, decisions to sanction such behavior has not been made public. There is no authority to monitor the sanctioning of manifestations of hatred or follow up on the cases started under Art.54 (2) of the CContr - religious intolerance manifested by impeding the free exercise of religious worship or by actions and calls to religious hatred.

7.4. Use of religion for electoral purposes

Numerous situations in 2014 occurred when politicians used religious events for campaigning purposes. At least five candidates used the image of the church or religious attributes for political purposes in their campaigns.

The involvement in the campaign by priests or religion-affiliated associations, mostly associated with the MOC, has become an issue. RM President Nicolae Timofti stated that high-ranking church representatives use political messages in their public speeches, and stressed that the church should not get involved in national politics[13]. This was recognized by Metropolitan Bishop Vladimir, who assured that such actions by the MOC priests would not be tolerated in the future.

However, on November 18, 2014, in a press conference, several members of the Pro-Ortodoxia Association urged citizens only to vote for pro-Orthodox parties, and not for the sodomites[14]. Given that only a handful of parties contested the need for a Law on equal opportunities, the call was clearly targeted at supporting those parties.

According to the Promo-LEX produced Election Monitoring Report on the November 30 Parliamentary Election, cases existed when the church involved itself in the campaign. In one village in the Ocnița district, a priest from the Metropolitan Church of Bessarabia was observed to be collecting signatures in support of Liberal Party of Moldova (PLDM). PLDM also used campaign materials in the form of icons, with a PLDM message on the back. Two other candidates, namely the Party of Socialists of the Republic of Moldova (PSRM) and PP "Patria"[15], used the image of the Orthodox Church in their campaigning leaflets.

Several politicians also paid for the transportation of religious relics and icons to RM from the Russian Federation. The Political Party "Patria" and the Socialist Party of Moldova[16] both engaged in this act. In one instance, the transportation of icons was not authorized by the head of the religious denomination, and thus, Metropolitan Bishop Vladimir of the MOC refused to welcome the Sergey Radonezhky icon in Chisinau, which was taken by the Bishop of Balti and Falesti Marchel on a tour through the northern part of RM, and accompanied by the leader of a political party[17].

7.5. Issues pertaining to historic properties of religious denominations

At meetings with the UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, on May 17, 2014, representatives of several religious denominations reiterated on the topic of restitution of their real estate and liquid assets. The Metropolitan Church of Bessarabia noted that the restitution of archives and property had been discussed with authorities, but without an outcome. The issue was also raised by the Lutheran Church and the Roman Catholic Diocese of Chisinau, whose property was nationalized in 1940 by the Soviet administration, and never returned. Additionally, according to the representatives of the Roman Catholic Diocese of Chisinau, Pr. Deacon Edgar Vulpe, after the Supreme Court refused to return the real estate that belonged to the Roman Catholic Diocese of Chisinau, the denomination filed an application with the European Court of Human Rights[18].

Evidence of properties included in the National Registry of Monuments that are protected by the state is another issue pertaining to places of worship. Presently, churches and monasteries included in the Registry are leased

13 News link: http://www.realitatea.md/ips-vladimir--mustrat-de-nicolae-timofti-pentru-declaratiile-politice-ale-unor-inalti-ierarhi_8417.html, (accessed on December 15, 2014).
14 Press conference: http://ipn.md/ro/societate/65865, (accessed on December 15, 2014).
15 Election Monitoring Report No.4 on the November 30 Parliamentary Election, page 14: http://promolex.md/upload/publications/ro/doc_1417173285.pdf, (accessed on December 15, 2014).
16 News on R.Usatii bringing holy relics: http://ru1.md/ro/peredal-svyatoj-matrony/; news on I. Dodon bringing the icon from Russia: http://www.zdg.md/investigatii/icoana-stelei-lui-dodon, (accessed on December 15, 2014).
17 News on politicians' actions: http://ziarulnational.md/mitropolitul-vladimir-refuza-sa-i-faca-electorala-lui-dodon/, (accessed on December 15, 2014).
18 Cult leader's opinion on ECtHR decision: http://casaprov.org/blog/libertatea-de-religie-in-republica-moldova-in-vizorul-onu/, (accessed on December 15, 2014).

to the MOC, even if not all are recognized to subordination to the MOC. According to the Metropolitan Church of Bessarabia, there are dozens of parish churches, whose premises are leased to the MOC. This was reported by the Cadaster Agency, under the provisions of the January 3, 2003 contract of collaboration, in which over 650 churches were leased to the MOC for an unlimited period. This agreement signed with the Ministry of Culture in reality limits the rights of the de facto church holders to properly manage their assets.

CONCLUSIONS

There were no cases of systemic obstruction of people's right to freely practice their religion or beliefs in 2014. However, public authority representatives demonstrated their intolerance on several occasions by preventing religious groups that are not the MOC from exercising their rights, in particular by restricting their access to public services.

Although there are legal provisions that provide criminal and contravention punishments for inciting to hatred and discrimination, the outcomes of the trials started under those provisions were not made public. Often central government representatives fail to respond consistently to hate speech and calls to discrimination made by senior representatives of religious cults.

There are no significant issues in the legal framework, and the only remaining aspect is the correct application of the law. We did not find discriminatory attitudes towards minority religions at the central level, except for the open affinity for the country's leadership to the MOC, which has become a custom. It must be stated that we believe legal provisions which openly favor certain religions contradict the essence of Article 31 of the Constitution.

We consider the fact that the CPEDEE examined multiple cases and issued decisions that found discrimination based on religion will play an important role in both monitoring religious rights and in raising the responsibility of both the public authorities and religions.

In Transnistria, exercising the freedom of religion and conscience is a notable problem, as there are no ways to monitor the situation. As well, there are no viable means for enforcing respect for religious rights. The few public sources of information allow for the conclusion that there is only one religion, the MOC, under the canonical jurisdiction of the ROC, which has the full support of the leadership of the region. Other religions have claimed that local authorities have been, if not hostile, at the very least dismissive of them. Some of these cases, covered in previous reports, were not resolved in 2014, and include the registration of religious groups and component parts with the region's state bodies, compulsory military service, and ill functioning of alternative military service for followers of other religious beliefs.

RECOMMENDATIONS

1. Measures to promote enhanced communication between religions and a culture of non-discrimination in the 2015-2018 Human Rights Action Plan shall be included;
2. Ensuring religious equality by removing the positive discrimination applied to a single religious denomination. Eliminating provisions of Article 3/1 letter z/1 of Law 273 of November 9, 1994 on the identity documents of the National Passport System;
3. Moving forward with sustained efforts that protect minority religious groups and building on the capacities of the CPEDEE to examine cases of religious-based discrimination;
4. Eliminating the text "by foreigners" from Article 54 (4) of the CContr;
5. Discouraging hate speech and manifestations of hatred, including religious intolerance, through the increasing of fines for offenses and violations;
6. Restricting the use of religion in election campaigns, including through the sanctioning of religious denominations which admit the use of religion in the campaigns of certain candidates;
7. Developing policy documents on the restitution and compensation of losses caused by the confiscation of religious assets during the Soviet period.

CHAPTER

8

FREEDOM OF ASSEMBLY AND ASSOCIATION

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Executive Summary

This chapter contains information on the most important and relevant trends in the exercise of the right of assembly in the Republic of Moldova (RM) in the year 2014.

Rallies, demonstrations, processions, or any other assemblies are free and may be organized and held peacefully, without weapons. Law no. 26 of February 22, 2008 on Assemblies regulates the organization and conduct of meetings in public places outside of buildings. Meetings may be held when prior notice is given to the local public authority via a statement that indicates the place, date and time of the meeting, its purpose, and number of participants. The law provides exceptions to the notification procedure for ad-hoc meetings and rallies with 50 or fewer participants. The local public authority may ask a court to ban a rally only if it is illegal and the reasons for prohibiting public rallies may be found in Art 8 of the mentioned Law. Local governments are required to facilitate the conduct of rallies free of charge, except for commercial public events, where authorities may charge fees for services rendered.

According to Art 24 p. 3 of Law 26, no later than October 22, 2008, the Government was to submit to the Parliament proposals that amend the regulatory framework. This would include governing religious gatherings and traditional events, as well as sports, cultural, and commercial events. At present however, in absence of a special document governing the above-mentioned categories of events, the law treats all public meetings equally.

According to data provided by the General Police Inspectorate (GPI), at least 10,760 rallies took place in RM between January to October 2014, attended by roughly 4,684,545 people. This data shows an increase in the number of meetings, and the number of participants compared to 2013. One contributing factor toward this increase may be the electoral campaign in 2014.

One must note that at these meetings several offenses and crimes were recorded and documented by law enforcement. During this period, 15 misdemeanor cases were started under Art 67 of the Contravention Code (CContr). This includes nine cases under Art 67 p.1 of the CContr. (Organizing and conducting rallies without prior notice of the mayoralty and violating the conditions (form, place, time) of the organization of the rallies as indicated in the submitted notice), four cases under Art 67 p.2 of the CContr (Impeding of the organization or conduct of assemblies as provided by law and preventing the participation or forcing to participate in rallies), and two cases under Art 67 p.3 of the CContr (failure of the rally organizer to meet obligations under the law).

During the same period, six criminal cases were started under Art 184 let.1 of the Criminal Code for violations of the freedom of assembly. There were cases of violation of public order as a result of a forced entry of the protesters inside the headquarters of certain municipalities.

The organization and conduct of meetings did not undergo any changes at the legislative level. The authorities gave up their draft legislation introducing certain conditions for rally organizers. However, it should be noted that the Central Electoral Commission (CEC) did adopt a decision regulating the conduct of campaign rallies.

8.1. Freedom of assembly

8.1.1. Managing assemblies

According to the GPI, most rallies, protests, and pickets were conducted in Chisinau[1]. Of the total 1,392 meetings, 1,248 were in Chisinau. We appreciate and note the fact that police improved their skills and tactics to intervene in conflict situations.

1 See Table 1.

The website http://intruniri.chisinau.md/ is managed by the Chisinau municipality to help simplify the procedures for organizing public events and remains the most efficient tool to coordinate the activities of the organizers and participants at the rallies. Analyzing the activity of the local public authorities overall, we conclude there were no registered cases on the limitation of the right to assembly. Police largely reacted promptly and in accordance with the law with regard to peaceful gatherings. There were interventions that were later challenged by the organizers of the meetings, but at present, there are no court judgments on their legality or illegality of those actions.

Table 1

Gathering type	mun. Chisinau	Total per country
Social-political	1,353	2,475
Protests, rallies, demonstrations	1,248	1,392
Cultural-artistic performances	3,091	5,179
Sports events	177	420
Religious events	29	1,294
Total participants	1,229,666	4,684,545
Total gatherings	5,898	10,760

Note that the actions of certain organizers turned peaceful events into acts of hooliganism and randomness.

On January 30, 2014, the S. Party occupied the hall of the Chisinau City Hall, shouting social slogans during a protest that lasted several hours[2]. The police did not intervene or diffuse the gathering that had already gone beyond the legal limit.

On October 20, 2014, the Association of refugees from Transnistria protested in front of the Chisinau City Hall. They accused the municipality of preventing them from privatizing the housing they received for use in 2008. After several court trials, the Municipal Council allowed the privatization of apartments for a fee. The protesters then held a rally against this decision in front of City Hall[3]. Soon, however, the rally participants entered and occupied a meeting room, which they seized for more than seven days. Meanwhile, the police did not intervene, citing the lack of a court judgment. Once the court adopted a judgment ordering the evacuation, the protesters left the room.

It is noted that the police often behave differently when it comes to rallies that have similar elements. Thus, on October 16, 2014, D.M. organized a "spontaneous protest" in front of Chisinau City Hall. The activist organized a protest titled "I want trash bins in Chisinau.[4]" During the protest, several participants threw garbage at the entrance to the City Hall. The protest was not carried through, and the organizer ended up in police custody on charges of hooliganism and resisting a police officer. The case is still pending examination.

At the same time, the police allowed other rallies that used similar tactics. For example, on January 27, 2014, during a protest in front of Chisinau City Hall, several participants brought corpses of dogs. Protesters tried to enter the mayor's office, but police stopped them. Protesters were assured that public debates will be held to find a solution for the problem of stray dogs[5].

On November 10, 2014, members of a political party threw several dozen kilograms of frozen apples in front of a Government building. They used this gesture as a protest against the actions taken by the Government. Several apple producers from various districts around the country accused the central government of distributing farming subsidies and compensations inconsistently and based on political criteria. The farmers also accused the Government of doing nothing to deal with the embargo imposed by the Russian Federation[6]. The authorities assessed these actions as de facto campaigning.

2 News on the rally: http://www.actualitati.md/md/scandaluri/un-nou-protest-la-primaria-chisinau-chirtoaca-isi-continua-linistit-sedintele, (accessed on December 15, 2014).
3 News on the rally: http://www.publika.md/protest-la-primaria-chisinau--refugiatii-din-transnistria-acuza-autoritatile--iar-chirtoaca-a-avut-o-reactie-dura_2127031, (accessed on December 15, 2014).
4 News on the rally: http://www.publika.md/scandal-la-primarie-domnica-cemortan-a-aruncat-gunoi-si-s-a-certat-cu-politistii-video_2122851.html, (accessed on December 16, 2014).
5 News on the rally: http://inprofunzime.md/stiri/politic/protest-la-primarie-autoritatile-otravesc-si-omoara-cainii-ce.html, (accessed on December 15, 2014).
6 News on the rally: http://trm.md/ro/electorala-2014/protest-cu-mere-inghetate-la-guvern/, (accessed on December 15, 2014).

8.1.2. Political rallies

2014 was marked by several important political events that determined the direction of a series of rallies and protests. The most numerous protests and rallies were focused on the signing of the Free Trade and Association Agreement between RM and the European Union (EU) on June 27, 2014. Protests related to the embargo on RM exports to the Russian Federation, and campaign rallies conducted during the electoral period for the parliamentary elections of November 30, 2014 also took up a significant share of public rallies.

After June 27, 2014, several parties held rallies in favor of the signing and subsequent ratification of the Free Trade and Association Agreement between RM and the EU. On July 2, 2014, several thousand people gathered in front of Parliament to support the ratification of the Agreement by the Parliament[7]. This may have been the largest gathering held in 2014 and it is worth noting that there were no riots or acts of hooliganism at the event.

On the other hand, the signing and ratification sparked other protests by political parties that opposed the Agreement. For example, on July 26, 2014, several farmers blocked traffic through an international customs point protesting the signing of the Agreement[8].

On August 5, 2014, another protest gathered roughly 1,000 farmers which called for a revision of the Free Trade Agreement with the EU[9]. On September 14, 2014, there were two large rallies with opposing agendas. Participants at the first rally welcomed the signing and ratification of the Association Agreement[10] while the participants at the second protest demanded that the EU-Moldova Association Agreement be denounced, and called for a referendum to consult the people on the re-orientation of RM's foreign policy towards the Customs Union[11]. Although both rallies were attended by large amounts of people, there were no clashes.

Political rallies conducted during the electoral campaign saw different events take place. The beginning of the campaign was marked by meetings with voters and electoral concerts held by almost all candidates in many localities. Most meetings were peaceful, but in Cantemir, on October 18, 2014, the candidate of political Party "Anti-Mafia People's Movement" (PP MPA) held a counter-rally against the rally held by the Democratic Party (PD). During this counter-rally, the two groups exchanged verbal offenses. A day later, on October 19, 2014, in the town of Nisporeni, PP MPA organized another counter event against the electoral concert organized by PD. At the end of the concert, more than 30 people threw rocks at the PP MPA group. Several people were injured during this attack, and a criminal investigation was undertaken.

After these incidents, PD filed a complaint to the CEC, which on October 24, 2014 adopted decision no. 2815, issuing a warning to PP MPA for a violation of Art 69 p.4 of the Election Code (EC). This decision was contested, but on November 6, 2014 the Supreme Court upheld the CEC decision as legal and well founded, and rejected the PP MPA appeal[12].

PP MPA organized another counter-rally to oppose a rally conducted by the Liberal Democratic Party (PLDM). On October 26, 2014, in Cahul, the PP MPA-sponsored counter-rally resulted again in verbal altercations. On October 28, 2014, the CEC adopted decision no. 2842 admitting the PLDM complaint and PP MPA received a warning. The CEC decision was recognized as legal and well founded, and the PP MPA contestation was dismissed[13].

On October 24, 2014, the CEC adopted a decision on the regulation of electoral rallies. The purpose of this decision was to manage most effectively the way rallies are held during the electoral campaign. The adoption of this decision was prompted by several conflict situations that occurred between candidates. However, the CEC allowed certain exceptions to the provisions of Law no. 26, provided that the prior notice of the local authorities, regardless of character of the assembly or the number of participants, was mandatory. The decision provides for other rules limiting the possibility of holding simultaneous or spontaneous assemblies. However, the decision was challenged on grounds of legality by the court. Its legality was confirmed by the Supreme Court of Justice (SCJ) in a judgment on November 7, 2014[14].

7 News on the rally: http://unimedia.info/stiri/foto-manifestatie-in-fata-parlamentului--mii-de-cetateni--in-sprijinul-ratificarii-acordului-de-asociere-cu-ue-78804.html, (accessed on December 15, 2014).
8 News on the rally: http://madein.md/news/producatorul-autohton/agricultorii-din-raionul-ocnita-au-desfasurat-un-protest-preventiv-impotriva-asocierii-rm-ue, (accessed on December 15, 2014).
9 News on the rally: http://www.ziare.com/articole/moldova+proteste+chisinau, (accessed on December 15, 2014).
10 News on the rally: http://unimedia.info/stiri/foto--video-cum-s-a-desfasurat-marsul-tricolorului-la-chisinau-81837.html, (accessed on December 15, 2014).
11 News on the rally: http://unimedia.info/stiri/foto-socialistii-au-marsaluit-pentru-pentru-moldova-in-uniunea-vamala-81852.html, (accessed on December 15, 2014).
12 See SCJ judgment of 06.11.2014, http://jurisprudenta.csj.md/search_col_civil.php?id=14415, (accessed on December 15, 2014).
13 See SCJ judgment of 14.11.2014, http://jurisprudenta.csj.md/search_col_civil.php?id=14656, (accessed on December 15, 2014).
14 See SCJ judgment of 7.11.2014, http://jurisprudenta.csj.md/search_col_civil.php?id=14434, (accessed on December 15, 2014).

8.1.3. Social and cultural gatherings

In 2014, RM, together with its neighboring countries, Romania and Ukraine, was ranked within the group of countries with a high risk of social protests. According to the ranking conducted by the Economist Intelligence Unit in 2014, 65 countries (43% of the 150 included in the report) ranked high on the risk of social unrest. The Commonwealth of Independent States (CIS) is widely represented in the high-risk for protests category – 8 out of 12 CIS countries rank very high or high on the risk of social unrest[15].

Most social problems are caused by the poor economic situation of segments of the population. Farmers as a group protested most frequently against the fiscal legislation applied by local authorities.

On May 28, 2014, a protest was held in the Great National Assembly Square attended by over 2,000 farmers from all regions. At this rally, farmers expressed dissatisfaction that the Government failed to ensure sustainable development of the agricultural sector. The demonstration ended with the adoption of a resolution, in which the farmers demanded legislative and normative acts that would contribute to subsidies in agriculture[16].

Another category of professionals which held several protests in 2014 claiming their right to a decent life was teachers from higher education, institutions, and lyceums. On February 9, 2014, a rally in support of teachers in Transnistria working in high schools teaching in Romanian was organized.

On October 29, 2014, at the initiative of the trade unions, teachers from the Pedagogical University "Ion Creangă", the State University of Moldova (USM), the Technical University (UTM) and the Academy of Economic Studies (ASEM) held a protest seeking a 10% wage increase. Teachers were dissatisfied with having received only half of the promised 20% increase[17].

An unusual protest was held on March 7 and 8, 2014, in front of the Ministry of Labor, Social Protection and Family, by a number of pregnant women and mothers with babies. It was here they expressed their dissatisfaction with the new version of the Law on child allowances, that significantly reduced the single mother care allowance paid at childbirth, and childcare support provided until the age of three[18].

8.1.4. Freedom of assembly in Transnistria

During 2014, the absolute majority of rallies held in Transnistria were commemorative and cultural rallies. In most cases, people gathered to commemorate political events of the former USSR, such as the Soviet revolution of November 7, Labor Day on May 1, and other events of the Soviet era[19]. There were no protests or rallies of any scale with a critical message against the authorities and the region's administration.

Only one rally in support of freedom of speech was held on July 7, 2014 in Tiraspol, and was attended by few. This rally aimed to support the right to freedom of expression, and the participants criticized the closing or blocking of certain Internet portals and media censorship[20]. In response, the secessionist government conducted a campaign of denigration of active participants at the rally through its security agencies.

15 Analysis and indicators - http://www.economist.com/blogs/theworldin2014/2013/12/social-unrest-2014, (accessed on December 15, 2014).
16 See farmers' resolution adopted at the rally of 28.05.2014, http://www.fnfm.md/index.php/stiri/item/190-protestul-fermierilor-in-pman-din-28052014, (accessed on December 15, 2014).
17 News on the rally: http://adevarul.ro/moldova/social/profesorii-republica-moldova-organizeaza-proteste-majorarea-salariilor-10-1_5450f0f80d133766a8576710/index.html, (accessed on December 15, 2014).
18 News on the rally: http://www.publika.md/galerie-foto-protest-cu-bebelusi-in-brate-la-ministerul-muncii-suntem-in-ajun-de-8-martie-dar-noi-stam-si-inghetam-aici_1833781.html#galerie[1833781]/0/, (accessed on December 15, 2014).
19 News on the rallies of Nov 7 and May 1: http://novostipmr.com/ru/news/14-11-07/v-tiraspole-proshyol-miting-posvyashchyonnyy-97-y-godovshchine and http://gov-pmr.org/item/2549, (accessed on December 15, 2014).
20 News on the rally: http://gmarkov.com/node/15, (accessed on December 15, 2014).

Nicolai Buceatchi and Luiza Dorosenco, both journalists and human rights defenders, were accused of "subversive acts" in Transnistria and "inciting hatred against the current authorities." Local investigative bodies ignored all their pleas of defense and complaint attempts.

In Transnistria, the work of human rights defenders is seen as subversive and an attempt to undermine the regime and local administration. This is why human rights do not have a wider representation at the local level and there are no effective mechanisms and institutions to monitor the situation. Persecuting human rights defenders for going public by participating at certain public events, which is carried out through posting denigrating films on numerous social networks, demonstrates that the secessionist government does not accept criticisms from its people[21].

8.2. Freedom of association

8.2.1. Development of the associative sector

Freedom of association is ensured by law, including the right to form foundations, public or private institutions, public associations, and other nonprofit organizations. As well, the information on the documents that must be submitted for registration is publicly available. According to information provided by the Ministry of Justice (MOJ), its website contains readily available, accessible information, templates of statutes, and other registration documents. Fees for registering associations are not too high, and the registration deadline is reasonable.

During the reporting period, the MOJ drafted amendments to the Constitution, which refer to Articles 41 and 42 of the Constitution governing the right of association. The MOJ stated that currently, the Constitution divides freedom of association into two components: the freedom of founding and joining trade unions (Article 42) and the freedom of political parties and other social-political organizations (Article 41). As a result, the MOJ proposed that the Constitution be amended so that Article 42 enshrines freedom of association in general.

There are many national or local initiative groups, some of which are organized as civic associations. According to the MOJ, at the end of 2014, there were 9,445 registered nonprofit organizations, of which 6,734 were registered as national public associations, 336 foundations, 102 employers' associations, and other non-profits[22].

In addition to the obligation to register organizations, authorities were meant to take measures to facilitate support for the non-profit sector. Under the 2012-2015 Civil Society Development Strategy, adequate mechanisms were to be developed to ensure the financial sustainability of non-profit organizations. One long awaited measure was the adoption of the legislation stating that 2% of the revenues of individuals and businesses were to be directed for the development of non-governmental organizations.

On December 23, 2013, the Parliament adopted Law no. 324 amending and supplementing certain acts, referring to fiscal policy for 2014. The law, inter alia, amended the tax code by introducing the right of individuals to dispose up to 2% of the amount of income tax calculated from their salary to the budget by redirecting them to support public non-commercial organizations and religious institutions.

According to experts, in what was ultimately passed in Parliament, the law allows for budgetary fraud and money laundering. The NGO Council asked the Parliament to repeal the provisions of the 2% law and return to the concept that was initially prepared with the support of international experts.[23]

On February 7, 2014, a Constitutional Court ruling declared Art 88 para (7) of said law unconstitutional[24]. The Court found that the procedure of adoption of laws on fiscal policy was violated during the adoption of that law. This was the only attempt in 2014 to adopt laws that support the non-profit sector.

21 Joint call of human rights organizations: https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/moldova/16642-transnistria-concern-on-the-situation-of-human-rights-defenders, (accessed on December 15, 2014).

22 See state register of non-government organizations: http://rson.justice.md/organizations.

23 News on the opinion of the NGO Council on the adopted law: http://unimedia.info/stiri/video-ong-urile-cer-abrogarea-legii-2-71382.html, (accessed on December 15, 2014).

24 See Constitutional Court decision of February 7, 2014: http://lex.justice.md/md/352582/.

8.2.2. Limitations of the right of association

There were no attempts to limit the functioning of non-profit organizations in 2014 and there was only one court decision that ruled for the forced liquidation of a public association.

On January 20, 2014, the Buiucani district court in mun. Chisinau admitted the application filed by NGO "Echitate" and obliged the MOJ to introduce the falun symbol, which is identical to the swastika and is used by Falun Dafa and Falun Gong Qigong Moldova Association, in the registry of extremist materials. Subsequently, at the request of the same association, on April 18, 2014, the district commercial court ordered the dissolution of the Falun Dafa Association and Falun Gong Qigong Moldova Association, by initiating the procedure of liquidation and appointing a liquidation administrator. The dissolution ruling was motivated by the use of fascist symbols and promoting extremist ideas. On July 15, 2014, the Court of Appeals declined the appeal and maintained the April 18, 2014 judgment. On February 11, 2015, the Supreme Court upheld the decision[25].

In the Transnistrian region, just as in previous years, one cannot speak of truly free civic associations that conduct activities without interference from the local administration. Most associations in the region work in the field of social aid and are less involved in public affairs. The administration of the Transnistrian region represents a real danger for initiative groups and public associations working in the public field. Aside from the fact that every public association and group of activists is monitored by security agencies, there is added risk that their persecution may be formalized. This is obviously due to the process of aligning the laws of the region with the legislation of the Russian Federation, which already contain rules that limit the right of association - such as the law on foreign agents.

CONCLUSIONS

Overall freedom of assembly has seen a positive development in 2014, even if certain systemic issues remain. These primarily relate to police intervention. In 2014, the police treated similar gatherings in different ways, and intervened to disperse some gatherings but not others. The lack of a clear justification for such actions could give the impression of bad intentions or lack of professionalism on behalf of the police.

This uncertainty in the police often determines the behavior of the rally participants. We have found that several seemingly peaceful rallies ended with the partial or total takeover of local government premises, contrary to Law no. 26. Police inaction in such situations could lead to future recurrences of the same situation. Unified regulation of campaign assemblies must be a priority for the 2015 election campaign and although the CEC decision was upheld after a legality check, we believe that the bylaw must be improved by detailing the stages and means of holding campaign assemblies, including indoor events. Restricting counter-rallies often cannot be justified, even if they are organized as part of a campaign.

If we return to the purpose of public assemblies, we note that every protest is actually a call to the bodies to which it is intended. Therefore, the authorities should not remain passive witnesses of these protests. Rather it is their duty to act to remedy the problems tackled during the protests.

On the situation of the right to association, we emphasize that the authorities must ensure support to non-profit organizations and should not limit themselves merely to the registration procedure. The hasty adoption of amendments to the Tax Code - and their ultimate dismissal as unconstitutional – shows that the authorities failed to fulfill their commitments outlined in the Civil Society Development Strategy during the reporting period.

25 SCJ decision of February 11, 2015: http://jurisprudenta.csj.md/search_col_civil.php?id=16858.

RECOMMENDATIONS

1. The government shall develop and send for adoption in the Parliament, bills and legislation on the framework of the conduct of sports, electoral, and commercial rallies. The Parliament shall pass the respective legislation;
2. Municipalities shall develop their own monitoring systems and fully engage in consultations with rally organizers on peaceful ways of holding meetings;
3. The CEC shall improve its decision on October 24, 2014 on regulating campaign rallies to include guarantees for peaceful spontaneous rallies and counter-rallies. Indoor electoral rallies should also be regulated;
4. The police shall improve their training and abilities to avoid excessive police intervention and passive observation of abuses committed by rally participants;
5. The Government shall promote the package of bills to support the civil sector and observe the 2012-2015 Civil Society Development Strategy Action Plan;
6. The Parliament shall eliminate contradictions outlined in the Constitutional Court decision of February 7, 2014, and adopt the bill to include NGO Council recommendations.

CHAPTER 9

RIGHT TO EDUCATION

Authors: Ion Manole, Irina Corobcenco

Executive Summary

A range of actions were carried out in the Republic of Moldova (RM) in 2014, thus continuing the badly needed reforms in education. "Education 2020", Education Development Strategy for 2014-2020, and Education Code are the most important documents that were adopted. In tandem with other laws, they have come to support reform of the educational system, a system which must modernize and ensure the well functioning and competitive capacity of its educational institutions.

While it displays potential, the Education Code cannot solve the systemic problems in the short term, given the lack of investments and financial support. However, society's resistance to this reform generated a number of negative reactions throughout 2013-2014, reactions that reveal a lack of understanding of the importance of a quality education. In 2011, only 3.9%[1] of citizens stated they were very satisfied with the education their children were getting in school. In 2014, only 4%[2] regarded education as the most important problem that RM must solve. 2014 was also marked by numerous incidents in Latin-script schools on the left bank of the Nistru river, which again saw the postponement of the resolution.

Although the Ministry of Education (MOE) made efforts to ensure physical access, the optimization and organization of school transport processes revealed issues with the management of its own local and institutional resources (21 of the 35 districts recorded a budget deficit, with the largest one in Chisinau municipality – MDL 87,629.50 thousand, and the smallest one in Glodeni – MDL 155 thousand). As well, the inclusion of children with disabilities in mainstream schools is still done without ensuring that there are professionals specialized in severe disabilities, enough support teachers, necessary material and didactic support for the Individual Educational Program (IEP), and without a communication strategy aimed at eliminating their discrimination. However, MOE is continuing with the reform and it has established a special Inclusive Education Fund and has trained 2,920 children on the basis of IEP during 2013-2014.

Some educational institutions still have elements of discrimination including, gender-based (school textbooks and practical activities), religious (symbols of Christian religion in classrooms, churches in the school yard, etc.), and linguistic (no possibility for minority groups to study in their native language, imposing the study of Russian language as an extra-curricular activity to the detriment of speakers of other languages, etc.).

According to the Education 2020 Strategy, both preschool and general, vocational and university education need to strengthen the quality of their teaching staff, upgrade the institutions, and ensure the necessary material and didactic support is present. An additional problem is the rate of school dropouts, with causes pointing to financial and social difficulties (migration). With this in mind the MOE intends to decrease this rate annually by 10% in general primary and secondary education. Another problem worth mentioning is that of the educational system referring to minors and young people in penitentiaries, and the lack of ongoing education.

9.1. Discrimination in terms of access to education

9.1.1. Physical access to education

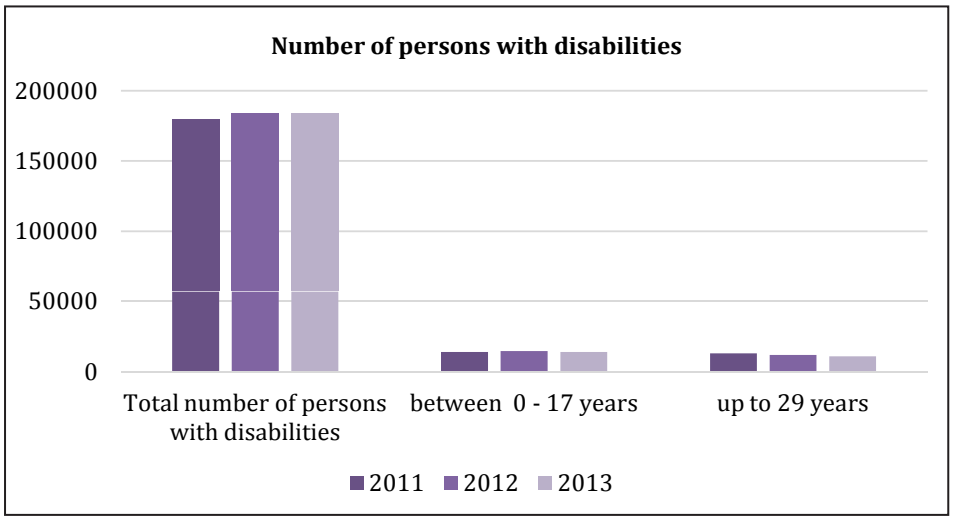
Poor infrastructure, in particular in rural areas, is still one of the primary problems of RM. Inherited from the Soviet regime, this problem is contributing to the isolation and discrimination of a number of categories of people. The lack of infrastructure makes school access difficult or next to impossible, in particular for children with mobility impairments (see Diagram 1). Most of the country's settlements still have poorly kept roads and stations that are not properly equipped. In Chisinau, roughly 70% of the buildings that have been assessed are

1 *Public Opinion Barometer*, Institute for Public Policy, "CBC-AXA" Center of Sociological Investigations and Marketing, Republic of Moldova, November 2011, p. 18.

2 *Public Opinion Barometer*, Institute for Public Policy, CIVIS Centre of Sociological, Politological and Psychological Analysis and Investigations, Republic of Moldova, October-November 2014, p. 21.

inaccessible[3], and only 1% of the town is accessible for persons with special needs[4]. Additionally, school buses are not properly set up for pupils or teachers in wheelchairs. The appropriate means of transport are being provided very slowly, and in 2014 the MOE bought only two vehicles that were equipped for children with disabilities[5].

Diagram 1



In 2010, RM ratified the *United Nations Convention on the Rights of Persons with Disabilities*[6], but the *Law on Social Inclusion of Persons with Disabilities, No 60 of March 30, 2012*, which provides access for persons with disabilities in Article 17, has not been implemented. According to a study[7], schools do not have an access ramp for children with mobility impairments, and only one school out of the ten monitored, had adjusted the stairs for children in the primary school. The lack of a lift makes it more difficult for children/young people in wheelchairs to go to classrooms, and because the lavatories, doors, entries, etc. are not adjusted, persons with disabilities are dependent on others. Rural schools do not have indoor lavatories nor are they meeting the hygienic and security norms, and as a result children are still using the lavatories located outside the institution.

As a result of education sector reforms, educational institutions have been provided means of transport as of late, but cases were registered when they were used for other purposes than the transportation of pupils. For example, the Regulation on Pupils Transportation[8] prohibits the charging of fees for the transportation of pupils by school buses, but no sanctions are stipulated for the violation of these provisions. Some research has revealed that in at least ten settlements parents pay fees, which are typically justified as necessary to pay the driver's salary.[9] The vehicles' technical capacity is inversely related to the number of pupils, and in some cases children are not transported back home, or are transported too late for the primary school children, who finish their classes earlier. Education Directorates and local public authorities must provide the necessary number of vehicles, but these vehicles do not always meet the technical or hygienic conditions.

Anatol, a student at the State University of Moldova, is crawling up to the fourth floor to attend the courses - there aren't any ramps and the lift is out of order. The road to dormitories is hampered by the inaccessible segments of the sidewalk, or by illegally parked cars, or by their physical state. He doesn't have access to public transport, either, because the minibuses are not adjusted, and the only trolleybus of new type, which has an access ramp, arrives with delays.[10] As a result, Anatol has to use the roadway, in spite of all the risks.

3 Access Map, accessible on http://motivatie.md/harta-accesibilitate/, (accessed on February 20, 2015).
4 http://protv.md/stiri/social/fa-ti-europa-acasa-se-taraste-in-maini-ca-sa-ajunga-la-lectii---730171.html, (accessed on March 10, 2015).
5 http://www.prescolar.md/newsview.php?l=ro&idc=89&id=537&t=/TV/N4-Autovehicule-pentru-copii-cu-dizabilitati, (accessed on March 10, 2015).
6 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335376, (accessed on March 13, 2015).
7 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 4.
8 Decision No. 903 of October 30, 2014 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355323, (accessed on March 13, 2015).
9 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 4.
10 http://protv.md/stiri/social/fa-ti-europa-acasa-se-taraste-in-maini-ca-sa-ajunga-la-lectii---730171.

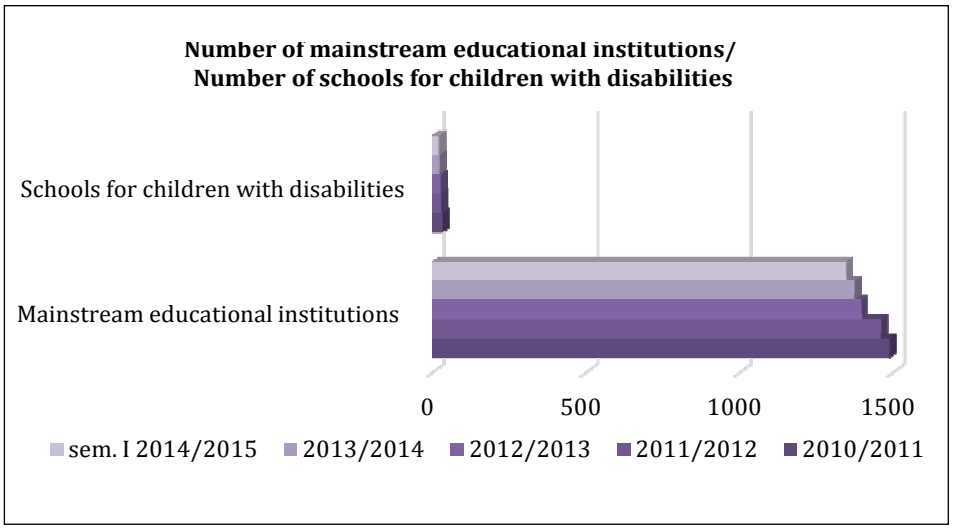
9.1.2. Integration of children with disabilities

The physical environment of schools is not adjusted to the needs of children with disabilities. In spite of efforts in the preparation and training of the teaching staff, RM has a low number of professional teachers involved in the education of children with disabilities. Though the Code of Education, Article 9 (6) provides for *support to persons with special educational needs*[11], only 10.7% of Russian-speaking teachers and 49.7% of Romanian-speaking teachers were trained, 34.3% regard themselves as rather unprepared, and 7.4% - as not prepared at all[12].

At the preschool level, due to the high number of children in kindergartens, it is not possible to identify nor provide early assistance to children with special needs, and the shortage of teachers and specialists for children with severe/multiple disabilities (autism, Down syndrome, etc.)[13] hinders the educational process. This is also stated in the Inclusive Education Development Program for 2011-2020, approved by RM Government Decision No 523 of July 11, 2011[14].

In 2013, there were 14 thousand children with disabilities (0-17 years), or 7.9% fewer[15], of which 2,360 were enrolled in 34 institutions[16] for children with special needs at the preschool level (see Diagram 2).

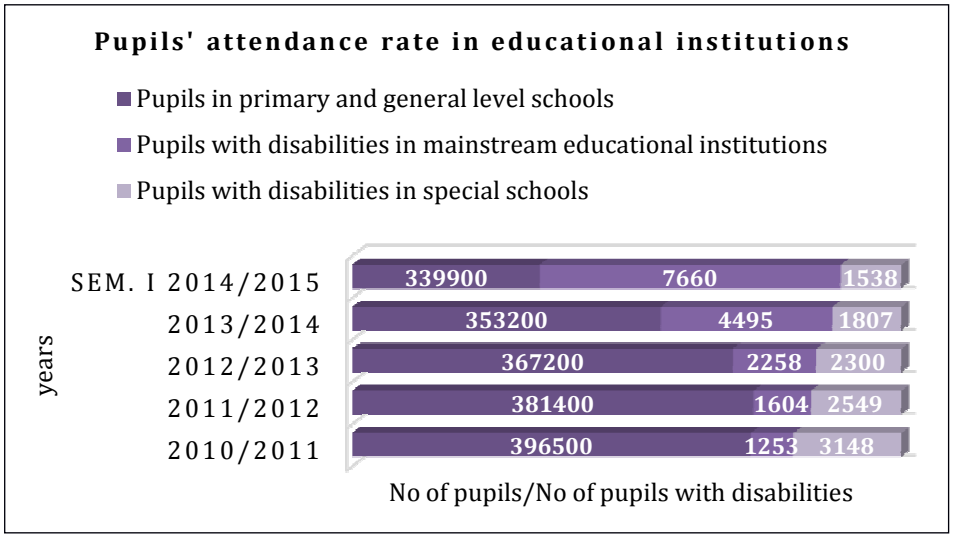
Diagram 2



At the primary and general level, the number of schools for children with intellectual and physical impairments decreased from 35, in 2009/2010 to 23 in 2013/2014, and the number of pupils with special educational needs in mainstream educational institutions increased by 3,356 children in 2013/2014 (see Diagram 3). In schools for children with impairments saw a decrease of 2,012 in 2014/2015[17] (see Graph 1) and in 2013-2014, 3,500 deinstitutionalized children[18] were enrolled in 400 mainstream educational institutions.

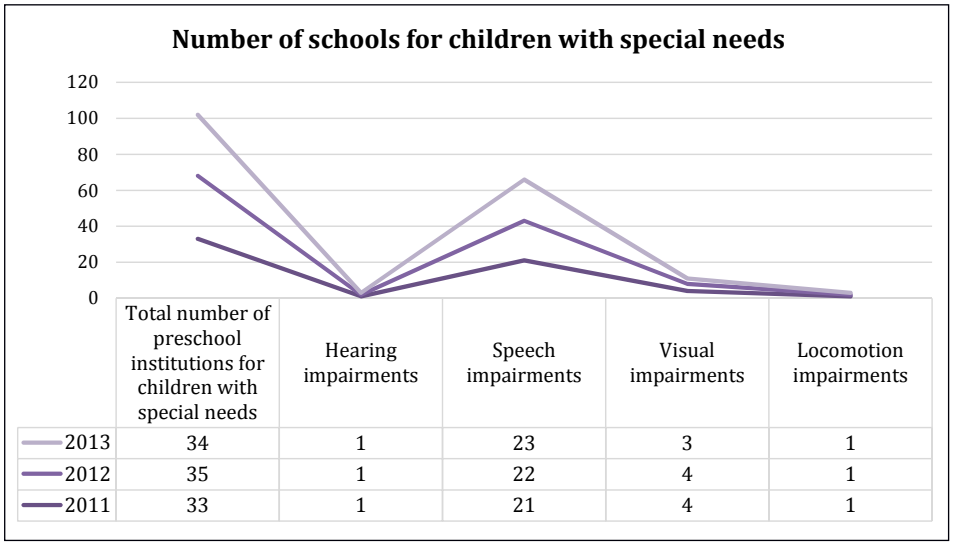
11 http://lex.justice.md/md/355156/, (accessed on March 13, 2015).
12 *Inclusion of Children with Disabilities in the Educational System. Sociological Study*, prepared by IDIS "Viitorul" in partnership with UNICEF Moldova, p. 35, accessible at www.unicef.org/moldova/Incluziunea_copiilor_cu_dizabiltati.docx, (accessed on February 20, 2015).
13 *Observance of Human Rights in the Republic of Moldova in 2014*, Center for Human Rights of Moldova, Chisinau 2015, p. 113, accessible at http://crjm.org/wp-content/uploads/2015/03, (accessed on February 20, 2015).
14 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339343, (accessed on March 15, 2015).
15 *Situation of Persons with Disabilities in 2013* http://www.statistica.md/newsview.php?l=ro&idc=168&id=4566, (accessed on February 10, 2015).
16 *Education in the Republic of Moldova. Statistical publication*, National Statistics Bureau, Chisinau 2014, p.41, available at http://www.statistica.md/public/files/publicatii_electronice/Educatia/Educatia_RM_2014.pdf, (accessed on March 20, 2015).
17 *Activity of general primary and secondary educational institutions, at the beginning of 2014/15 school year*, http://www.statistica.md/newsview.php?l=ro&idc=168&id=4598, (accessed on February 10, 2015).
18 *Activity Report of the Ministry of Education for 2013*, p. 16 available at http://edu.md/file/Circulara/Raportul%20de%20activitate%20al%20MEd%20pentru%202013.pdf, (accessed on February 20, 2015).

Diagram 3



In spite of policy development regarding inclusion, general opinions of the greater society is still failing to understand properly the situation. Thus, 31.4% of all the interviewed teachers believe that all children with disabilities should be cared for in the family, 13.3% of them believe that they should be placed in residential institutions[19], 38.5% of respondents (male students) do not agree with the presence of children with disabilities in mainstream schools, and the negative attitude increases with the disability severity level. However, in 2013, 137 persons with disabilities were enrolled[20] (39 children with disabilities of the first and second degree and 98 children with physical and sensory impairments), 90 persons were enrolled in colleges (82 children with disabilities of the first and second degree and 8 children with physical and sensory impairments) and 9 - in higher educational institutions, cycle I, tuition free.

Graph 1



	Total number of preschool institutions for children with special needs	Hearing impairments	Speech impairments	Visual impairments	Locomotion impairments
2013	34	1	23	3	1
2012	35	1	22	4	1
2011	33	1	21	4	1

Though The Education Code, Article 129[21] and Government Decision No 732 of September 16, 2013[22] on the Republican Psychopedagogical Assistance Center provide for the development of support teachers (35 have psycho-pedagogical support services that have 238 members) and support to children with disabilities, nevertheless an incorrect approach still persists: the less visible the disability is, the easier the situation is

19 *Inclusion of Children with Disabilities in the Educational System. Sociological Study*, prepared by IDIS "Viitorul" in partnership with UNICEF Moldova, p. 17, accessible at www.unicef.org/moldova/Incluziunea_copiilor_cu_dizabiltati.docx, (accessed on February 20, 2015).

20 *Activity Report of the Ministry of Education for 2013*, p. 16 available at http://edu.md/file/Circulara/Raportul%20de%20activitate%20al%20MEd%20pentru%202013.pdf, (accessed on February 20, 2015).

21 http://lex.justice.md/md/355156/, (accessed on February 10, 2015).

22 http://lex.justice.md/md/349661/, (accessed on February 10, 2015).

tackled. Thus, pupils are developing stereotypes because of the lack of correct and current information: *"There are children with disabilities, but only mental, we do not visit them, but the colleagues who live closer to them visit them, we do not get near them so we do not get sick as well", "he is a boy who is a bit sick in the head"*[23].

In these conditions, during October 2013 - November 2014, 194 complaints were submitted to the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE)[24], 15 of which focused on harassment in the educational process on the basis of the disability and social origin of the orphan child, discrimination-based with regards to the access of minor victim to the preschool institution, etc. With the adoption of the new Education Code, a judicial precedent is gradually being formed. For example, the CPEDEE Decision of September 9, 2014 found a discriminatory attitude from the MOE and the General Directorate for Education, Youth and Sports of the Chisinau Council, who denied reasonable accommodation for the Baccalaureate examinations. As a result, MOE decided to adopt a regulation.

V.U. and her guardian B.L. invoked a discriminatory attitude on behalf of her colleagues and the management of the vocational school, where she studied. She had faced a hostile and discriminatory attitude since her enrollment in the school, with the school management imposing barriers such as requesting a compulsory visit to the neurologist and to obtain a signed certificate from said neurologist confirming that she was able to study. Initially she was not offered a place in the dormitory, and the school management only gave one after she submitted an application to the MOE. She was eventually accommodated in an overcrowded room, near the window, and the bed did not meet the special physiological requirements of V.U. The request to accommodate the living conditions was not approved by the school management. Finally, V.U. ex-matriculated illegally from the school, where the classmates used to insult her and apply physical force against her. During this time the school management ignored her requests to resolve the conflicts between her and her classmates[25].

In order to solve the deficiencies of the system, support teachers were increased to 100 in 2012 and to 360 in 2013, and the number of resource centers increased as well (from 35 in 2012 to 250 in 2013[26]). Since 2013, resources were allocated to set up and equip resource centers for inclusive education (497 resource centers[27]), MDL 37,224 thousand in 2013 and MDL 35,670.90[28] thousand in 2014. On the other hand, a special fund was established for inclusive education, for which 2% of the local budget was allocated. The IEP was implemented and developed according to the "Integration of Pupils with Special Needs in European School" document[29], which aims at identifying and prioritizing the learning and development needs of the child with special educational needs, etc., but which also requires material and didactic support[30]. In 2013-2014, 2,920 children[31] were taught on the basis of the IEP, and at the end of the school year 66 pupils with deficiencies from 14 territorial-administrative units graduated from mainstream schools, being assessed and certified on the basis of an individualized assessment[32]

In March 2015, the network for the promotion of genuine inclusive education, which consists of 80 families, helped to organize the first National Discussion Platform, attended both by parents and representatives of authorities[33].

23 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 17.

24 Irina BURAC-MIHALACHI, Ana NANI, Ana FURTUNĂ, Iurii ARIAN, *Report on Monitoring the Activity of the Council on the prevention and elimination of discrimination and ensuring equality during 2013-2014*, Non-Discrimination Coalition, Civil Rights Defenders, Chisinau 2014, p. 21 available at, (accessed on January 21, 2015).

25 Irina BURAC-MIHALACHI, Ana NANI, *Report on Monitoring the Activity of the Council on the prevention and elimination of discrimination and ensuring equality during 2013-2014*, Non-Discrimination Coalition, Chisinau 2015, p. 23.

26 Angela CARA, *Implementation of Inclusive Education in the Republic of Moldova. Public Policy Study,* Institute for Public Policy, Chisinau 2014, p.44.

27 http://www.unicef.org/moldova/ro/11941_27451.html, (accessed on March 22, 2015).

28 Angela CARA, *Implementation of Inclusive Education in the Republic of Moldova. Public Policy Study,* Institute for Public Policy, Chisinau 2014, p.44.

29 European School, Integration of Pupils with Special Needs in European Schools, available at: http://www.mailissima.com/fichiers/contenu_fichiers1/1353/2009-D-619-ro-3.pdf, (accessed on March 21, 2015).

30 *Individual Educational Plan, IEP , Guide on the Development and Use,* pp.17-20.

31 Angela CARA, *Implementation of Inclusive Education in the Republic of Moldova. Public Policy Study,* Institute for Public Policy, Chisinau 2014, p.62.

32 *Activity Report of the Ministry of Education for 2013*, p. 16 available at http://edu.md/file/Circulara/Raportul%20de%20activitate%20al%20MEd%20pentru%202013.pdf, (accessed on February 20, 2015).

33 http://www.unicef.org/moldova/ro/11941_27451.html, (accessed on March 22, 2015).

9.1.3. Gender issues

Women are still being discriminated upon employment "In spite of the higher educational potential and professional qualifications than men, as well as the principle of equal remuneration"[34], women are still discriminated against in terms of employment. This, in spite of the RM Constitution[35], which guarantees in Article 16(2) the right to equality: *"without differences of race, nationality, ethnic origin, language, religion, gender [...]".*

Prevention and elimination of gender-based discrimination at an early stage (preschool, primary, general education etc.) should be an obligation.

Law No 121 of May 25, 2012[36] on Ensuring Equality prohibits discrimination in education *when developing didactic materials and curricula,* however, an analysis from the perspective of gender equality and discrimination reveals a lack of balance and neutrality. These include the following: lack of numeric balance, division of roles and occupations by gender, etc. As well, gender-based discrimination also persists in activities practiced by children, such as by separating them in groups for technological education and sports:*"we were divided like this from the very beginning, we cannot go over to the boys and they cannot come to us, it is not normal for a boy to sew together with us"*[37]. Moreover, teachers and parents only "understand vaguely the concept of gender equality"[38], and some parents do not know or do not want their children to learn occupations that are not traditionally for their gender *"No, why should they change, they should learn what a man and a woman do with their life"*[39].

> *Civil Education Manual, IX^th^ form, pag.45: women are often presented in the service area, as secretaries, receptionists, etc., and men - in action, as leaders, etc.*
>
> *Civil Education Manual, IX^th^ form, pp. 45-48, 51-53: men are presented by the computer, and women - in the communication process (in other context than family, women are presented only as mothers)*[40].

As for the use of proper terminology with respect to persons with disabilities, it is worth mentioning that it exists with a low presence in school textbooks, and the Civic Education Textbook for the VIII^th^ uses the term of "handicap", which is a violation of the relevant standards.

9.1.4. Religion in the educational system

Secularism of the educational system is guaranteed by the Law on Education, Chapter I, Article 4(3), which stipulates that "the state education is laic, resistant to discrimination on the basis of ideology-party, politics, race, nationality". Moreover, according to the Convention on the Rights of the Child, Article 14(1), "States Parties shall respect the right of the child to freedom of thought, conscience and religion". Many educational institutions of RM however, still have religious symbols or objects (3 of 10 schools: icons, crosses, excerpts from the bible, etc.[41]), churches or religious monuments on the territory of the educational institutions etc. (Secondary School 31, Muncesti St., G. Maniuc High School[42], Natalia Dadiani High School, Mircea cel Batran High School, Botanica district), as well as the organization of some rites or religious ceremonies without the content of the child's parents/guardians (8 of the 10 settlements studied)[43].

The failure to discuss with the parents/guardians and/or pupils about religious classes leads to dissatisfaction for many, as they may be marginalized due to societal stereotypes and prejudices that exist due to their disagreement with the classes: *"I am not satisfied. Children learn prayers. The priest invites children to the church, and those who do not want to go remain marginalized, as they refer only to Orthodoxy. The priest comes once a week"*[44].

34 Oana CAUCAZ, Mariana BUCIUCEANU VRABIE, *Gender Inequality on the Labor Market of the Republic of Moldova*, No. 13, December 2012, Institute for Development and Social Initiatives (IDIS) "Viitorul", p. 9.
35 http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731, (accessed on March 22, 2015).
36 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343361, (accessed on March 22, 2015).
37 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 7.
38 *Ibidem*
39 *Ibidem*
40 http://drepturi.md/ro/node/311, (accessed on March 22, 2015).
41 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 9.
42 http://curaj.tv/reportaj/biserica-ortodoxa-se-infiltreaza-in-scoli/, (accessed on March 20, 2015).
43 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 9.
44 *Ibidem*

In some settlements, the class master's classes are held by priests or their wives, and those who teach religion continually present the material only from the perspective of Christianity: *"We had the history of religion for one year (with a specialist - he talked to us about all of the religions, about morality in general), then Religion became an optional course (with a priest - only about Christianity). Then it disappeared because it was boring, as the priest would impose his viewpoint"*[45].

During the 2014-2015 school year, religion was included in the curriculum as an optional course in 371 schools, compared to 2013-2014, when it was included in the curriculum of 317 schools. The share of optional courses in the framework curriculum is 10-15%[46] in primary schools, 15-20% - in secondary schools and 20-25% - in high schools.

The mother of T.I., pupil in the Vth form in "Alexei Starcea" Arts School, communicated that the primary school teacher had an abusive attitude towards her child, in particular on the last year of primary education (2013-2014), when she resisted the increase in the Class Fund. On the last year of primary school, the child told his mother that the course of moral and spiritual education is actually a religious course, where religious dogmas are studied. The family submitted a request to E.M., but this continued, encouraging the negative attitude of the class towards T.I. When the whole class went on a trip to a monastery, the class mates did not allow T.I. to enter the monastery claiming he was a non-believer, and teacher E.M. did not intervene[47].

9.1.5. Elements of linguistic discrimination

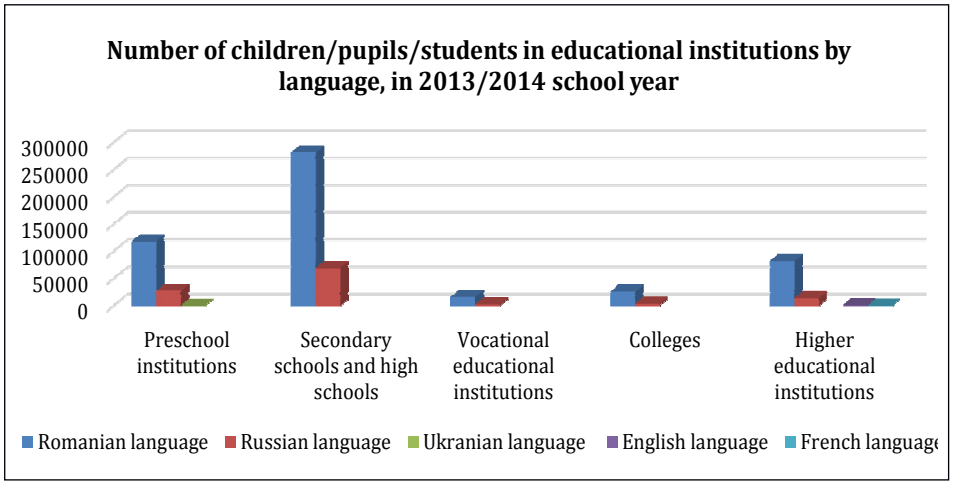
The educational system of RM has always been accused of not contributing to the integration of ethnic minorities. This failure to harness the ethnic and linguistic diversity led to flaws in the educational system, which must be equal for everyone. That is why at present there are few schools that have a mechanism of transition from the native language to the language of education, so that their adaptation and development could be more effective. The school administration decided to have an individual approach.*"We had a Russian-speaking pupil, with whom we worked individually for integration"*[48], and in a school from the Gagauzia Autonomous Unit the educational process is only in Russian, while the Gagauzian language is taught on a compulsory basis, and Romanian - only 4 hours a week[49]. If there is no demand, the management of the institutions does not organize training courses for linguistic minorities, and courses taught in the minority languages were not included in the curricula due to financial shortages, or lack of teachers: *"There aren't any courses in the native language of minority groups"*[50].

To ensure compliance with the Law on Rights of National Minority Groups, No. 382 of July 19, 2001[51], which requires in Article 6(4) to study on a compulsory basis the history and language of the country of residence, the MOE carried out a program of multi-language training, "Social and linguistic integration of non-native students by extending the number of school subjects studied in the Romanian language", in the school years of 2011-2012 and 2012-2013, in which the Romanian language was taught in 19 schools teaching in Russian and 240 of the existing schools, initially eight and then nine subjects by 71 teachers in 113 classes[52]. Thus, 23 institutions participate in the project, in which 3,125 pupils study eight subjects in Romanian, taught by 51 teachers[53], out of over 110 thousand pupils that study in Russian, Ukraine, etc. (see Diagram 4). In 2012, the MOE announced its intention to establish five training and coaching centers that would teach how to use properly the Romanian language, in Cahul, Edinet, Balti, Chisinau, and Gagauzia TAU[54].

The project ceased in "Mihail Guboglo" High School of Ceadir-Lunga, as the only teacher of the Romanian language is on maternity leave[55].

45 *Ibidem,* p. 10.
46 Article 40(7) of the Education Code http://lex.justice.md/md/355156/, (accessed on March 20, 2015).
47 http://egalitate.md/media/files/files/decizie_nr_t_i__164_final_438186.pdf, (accessed on March 20, 2015).
48 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 11.
49 *Ibidem*
50 *Ibidem*
51 http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312817&lang=1, (accessed on March 22, 2015).
52 http://www.edu.md/ro/evenimentele-saptaminii/13477/, (accessed on March 15, 2015).
53 *Activity Report of the Ministry of Education for 2013*, p. 19 available at http://edu.md/file/Circulara/Raportul%20de%20activitate%20al%20MEd%20pentru%202013.pdf, (accessed on February 20, 2015).
54 http://studiimoldova.info/noutati/social/proiectul-pilot-%E2%80%9Eintegrarea-sociala-si-lingvistica-a-elevilor-alolingvi-prin-extinderea-numarului-de-discipline-scolare-studiate-in-limba-romana%E2%80%9D, (accessed on March 15, 2015).
55 http://adevarul.ro/moldova/social/experimentul-cu-romana-scolile-ruse-bun-lachisinau-dificil-raioane-1_5273

Diagram 4



On the other hand, the wrong approach to the idea of linguistic tolerance may generate conflicts in extra-curricular activities. In 2014, MOE was informed about the linguistic discrimination in children's camps ("Sadovo" from Sadova and "Cristiano O" from Slobozia-Dusca), where Russian was spoken to the detriment of Romanian speakers, who were the majority in the groups most of the time: "*On the first day, the educators of the group that my daughter belonged to asked the children: 'Who doesn't speak English?'. Some people raised their hands. As a response, the educator stated: "We have both Russians and Moldovans here. For everyone to understand, we will speak Russian!"*[56]. MOE delegates this issue to the District Education Directorates, and the latter do the same, ultimately losing the possibility to be part of the linguistic integration process, developed, and supported by the MOE.

9.1.6. Integration of ethnic minorities

The integration of Roma people, in particular children, still remains difficult as stereotypes continue and develop due to lack of information. This violates the Constitution of RM[57] (Article 16). The improper attitude of decision makers, who on some level contribute to these problems, is failing to eliminate ethnic discrimination. Thus, 82.5% of school principals would accept a Roma person as an employee or pupil, but only 27.2% of them would accept a Roma person as their peer and 26.3% - as pupil and/or student, though only 12 thousand Roma people officially live in RM and are registered, but their actual number could exceed 150 thousand[58].

Some settlements have been segregating Roma children since 2013, where the "level of teaching is much below the country's level"[59], such as Otaci, Tibirica, Stejareni/Lozova and Parcani/Raciula[60]. Thus, also in 2013, the RM Government approved the decision to set up a network of community mediators in the Roma communities (48 mediators in 44 settlements), and Law 121/May 25, 2012 on Ensuring Equality[61] was approved, however in 2013 only seven mediators were employed, out of the 15 initially planned[62]. In April 2015, this number reached 25[63].

56 http://www.jc.md/educatie-patriotica-cu-katiusa-si-zarnita/, (accessed on December 10, 2014).
57 http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731, (accessed on March 20, 2015).
58 Nicolae RADITA, Chairman of the Roma National Center http://www.noi.md/md/news_id/38816, (accessed on December 15, 2014).
59 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339319, (accessed on March 14, 2015).
60 Magdalena SEPÚLVEDA CARMONA, *Report of the Special Rapporteur on extreme poverty and human rights*, General Assembly of the United Nations, p. 13, Available at http://www.prescolar.md/newsview.php?l=ro&idc=89&id=537&t=/TV/N4-Autovehicule-pentru-copii-cu-dizabilitati, (accessed on March 10, 2015).
61 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343361, (accessed on March 10, 2015).
62 Igor BOTAN, Denis Cenusa, Mariana KALUGIN, Adrian Lupusor, Polina PANAINTE, *Euromonitor, Quarterly monitoring Report on European Union – Moldova Action Plan (EURMAP) implementation during October – December 2013*, Chisinau, March 2014, p. 9, available at http://www.e-democracy.md/files/ euromonitor30.pdf, (accessed on February 10, 2015).
63 http://gov.md/ro/content/guvernul-va-participa-activ-la-dialogul-politic-si-social-pentru-imbunatatirea-situatiei, (accessed on April 29, 2015).

In 2012, the management of "Mihai Eminescu" High School of Otaci promised to reconsider the separation of pupils into Roma and non-Roma classes. The management believes that Roma pupils "need to have an easier curriculum, because they come to the school without any preliminary preparation". Teachers claim that most of the Roma pupils find it more difficult to learn, they need to invest double the effort to be able to work together with children, who attended a kindergarten. On the other hand, Roma parents claim that they did not have any choice, and were forced to send their children to Roma classes, and that the tuition fees[64] cannot be covered.

Their presence did allow for the conducting of several studies with Roma inhabitants. In the town of Soroca, only 84 of the 278 Roma children of school age attended school at least once in 2014, and only 10 - regularly[65]. 180 Roma pupils are enrolled in the secondary school of Vulcanesti, but only 13-15 attend the classes[66]. In Briceni, 96% of Roma children[67] are enrolled in the three high schools from that settlement, and another five either did not want, or did not have identity documents, and are therefore attending courses in the Multifunctional Community Center. To issue identification documents to Roma children (44 in 2013[68]) is problematic because of frequent migration, lack of any documents to attest the children's birth or use of foreign documents.

Roma children drop out of school or attend it sparingly not only because of poverty, migration or early marriages, but also due to their approach. They consider school as "a foreign institution [...], which has belonged for centuries to a traditionally threatening environment[69]"; moreover, once enrolled in school, Roma children have the feeling that they are living "an illegal culture, because their culture and language are marginalized or even stigmatized through various words and deeds"[70]. On the other hand however, the school system fails to provide any opportunities to teach about diversity: *"They only tell us about them, only about Gipsies, that we should not offend them, that we need to help them if they need help"*[71]. As well traditions have a special place in the lives of Roma people, which is why in secondary school a higher risk is for Roma children (in particular girls) to drop out of school, and a long-term solution has not yet found in this respect.

9.2. Enrolling children in kindergartens. Differences between the urban and rural environment

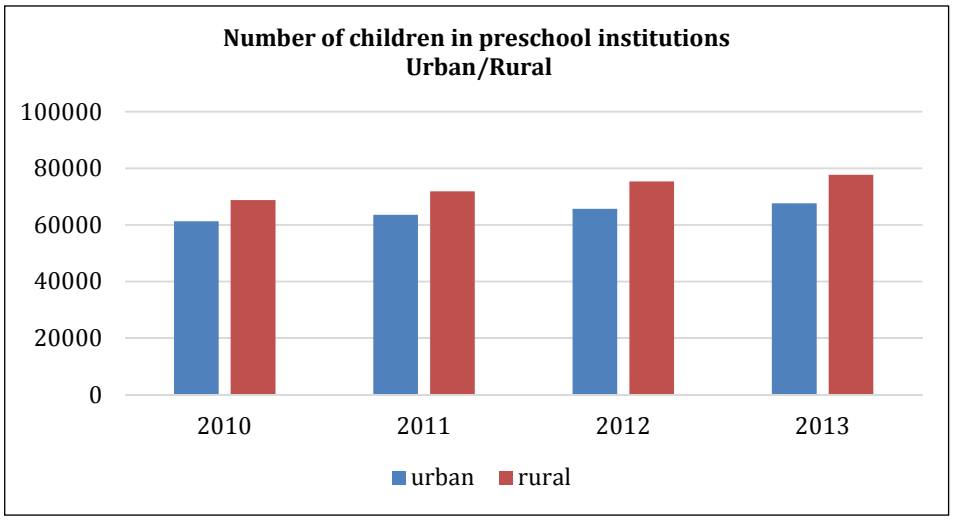
As educators are lacking the necessary abilities, it is difficult to implement efficiently the Early Education Curriculum and the Child Development Standards from birth to seven years old[72]. This can be explained by the age of the educators (7,329 of the total number of 12,324 have over 15 years of experience), the lack of an ongoing training system, and the fees charged for the training courses.

The lack of an effective parent-kindergarten relation negatively impacts the quality of education, and fosters the parental passivity towards the child's education, as 16.4%[73] of parents (on the average of the total population) participate in child care activities 2.1 hours a day, with rural parents focusing on supervision and care, and urban parents - on the development of cognitive skills. At the same time, the increasing rural-urban immigration rate

64 http://canalregional.md/index.php/emisiuni/loc-de-dialog/item/806-problema-scolarizarii-copiilor-romi-camufl
65 http://nediscriminare.md/accesul-la-educatie-al-copiilor-romi-din-orasul-soroca, (accessed on January 15, 2015).
66 http://evenimentul.md/unicef-impreuna-putem-asigura-ca-toti-copiii-romi-sa-mearga-la-scoala/, (accessed on January 15, 2015).
67 http://nediscriminare.md/daca-n-ai-sa-asculti-te-dau-la-tigani/, (accessed on January 15, 2015).
68 Tatiana CRESTENCO, *Thematic Report. Analysis of the issuance of Birth Certificates to Children (p. 7 of the Action Plan of the Child Protection Service for 2013)*, Center for Human Rights of Moldova, Chisinau 2013, pp. 9-10.
69 *EURROM, Integration of Roma Culture in the School and Extra-Curricular Education, Project ref. 57399-CP-2-99-2-RO-C2 (second year of project implementation), Methodological guideline for teachers who work with Roma children,* European Commission, SOCRATES/COMENIUS Program, Action 2, Intercultural Institute of Timisoara 2000, pp. 55-56.
70 *Ibidem*
71 *Preliminary findings of the Study on Discrimination in the School System of the Republic of Moldova,* developed by the Information Centre for Human Rights, with the support of the US Department of State, Chisinau 2013, p. 13.
72 *"Education 2020" Sector Development Strategy for 2014-2020,* Ministry of Education 2014, p.25, available at http://particip.gov.md/public/documente/137/ro_1112_Educatia-2020.pdf, (accessed on March 22, 2015).
73 ANALYITICAL NOTE. *Use of Time for Child Care by Moldovan Parents,* National Statistics Bureau, with the support of United Nations Development Program, United Nations Entity for Gender Equality and the Empowerment of Women and Sweden Government, p. 1 available at: http://www.statistica.md/public/files/publicatii_electronice/Utilizarea_timpului_RM/Note_analitice_rom/01_brosur_ROM.pdf, (accessed on January 20, 2015).

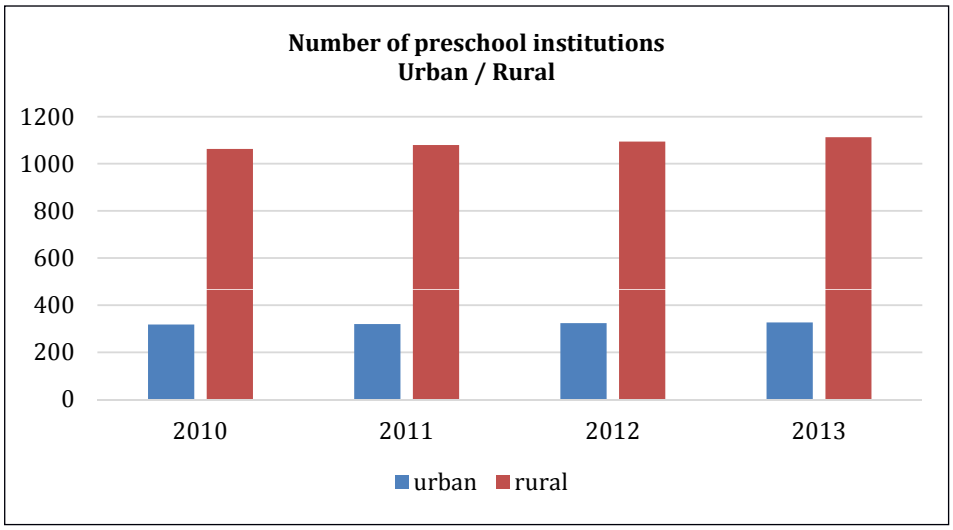
(33.4 thousand people in 2013[74]), the emigration (2.585 people) and the physical conditions of the institutions impacted the enrollment rate (Diagram 5), which was higher in the urban area (77.2%) than the rural one (51.8%[75]).

Diagram 5



In early 2014, there were 170,103 children of 0-6 years of age (3-6 - 97,898) in the rural area[76] and 99,550 children of the same age in the urban area (3-6 years - 128,939). Note that in 2012, 176 settlements did not have any preschool institutions (Diagram 6), and this number dropped to 70 in 2014[77], while 100 kindergartens were rehabilitated and/or reopened[78].

Diagram 6



74 *Demographic Situation in the Republic of Moldova in in 2013*, National Statistics Bureau http://www.statistica.md/newsview.php?l=ro&id=4415&idc=168, (accessed on February 13, 2015).

75 *Education in the Republic of Moldova. Statistical publication*, National Statistics Bureau, Chisinau 2014, p.38, available at http://www.statistica.md/public/files/publicatii_electronice/Educatia/Educatia_RM_2014.pdf, (accessed on March 23, 2015).

76 Structure of the Stable Population of the Republic of Moldova by Gender and Age as of 1 January 2014, National Statistics Bureau http://www.statistica.md/newsview.php?l=ro&idc=168&id=4402, (accessed on March 15, 2015).

77 http://www.moldpres.md/news/2014/10/22/14000142, (accessed on March 10, 2015).

78 http://www.moldpres.md/news/2014/10/22/14000142, (accessed on March 10, 2015).

The enrollment rate in education increased to 85.6% in 2013/2014[79] (age of 3-6 years), up from 82.1% in 2012[80], however, it is clear that the problem of non-registered children still persists. In early 2013 there were 343 non-registered children[81] (Taraclia, Glodeni, Ceadir-Lunga and Basarabeasca, Briceni), that indicated they are not enrolled in the educational process.

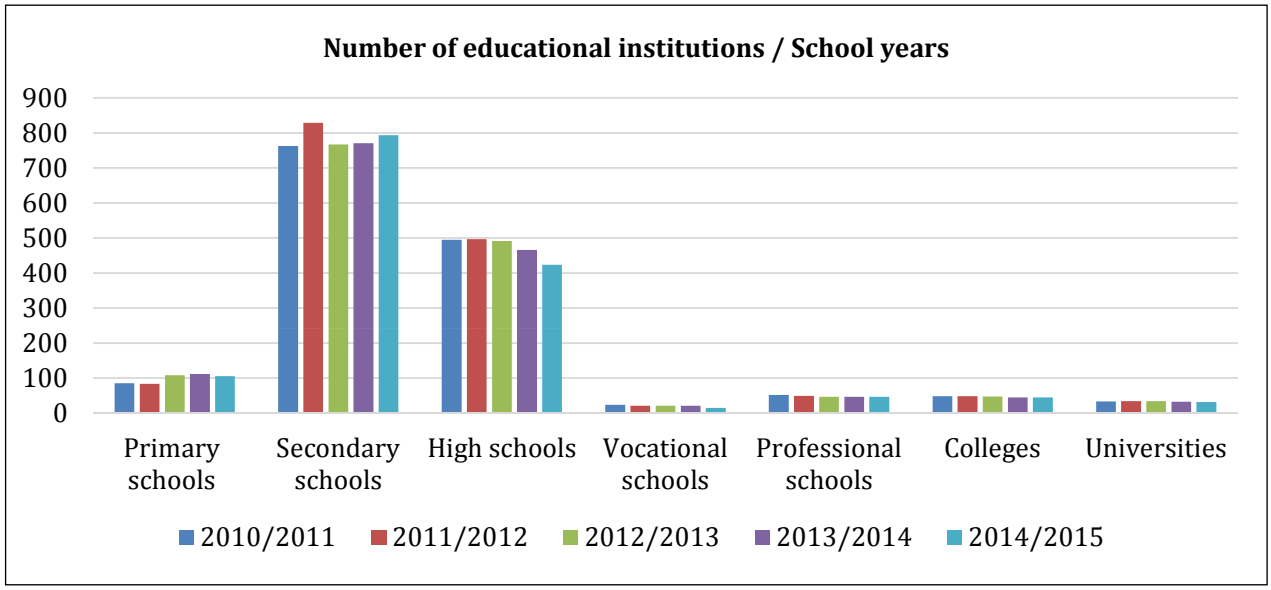
9.3. Pre-University and university education

Demographic changes, people's migration, low educational performance at the national and international level, lack of professional teachers, and delayed modernization of the educational system has caused changes at all educational levels. During the 2014/2015 school year, there were 794 secondary schools[82], 424 high schools, 12 secondary schools and three high schools being closed, with the number of secondary school pupils increasing slightly from 47.4% in 2013/2014 to 47.8% in 2014/2015, and the number of high school pupils decreasing from 13.2% in 2013/2014 to 11.5% in 2014/2015[83].

The number of secondary vocational educational institutions decreased by six during the 2014/2015 school year and now totals 61 units. The number of vocational education pupils also decreased by 2.7%. The number of college students increased slightly, by 0.5 thousand persons, while the number of higher educational institutions decreased by one, with the number of students dropping by 7.8 thousand persons (Diagram 7). Moreover, over 5,000 high school pupils, university, and PhD students are attending universities in Europe and other parts of the world due to the low quality education available in RM.

The number of pupils is continuously decreasing at the eight schools in the Transnistrian region, subordinated to the constitutional authorities. 5,500 pupils used to study in these educational institutions in the 1990's. As a result of a number of problems created for teachers, parents, and pupils, their number dropped to 1,800 in 2012-2013[84].

Diagram 7



79 *Education in the Republic of Moldova. Statistical publication*, National Statistics Bureau, Chisinau 2014, p.38, available at http://www.statistica.md/public/files/publicatii_electronice/Educatia/Educatia_RM_2014.pdf, (accessed on March 23, 2015).

80 Alexandru ZUBCO, Vadim VIERU, Nadejda HRIPTIEVSCHI, Vladislav GRIBINCEA, Sorina MACRINICI, Alexandru POSTICA, Pentru MACOVEI, Lina ACALUGARITEI, Tatiana CERNOMORIT, Nicolae PANFIL, Lilia POTING, Vitalie IORDACHI, *Human Rights Report. Retrospective of 2012-2013*, Promo-LEX Association, Civil Rights Defenders, Sweden Embassy, p. 75 available at http://www.promolex.md /upload/publications/ro/doc_1403006808.pdf, (accessed on February 20, 2015).

81 Tatiana CRESTENCO, *Thematic Report. Analysis of the issuance of Birth Certificates to Children (p. 7 of the Action Plan of the Child Protection Service for 2013)*, Center for Human Rights of Moldova, Chisinau 2013, pp. 9-10.

82 *Socio-Economic Situation in the Republic of Moldova in 2014,* National Statistics Bureau, p. 67 available at http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_2014_rom.pdf, (accessed on March 20, 2015).

83 *Ibidem*

84 *Transistrian Realities*, No 4, May 2014, IDIS "Viitorul", The Balkan Trust for Democracy, p.7 available at http://viitorul.org/doc.php?l=ro&idc=392&id=4380&t=/PUBLICATII-PERIODICE/Realitati-Nistrene-Buletine-InformativePolicy-Brief-uri/Venica-reseta re-a-dosarului-educational-problemele-existente-i-necesitatea-cooperarii-dintre-Chiinau-i-Tiraspol, (accessed on March 10, 2015).

The quality of education has become a priority for RM, in particular when the Baccalaureate passing rate was brought to the public's attention (in 2014 - 58%, in 2013 - 56%). Quality can be impacted both by the poverty rate, which amounted to 84% in rural areas in 2013, by income level, which was by 9.2% under the minimum existence level[85], and by teacher salary. As a consequence, MOE acknowledged that the performance of urban students was higher than the performance of rural ones[86]. Thus, in spite of efforts made to optimize the framework and places of general education, the quality of teaching in the rural area is still significantly lower than the professional level of teachers from urban high schools. Trying to adapt, MOE intends to move to a performance-based payroll system. As well, a separate approach should exist towards teachers from the Transnistrian region of RM, where

after the bank accounts of "Lucian Blaga" High School of Tiraspol were blocked, the RM Government decided to provide a MDL 400 monthly bonus to the salary[87] for teachers from the eight schools located on the territory controlled by the de facto authorities of Tiraspol.

Due to the inadequate level of practical training of teachers as dictated by the labor market, obsolete material and didactic methods, along with the manner of teaching the material as a chain, rather than through logical consecutiveness, the shortage of qualified graduates with vocational and higher education affect 40.2% of enterprises with less than 10 employees and 58.3% of enterprises with over 50 employees[88]. In 2013, the unemployment rate among young people of 15-24 years of age accounted for 12.2%[89].

The optimization of institutions should also include their focus on vocational educational institutions, which run at only 50% of their capacity[90]. Not being able to justify the financial expenses that can be used to transfer practical expertise from the private sphere, and thus obligating the institution to develop a strategy to reorganize the institutional structure.

On the other hand, in 2014, according to a MOE study, the parents' investments were "almost equal to the Government's monthly contribution [...] of roughly MDL 600"[91], though the new Education Code, in Article 135(3) prohibits "*receipts of money or other benefits in any form [...] the parents' civil organizations".* The merely administrative role (management of money) can be eliminated in favor of some associations with their own ideology and parents' involvement in the teaching process.

Though the educational sector is over-extended in terms of infrastructure and financing, the quality and efficiency of investments in education are the lowest in the region. This was caused by the previous delay in a series of critical structural reforms that left the educational system decoupled from economic, demographic, and social realities. Respectively, the correlation of the educational offer with the demand of the real sector and anchoring this sector within the budgetary constraints must be the immediate priorities of the Government. The unprecedented reforms initiated by the MOE need a multitude of support from other competent ministries (Ministry of Economy, Ministry of Finance, Ministry of Labor, Social Protection and Family (MLSPF), etc.), as well as from political elites. Lastly, the quality of education can be improved by changing people's mentality, which is currently focusing on *access*, at the expense of the *quality* and the *relevance* of education.[92]

85 Adrian LUPUSOR, Alexandru FALA, Denis CENUȘĂ, Iurie MORCOTILO, *Republic of Moldova: State of Country Report*, Expert-Grup Independent Think Tank, Friedrich Ebert Stiftung, Chisinau 2014, p. 28.

86 http://edu.gov.md/ro/evenimentele-saptaminii/ministerul-educatiei-a-anuntat-rezultatele-bac-2013-si-noutatile-din-metodologia-bac-2014-15118/, (accessed on March 22, 2015).

87 *Transistrian Realities*, No 8, February 2014, IDIS "Viitorul", The Balkan Trust for Democracy, p.7 available at http://viitorul.org/doc.php?l=ro&idc=392&id=4334&t=/PUBLICATII-PERIODICE/Realitati-Nistrene-Buletine-Infor mativePolicy-Brief-uri/Buletin-nr-8-Necunoscutele-viitorului-scolile-cu-predare-in-limba-romana-din-stanga-Nis trului, (accessed on March 10, 2015).

88 Adrian LUPUȘOR, Alexandra FALA, Dumitru BUDIANSCHI, Victor BURUNSUS, Alex OPRUNENCO, Dumitru VASILESCU, *Republic of Moldova: National Human Development Report 2014. Good Corporate Citizens. Public and private goals aligned for human development*, EXPERT-GRUP Independent Think-Tank, with the support of United Nations Development Program, Chisinau 2014, Central Publishing House, p. 46.

89 *Young People in the Republic of Moldova in 2013,* National Statistics Bureau http://www.statistica.md/newsview.php?l=ro&id=4480&idc=168, (accessed on March 12, 2015).

90 *Ibidem*

91 http://www.europalibera.org/content/article/26626068.html, (accessed on April 5, 2015).

92 Adrian LUPUSOR, Alexandru FALA, Denis CENUȘĂ, Iurie MORCOTILO, *Republic of Moldova: State of Country Report*, EXPERT-GRUP Independent Think-Tank in partnership with "Friedrich-Ebert-Stiftung", "Bons Offices" Publishing House, Chisinau 2014, p. 26 available at http://www.expert-grup.org/ro/biblioteca/item/1026-rst-2014&category=182, (accessed on February 23, 2015).

9.4. School dropout

The school dropout rate remains connected to the migration of one or both parents. In 2014 only 2,374 children dropped out of school[93], and at the beginning of the 2014-2015 school year were 221 cases[94] of school dropout registered, 40% of whom emigrated with their parents. In 2013, 39.9% of children[95] were recorded by the ML-SPF, after one or both parents emigrated.

The school dropout is also caused by the existence of non-registered children (there were 28 unschooled children in 2013 only) engaged in labor that develops into a seasonal dropout (autumn-winter, 8 of 37 stated that they came to school by a means of transport, 6 of 37 - "only sometimes, when the weather is bad"[96]). Though Law 140 of June 14, 2013 on the Special Protection of Children at Risk and Children Separated from Parents, Article 10[97] provides criminal penalties for parents (a fine and/or deprivation of parental rights), nevertheless the percentage of children reaches 60% that are "neither monitored, nor confirmed by the child protection institutions"[98]. During 2010-2013 labor inspectors only found 440 minors engaged in labor.

A higher juvenile delinquency rate also leads to school dropout as one would expect. During the first months of 2014, this grew by 43.75% when compared to the same period of 2013 (207 and 144 criminal cases, respectively)[99]. During the first eight months of the previous year, the percentage of thefts and drug-related crimes committed by minors increased by 5% (419/397 criminal cases) and by 25% (10/8 criminal cases), respectively[100].

A precise number of higher education dropouts is not available, but the general number of those who go to university is decreasing - 13 thousand over the past two years[101]. Moreover, the number of students enrolled for master studies (cycle II) is 79.89% smaller than the number of students enrolled for license studies (cycle I). The financial condition of families is the primary cause, as financial support for young adults is difficult, and the young are eventually forced to find a job rather than continuing their education.

9.5. Education in penitentiary institutions

The RM Constitution[102] ensures the right to education (Article 35), but this right cannot be respected because of the lack of necessary physical conditions, of a material and didactic basis, and because detainees who were graduates from secondary school or high school pupils at the time of their arrest who cannot continue their education. "Educational institutions only ensure the compulsory general education"[103]. On January 1, 2015, over 1,000 young people[104], including 38 pupils were detained in RM penitentiaries (See Graph 2). Moreover, on January 1, 2015, 176 detainees were illiterate, 219 had primary education, and most of the 3,097 had incomplete upper secondary education.

93 *Socio-Economic Situation in the Republic of Moldova in 2014,* National Statistics Bureau, p. 61 available at http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_2014_rom.pdf, (accessed on March 20, 2015).

94 http://adevarul.ro/moldova/actualitate/abandonul-scolar-republica-moldova-generat-migratia-fortei-munca-1_54c212bd448e03c0fde0a08c/index.html, (accessed on February 22, 2015).

95 *Children in the Republic of Moldova in 2013,* National Statistics Bureau http://www.statistica.md/newsview.php?l=ro&idc=168&id=4412 l=ro&id=4480&idc=168, (accessed on March 3, 2015).

96 Natalia GHILASCU, *Discrimination in Schools Continue to Marginalize Children from Various Families* http://discriminare.md/discriminarea-in-scoli-continua-sa-marginalizeze-copiii-din-diverse-familii/, (accessed on 16.02.2015).

97 http://lex.justice.md/md/348972/, (accessed on March 21, 2015).

98 Tamara PLAMADEALA, Ombudsman in article *Combating Child Exploitation – Strategic Issue for the National Trade Union Confederation of Moldova* available at http://vocea.md/combaterea-flagelului-de-exploatare-a-copiilor-punct-strategic-pentru-cnsm/, (accessed on March 22, 2015).

99 http://irp.md/news/543-n-primele-3-luni-ale-anului-2014-comparativ-cu-perioada-analogic-a-anului-2013-a-crescu t-cu-4375-rata-copiilor-care-au-devenit-victime-ale-infraciunilor.html, (accessed on February 23, 2015).

100 *Report*, General Police Inspectorate, Ministry of Internal Affairs, p. 16, available at http://www.igp.gov.md/sites/default/files/document/attachments/raport_activititate_i_semestru_2014.pdf, (accessed on March 24, 2015).

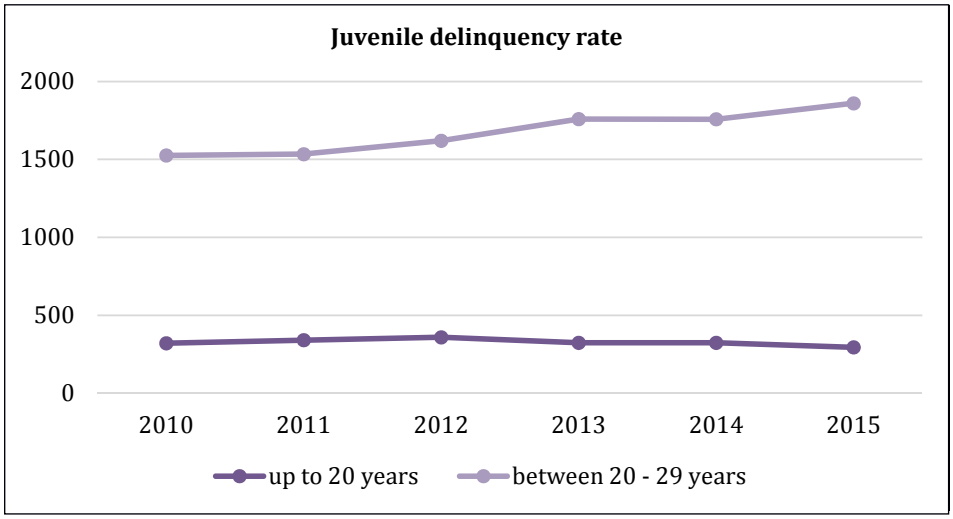
101 *Activity in the Higher Educational Institutions in 2014/15,* National Statistics Bureau http://www.statistica.md/newsview.php?l=ro&idc=168&id=4588, (accessed on February 20, 2015).

102 http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731, (accessed on February 21, 2015).

103 http://www.ombudsman.md/ro/avocatul-copilului/minorilor-detinuti-institutiile-penitenciare-nu-le-este-asigurata-pe-deplin, (accessed on March 15, 2015).

104 http://www.penitenciar.gov.md/ro/statistica, (accessed on March 5, 2015).

Graph 2



According to the Enforcement Code of the Republic of Moldova[105] No 443 of December 24, 2004, Article 259, penitentiary institutions must organize the general secondary education, and at the detainee's request, conditions for secondary vocational education or higher education. However "the curriculum and subjects taught to minor detainees vary among penitentiaries, [...] a significant number of school subjects are not taught"[106] according to Order 679 of July 4, 2013. Some penitentiaries do not have the necessary teaching material, raising questions regarding the educational process (e.g. Penitentiary No 13 of Chisinau[107]) and the monitoring of the educational process.

Moreover, according to the Code of Criminal Procedure of RM[108], No 122 of March 14, 2003, Article 186, minors cannot be placed in preventive detention centers for more than 30 days, except for cases provided in the Code. The Ombudsman's review of the minor detainees' files revealed that some of them stayed in pre-trial detention for "long periods of time, even up to 450 days"[109]. This slows not only their integration, but also education, as their placement in pre-trial detention should be a last resort measure, intended as a "disciplinary measure"[110].

9.6. Ongoing learning

Lack of cultural institutions in the rural area limits the consumption of arts, which urban inhabitants have a higher rate of interactions with, but financial conditions can also dictate the higher/lower interest for ongoing learning activities. On the other hand, many institutions that employ citizens do not support their ongoing training, which is another hindrance to the training of newly employed and older staff.

According to Education 2020 Strategy, the vocational training at all education levels does not ensure the necessary set of skills demanded by the labor market, and thus the limited possibilities for ongoing training is a violation of the Education Law, Article 123 and 124 on lifelong learning. Of the 1,214.5 thousand persons active for over 15 years, 1.6% has primary education or no education at all[111]. On the other hand, only 17 thousand[112] a day are dedicated to reading, 1 in 10 persons are involved in volunteer activities (they are helping neighbors or other households), 1 in 500 persons are involved in volunteer activities (NGO), 0.4% go to movies and 0.1% go to theater, concerts or sports events, etc.

105 http://lex.justice.md/viewdoc.php?action=view&view=doc&id=286114, (accessed on March 21, 2015).
106 http://www.ombudsman.md/ro/avocatul-copilului/minorilor-detinuti-institutiile-penitenciare-nu-le-este-asigurata-pe-deplin, (accessed on March 15, 2015).
107 Tatiana CRESTENCO, Tamara TENTIUC, *Thematic Report "Respecting the Right to Education of Minor Detainees/Convicted in Penitentiary Institutions"*, Ombudsman Office, Chisinau 2014, pp. 4-5.
108 http://lex.justice.md/md/326970/, (accessed on March 9, 2015).
109 Tatiana CRESTENCO, Tamara TENTIUC, *Thematic Report "Respecting the Right to Education of Minor Detainees/Convicted in Penitentiary Institutions"*, Ombudsman Office, Chisinau 2014, p. 12.
110 http://infoeuropa.md/detinuti/cel-de-al-24-lea-raport-general-al-cpt/, (accessed on February 23, 2015).
111 *"Education 2020" Sector Development Strategy for 2014-2020,* Ministry of Education 2014, p.25, available at http://particip.gov.md/public/documente/137/ro_1112_Educatia-2020.pdf, (accessed on March 22, 2015).
112 *Analytical Notes on the results of Use of Time by Women and Men in the Republic of Moldova Study,* National Statistics Bureau http://www.statistica.md/libview.php?l=ro&id=4444&idc=30, (accessed on February 15, 2015).

CONCLUSIONS

In the modern world education has a crucial role in human resources development, which represents the most important resource of any country. An efficient educational system is needed in order to educate and teach people to be able to manage and lead society. RM does not have such a system in place, and is unlikely to have one in the near future. We may conclude that the MOE understands this and is open to finalize reforms initiated during the past years. The massive emigration of young people and other social issues caused by emigration (mainly population aging) forces authorities and society to speed up the reforms. This should be preceded by national debates, involving teachers, parents, the academia, experts, civil society, and politicians. At least 11 aspects of this topic were identified as potential candidates for a wide national debate:

1. Adjust the public institutions and the infrastructure to the needs of persons with special needs (access, alternative communication systems etc.). Introduce mechanisms for accountability and sanctioning of public authorities;
2. The IEP should be continuously improved by involving specialists for severe disabilities and parents to make sure that home learning program is respected, the assessment process adjusted, the material and didactic basis is ensured, and specialists are trained;
3. Develop judicial precedent with regards to discrimination in education, which will gradually lead to de facto observance of human rights;
4. The teaching staff at most educational institutions have not been trained in human rights, parents do not participate in the educational process and are not interested in the type of practical activities attended by their children. School textbooks tackle this issue superficially, sometimes even with elements of discrimination;
5. Due to the lack of specialized teachers of the native language or Romanian language, many children from ethnic minority groups study only in Russian and/or encounter problems with linguistic integration;
6. The cultural-legislative conflict between Roma communities and RM legislation has not been settled. Due to the lack of mechanisms to teach families how to educate their children and mechanisms to eliminate discrimination against Roma people, the problems are only getting worse. The mediators appointed in Roma communities are not a panacea for all problems, but rather an enhancement of the relationship with the local authorities;
7. Some kindergartens are still understaffed, and have to deal with parental passivity. This is coupled with the low number of urban kindergartens, which are less than in the rural area, despite the number of children being roughly the same;
8. The number of students is continuously decreasing, both due to poverty, low modernization of educational institutions, and lack of practical training of the teaching staff and direct beneficiaries, who eventually determine the quality of education and exam passing rate. The financial autonomy frequently fails because of inadequate management. On the other hand, the Baccalaureate passing rate has discouraged beneficiaries from continuing their education, which further supports the need to continue the reform of the higher education;
9. School dropout still persists due to the migration of parents and/or the entire family, failure of some parents to register their children, labor exploitation, juvenile delinquency, as well as financial reasons, which most of the time leads to dropping out of higher education;
10. The educational process in penitentiaries follows neither the framework curriculum of the MOE, nor RM legislation, as most of the penitentiaries do not ensure all levels of education because of lack of physical conditions, lack of materials, and because minors are detained for longer periods than provided by the law;
11. Ongoing education is neither ensured, nor developed, as it implies additional costs, lack of employers' support, and lack of an educational culture at all stages.

RECOMMENDATIONS

1. Develop cooperation between Local Public Authorities, educational institutions, and State Roads Administration to arrange the bus stations, roads, transport, transport conditions, and access to institutions (lift, lavatories, access doors to classrooms etc.), as well as a control and sanctioning mechanism;
2. Prepare and financially motivate a multidisciplinary team consisting of teaching staff, staff specialized in supporting the inclusive education (psychologists, educational psychologist, speech therapists, physiotherapists) of highly specialized professionals to work with people with disabilities (autism, Down disease, speech therapy, Braille writing, sign language etc.) not just in settlements where such people live;
3. Organize parental schools that will provide parents the necessary tools to understand their children. The parents' mixed messages, which often change from one day to the next, are also reflected in the education of their own children;
4. Include the inclusive education services as part of a continuous and focused process, and provide support to graduates with disabilities from mainstream schools, as the risk of school dropout is high, in spite of their integration in the mainstream schools;
5. Develop a sustained strategy on the communication of the violation of law and/or regulations by children, children with deficiencies, and by parents and teaching staff, as well as organize courses on human rights for the teaching staff and parents;
6. Set up teams of researchers to tackle topics that are missing or are presented poorly in the school text-books;
7. Develop a system of information and conscious choice of optional subjects from the child's curriculum, and develop a joint communication strategy on the existence of other religions, or religious and ethnic minorities;
8. Continue the training of teachers, initiated by MOE, in order to provide non-native institutions with specialized teachers of Romanian, and extend the curriculum to ensure the social and linguistic integration of non-native students, initiated and developed by the MOE in the other institutions teaching in the Russian language;
9. Establish a mechanism to certify the practical skills of adult Roma people and create jobs to encourage less physical activity for the period when their children are in school (preschool and primary education);
10. Eliminate discrimination by setting up a common communication area for local authorities, educational institutions, and parents that would ensure the inclusion of Roma people. Monitor the Roma population by developing a common database and joint projects for mediators and local authorities;
11. Continue financial investments by MOE in preschool institutions that ensure equal access to education and learning in modern facilities;
12. Develop the institutional management to ensure financial autonomy and adapted curriculum by involving the private sector in the modernization and training of graduates from vocational and higher educational institutions;
13. Develop efficient mechanisms to control children left-behind, eliminate juvenile delinquency and labor exploitation by parents in order to decrease school dropout rates;
14. Monitor the educational process in penitentiaries to ensure access to education and ensure compliance with the law, while establishing the necessary physical conditions in these institutions;
15. Oblige employers, by law, to organize at least one training a year and/or retraining courses, and develop a discount system for pupils/students and the elderly to access cultural institutions.

CHAPTER 10

RIGHT TO WORK, SOCIAL PROTECTION, AND HEALTH CARE

Author: Tatiana Cernomorit

Executive Summary

Compared to 2013, the labor market of the Republic of Moldova (RM) improved in 2014. The number of unemployed people decreased from 51.4 thousand in 2013 to 43.9 thousand in 2014. However, cases of violations of labor rights and labor protection were still registered among pregnant women and mothers with many children. As well, vulnerable groups, including people with disabilities and Roma people, continue to encounter discrimination and difficulties in exercising the right to work.

The social protection system is developed to provide support to individuals and groups that cannot ensure a decent living on their own. Throughout 2014, the state pension/social benefits system continued to cover only the minimum needs of the elderly, essentially failing to meet the requirements for providing a decent living for the 559.5 thousand people that are over the age of 60. Additionally, the access of people with disabilities to social services that are intended to facilitate their social inclusion is minimal or non-existent.

Maternal healthcare continues to be a challenge for the healthcare system. This persists because of informal payments in maternity hospitals, a healthcare system that is less friendly to mothers and children, and violation of the right to be informed about the available maternal healthcare services. It is also important to note that the perinatal medical system is not accessible for people with disabilities due to lack of appropriate equipment, inaccessible infrastructure, and the presence of stereotypes among healthcare professionals.

10.1. Right to work

Situation on the labor market of RM in 2014

The right to work and equality in exercising this right is enshrined in the Constitution of RM, which defines in Article 43(1) the right to work and its free exercise, in equitable conditions for everyone.

Table 1. Labor Market Topics in RM during 2013 - 2014[1]

Topic	2013	2014
Number of economically active population	1328.2 thousand persons	1319.6 thousand persons
Employment rate of population over 15 years	44.5%	44.2%
Employed people	1227.6 thousand persons	1275.7 thousand persons
Unemployed people	51.4 thousand persons	43.9 thousand persons
Unemployment rate	3.9%	3.3%

Analyzing the labor market situation for 2013 - 2014, we find a 0.7% decline of the economically active population by (8.6 thousand people) when compared to Quarter 3 of 2013, along with a 0.3% decrease of the employment rate of the population over 15 years. The increase of the employment rate led to a decrease in the number of unemployed and unemployment rate.

In 2014, the Ministry of Labor, Social Protection and Family (MLSPF) approved the Classification of Occupations of RM (CORM 006-14) by Order No 22 of March 3, 2014. The Classification entered into force on January 1, 2014 and represents an important step in modernizing the labor mobility recording system in RM, and thus contributing to job creation. The Classification is mandatory for all central and local public administrative authorities, budgetary units, enterprises, organizations and institutions, employers' organizations, trade unions, professional organizations and other individuals, and legal entities operating on the territory of RM.

1 National Statistics Bureau of the Republic of Moldova (NSB), Labor Force in the Republic of Moldova: Employment and Unemployment in Quarter 3 of 2014 http://www.statistica.md/newsview.php?l=ro&idc=168&id=4570, (accessed on December 1, 2014).

10.1.1. Pregnant women and mothers with many children at risk of having their right to work violated

In RM, women are more prone to have their right to work violated than men. At the same time, pregnant women, mothers with children under three years, and mothers with many children are particularly vulnerable to discrimination of employment and in exercise of the right to work. These are contrary to legal provisions that ensure equality in exercising the right to work and protection against unemployment. Equality in rights of all citizens is guaranteed by the Constitution of RM. This statement is defined in Article 16 (2) *"All citizens of RM shall be equal before the law and public authorities, regardless of the race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin."*

Article 43 states that *"(1) Every person shall benefit by the right to work, to freely choose his/her profession and workplace, and to equitable and satisfactory working conditions, as well as to the protection against unemployment."*

As well, Article 7 of Law *on Equality No 121 of May 25, 2012* prohibits *"any distinction, exclusion, restriction, or preference that has the effect of limiting or undermining equality of opportunity or treatment upon employment or dismissal, during the work per se and the professional training."*

> *"Employers are not interested in taking people to work for a short period of time. In such situations, they have to employ other people and sign individual contracts with them for a specified period of time, specifically, for the period when the employee is on a maternity leave, partially paid leave for child care and/or additional unpaid leave to care for children aged from 3 to 6 years",* says lawyer Grigore Popa.
>
> http://agora.md/stiri/787/ce-drepturi-are-o-femeie-insarcinata-la-locul-de-munca, (accessed on 11.30.2014)

RM law does not provide for any limitations on the exercise of the right of pregnant women to work, but establishes certain facilities related to the status of the person. Thus, a pregnant woman cannot be obliged to work night shifts, overtime, sent on business trips, or work on weekends or holidays[2]. This is prohibited, when a medical certificate can confirm it[3]. It is important to note that the national law provides that an employer does not have the right to dismiss a female employee if she is pregnant or on child care leave for a period of up to six years.

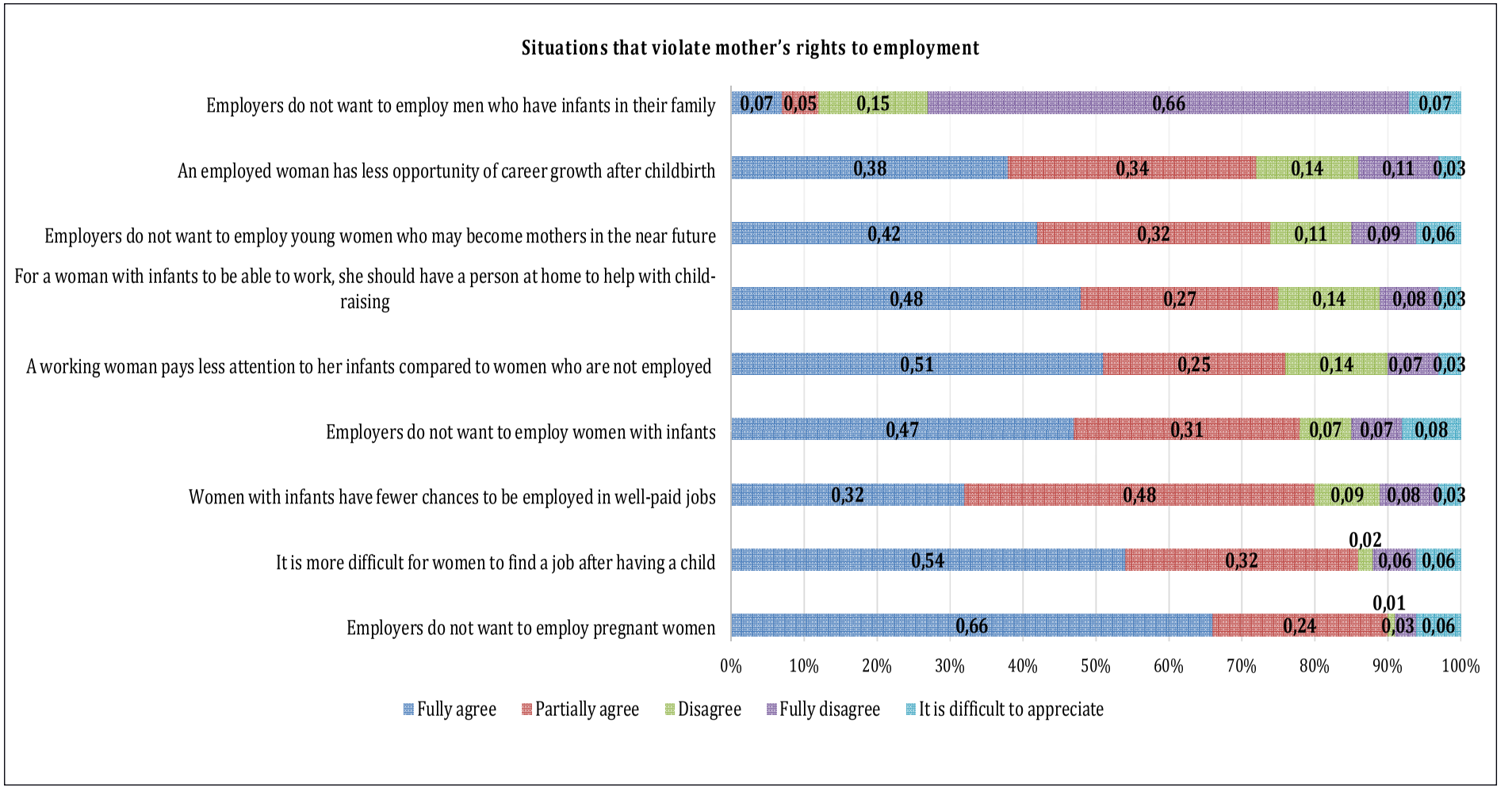
The national law does contain provisions on the protection of work maternity, however, pregnant women complain of the refusal of employment due to pregnancy, with it being explained by the employer's fear of less efficiency due to medical leaves. The existence of stereotypes among employers regarding the professional activity of women who become mothers is confirmed by the pregnant women, mothers with children under three years, and/or with many children. The sociological study "Identifying the Needs for Protection of Maternity and Parental Rights"[4] underlines this finding that 90% of respondents agree, more or less, that employers do not want to hire pregnant women because they will soon go on maternity leave that the employer will have to pay, followed by child care leave. Refusal of employment on the grounds of having a child/being pregnant is highlighted by 13% of respondents in the survey.

2 Labor Code of the Republic of Moldova, Article 103 (5); Article 105 (1); Article 249 (2). Available at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=326757

3 Labor Code of the Republic of Moldova, Article 110 (3), Article 111 (3).

4 "SBS-AXA" Centre of Sociological Investigations for the Social Association for the Protection of Maternity and Parental Rights "MAMI", sociological report *"Identifying the Needs for Protection of Maternity and Parental Rights"*.

Diagram 1. Situations that violate mother's rights upon employment



Source: Sociological survey "Identifying the Needs for Protection of Maternity and Parental Rights", Social Association for the Protection of Maternity and Parental Rights "MAMI".

The above data highlights the existence of cases when the rights of parents are violated. Even so, these cases are rarely documented as people rarely complain about discrimination, as often they do not know their rights or because of a fear of job loss[5].

Nevertheless, in 2014, the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) reviewed two complaints of maternity discrimination in the exercise of the right to work.

One of the complaints refers to the employer's refusal to provide reasonable accommodation for gender and maternity to an employee who requested part-time work from 9.00 am to 5.00 pm to meet the diet of the newborn.

DECISION of May 15, 2014 on the case initiated on the basis of the Mrs. TB's complaint of alleged discrimination in refusal of reasonable accommodation, harassment and victimization at the workplace based on gender and maternity criteria

The petitioner, in accordance with Article 97 of the Labor Code of RM, requested from the employer part-time work program (f.d.9, 13), from 9.00 am to 5.00 pm, which is essential to respect the diet of the newborn, who was breastfed between 8.00 am and 8.30 am. Contrary to the application submitted, the employer unilaterally set the working hours from 8.00 am to 4.00 pm.

The defendant did not have an objective nor reasonable justification why he unilaterally established other working hours than requested. According to Article 97(1) of the Labor Code, a part-time working schedule can be established only by agreement between the employee and the employer. CPEDEE revealed that Order No 302-p of November 27, 2013 that established the working hours from 8.00 am to 4.00 pm is not countersigned by the petitioner. Thus, the Council could not accept the defendant's justification that "[...] Mrs. T.B. tacitly accepted to work based on the conditions imposed by Order 302-p, because she is complying daily with the established part-time working schedule [...]". The compliance of the employee to the working hours imposed unilaterally by the employer proved the employee's responsibility, but by no means agreement with the imposed regime.

CPEDEE also found that the adjustment of the working hours to the petitioner's request did not impose a disproportionate burden on the employer. CPEDEE could not identify any reason why the working hour from 4.00 pm to 5.00 pm is less important than the hour from 8.00 am to 9.00 am. For these reasons, the Council believes that the defendant has denied reasonable accommodation to the petitioner on grounds of gender and maternity, implicitly denying the respecting of the petitioner as a mother.

Source: *CPEDEE*

http://egalitate.md/media/files/files/decizie_cauza_056_deperson_6108134.pdf

The other petition concerns the employer's refusal to extend the individual employment contract after being informed that the employee is pregnant.

DECISION of June 19, 2014 on case No 105/2014 initiated on the basis of the complaint of Mrs. S.T. and Mrs. A.E. on alleged maternity discrimination in the exercise of the right to work

Petitioners S.T. and A. E. claimed that they were discriminated on the grounds of maternity and gender by their employer in the exercise of their right to work. The petitioners complained that after notifying the administration at their workplace about their pregnancy, the employer did not want to prolong their individual employment contract, and at the end of the contract, he terminated working relations with them, employing other people in their place.

Additionally, the petitioner S.T. revealed that she had been continuously discriminated by the employer, being dismissed twice after her reinstatement and that she had been in trials for more than a year. Furthermore, the petitioner believes that her child is also discriminated against, given that her employer refused to submit the required set of documents that would obtain the social insurance policies related to child care until the age of three years.

5 "SBS-AXA" Centre of Sociological Investigations for Social Association for the Protection of Maternity and Parental Rights "MAMI", sociological report *"Identifying the Needs for Protection of Maternity and Parental Rights"*, p. 24.

After examining the complaint, CPPEDEE decided that the facts stated in the complaint represent discrimination at work against S.T., on the grounds of maternity and gender from ÎSCA «Air Moldova», contrary to Articles 1,2 in conjunction with Article 7 paras (1) and (2)(b) of the Law No 121 on Equality.

Source: *CPEDEE*

http://egalitate.md/media/files/files/decizie_105_14_5488439.pdf

At the same time, it is important to note that RM women encounter difficulties in reconciling their professional and personal life. This is engrained by the lack of support services for the care and development of children up to three years and insufficient development for children aged three to seven years. Lack of support services forces women to give up their professional activity with the arrival of children. In this regard, MLSPF developed the draft, Strategy for Child and Family Protection (2013-2020), which highlights, inter alia, that "the role of women and men in raising and educating children, especially in the early years of the children's life is still not adequate, due to existent prejudices in society related to the involvement of parents in the children's education"[6]. To that effect, MLSPF set the general objective to "reconcile the family life with the professional work to ensure harmonious growth and development of the child", with the following specific objectives: (1) resize the social significance of motherhood and fatherhood, and the role of both parents in raising and educating their children, and (2) promote support services for employed parents. The difficulty lies in the fact that the strategy was not adopted, respectively, and no effective measures have been taken to solve this problem.

In addition, RM women continue to be responsible for child care, with minimal involvement from fathers. This reality is dictated by the lack of public policies that would facilitate the active involvement of fathers in child care, and the persistence of stereotypes. To this end, the Government of RM adopted this July in the first reading a Decision approving the draft Law on the Amendments and Addenda to Some Legislative Acts to synchronize the national legislation with the provisions of Law No 5 of February 9, 2006 on Ensuring Equal Opportunities for Women and Men. One of the proposed amendments was the introduction of Article 124 in the Labor Code[7], which would provide for paternity leave of 14 calendar days. The political class has assumed the commitment to adopt the draft law, but no measure has yet been taken. As a result, it demonstrates a lack of political will to protect maternity in the RM[8].

10.1.2. Difficulties in exercising the right to work

People with disabilities are among the vulnerable that are encountering discrimination in the exercise of their right to work. According to data of the National Statistics Bureau (NSB)[9], there are 184.3 thousand persons with disabilities in RM, including 14.0 thousand children between the ages of 0 and 17. In the past 5 years, this number increased 3.8%, while the number of children with disabilities increased 7.9%. In total, people with disabilities account for 5.2% of the country's population, while children with disabilities account for 2% of the total number of children in RM. Nearly one in seven people with disabilities fall into the category of severe disability.

According to the Households Budget Survey, 41.4% of people with disabilities who are over 15 years old are employed compared to 65.9% of people without disabilities. The severity of the disability is a factor in employment levels of people with disabilities. Thus, 57.6% of people with intermediate disabilities are employed, followed by 44.8% of people with advanced disability, and 11.2% for severe disabilities. Depending on employment status, people with disabilities are mostly self-employed in agriculture (66.4%), double the rate when compared to persons without disabilities, and in particular in the rural area (76.3%).

In the urban area 56% of those who are employed with disabilities are salaried employees. At the end of 2013, people with disabilities accounted for only 0.8% of the total number of employees in RM. The largest share of people with disabilities are employed in the health and social assistance sectors - 1.8%, followed by industry - 1.2% and administration, education, art, and recreation activities - 1.0% of all employees.[10]

6 Strategy on Child and Family Protection, http://www.particip.gov.md/public/documente/139/ro_789_StrategiaProtectiaFamilieCopil-plasatap-u-consultari.pdf, p. 10, (accessed on December 29, 2014).

7 Draft Government Decision approving the draft Law on Amendments and Addenda to Some Legislative Acts in order to harmonize national legislation with the provisions of Law No 5 of February 9, 2006 on Ensuring Equal Opportunities for Women and Men http://www.particip.gov.md/proiectview.php?l=ro&idd=1178

8 Gender Equality Agenda, Proposals for the Government Program on Gender Equality Promotion for 2014-2018.

9 http://www.statistica.md/newsview.php?l=ro&idc=168&id=4566&parent=0, (accessed on December 4, 2014).

10 http://www.statistica.md/newsview.php?l=ro&idc=168&id=4566, (accessed on December 10, 2014).

In RM, people with disabilities continue to encounter discrimination and difficulties in excising their right to work, due to the following:

- Discriminatory attitude of the employers regarding the skills of people with disabilities, who want to have a profession;
- Lack of a constraint mechanism for companies/institutions that refuse to employ people with disabilities;
- Lack of incentives/facilities for employers;
- Lack of employment support service;
- Low training level for people with disabilities caused by the limited access to vocational education programs.

Roman Gutu *is 26 years old and is almost blind. However, in 2012 he graduated from university, and applied for his Master studies, and completed it in 2014. Currently Roman is an IT specialist. After his graduation, he started to search for a job. He has been searching for two years. He could find a job only at the SBPM project (Society of Blind People from Moldova), where he had been employed for about half a year.*

Roman tells of a number of his cases of refusal. One such example is when Roman found an announcement on a website that MLSPF is searching for an IT specialist. Roman sent in his CV and a few days later he was invited for an interview. "I arrived there, a specialist came down, and when he saw me, he asked who had invited me. I was not even invited into the office, as is customary for an employment interview, but in the hall of the ministry's building he started to bring forth arguments regarding my ability to perform the job as a result of the disability. No questions were asked pertaining to the topic of the interview", Roman says.

Source: *http://www.zdg.md/editia-print/social/handicapul-societatii-in-fata-persoanelor-cu-disabilitati-care-vor-sa-munceasca, (accessed on 10.01.2015)*

People with disabilities from the Transnistrian region also encounter difficulties with employment. In the Transnistrian region there are 13 thousand people with disabilities and of the appropriate age for employment. According to the "local legislation" on social inclusion, there are several guarantees for people with disabilities. At the proposal of the Employment Center from the region, a quote of 7% was set for the employment of people with disabilities in enterprises, institutions, organizations of all organizational and legal forms, regardless of property type[11].

Roma people also encounter difficulties in exercising their right to work. According to formal data, in RM there are over 12 thousand Roma people, but informal data points to between 150 and 200 thousand. The socio-economic level of the Roma population is declining each year.[12] The employment structure differs significantly for Roma and non-Roma people. For example, 29% of Roma people are unemployed or without a job, and this percentage is twice as high compared to non-Roma people. In addition, discrepancies exist in the employment of Roma women and men, due to limited number of jobs available for Roma women.

Due to the lower level of training, lower abilities, and professional qualification, lack of job opportunities, residential segregation, and by gender stereotypes within their ethnic group, Roma women are employed at a lower rate, including formally, than Roma men or non-Roma women.[13] The study on the situation of Roma women and girls from RM reveals that many of the Roma women interviewed have never entered the labor market, and only some have worked legally at some point during their lives. This means they have never signed an employment contract. They have explored job opportunities based on an oral agreement, for example, none of the Roma women from the Schinoasa or Ursari villages is employed in the public sector from Tibirica or Parjolteni villages, while the employment of the Roma women in the private sector from Schinoasa and Ursari villages is very limited or totally missing. The shortage of job opportunities in many rural areas limits Roma women only to casual and part-time jobs. At the same time, due to the low or lack of qualifications, many Roma women cannot actively search for a steady long-term job[14].

11 http://www.zdg.md/editia-print/social/handicapul-societatii-in-fata-persoanelor-cu-disabilitati-care-vor-sa-munceasca, (accessed on February 10, 2014).
12 http://www.noi.md/md/news_id/38816, (accessed on December 1,214).
13 UN Women, OHCHR and UNDP Moldova, Study on the Situation of Romani Women and Girls in the Republic of Moldova, 2014, p. 36.
14 *Ibidem*

10.2. Right to social security

10.2.1. The elderly

In RM, elderly are most exposed to the risk of poverty. The state pension/social insurance system covers only minimum needs, and is not enough for a decent living. At the beginning of 2014, 559.5 thousand persons over the age of 60 were registered in RM, constituting roughly 15% of the population. About two-thirds of the elderly live in a rural area. The average indexed pension was MDL 1116.75[15], while the minimum subsistence averaged MDL 1326.9 in 2013, a 1.8% increase compared to the previous year. The minimum subsistence for pensioners varies by area of residence. In big cities it amounts to MDL 1,452 versus MDL 1,268.7 for those living in villages and MDL 1,367.9 for those living in towns. The average monthly pension covered only 79.1% in 2013 of the minimum subsistence for the elderly[16]. The need to review the existing mechanisms for pension accrual and indexation was regarded as a priority in the process in ensuring equity and sustainability of the pension system, an objective that was included in the Moldova 2020 Strategy[17]. In addition, the objectives of the Program for Mainstreaming the Ageing Issues in Policies (*Government Decision No 406 of June 2, 2014*[18]) stipulate that initiated reforms must be well designed to secure equity and viability of the pension system, including its long-term benefits.[19]

RM has a complex legislation system making the providing of social services to the elderly unnecessarily difficult. The services are offered by the local authorities, but the constant increase in the number of elderly who need such services along with the lack of financial possibilities do not allow full satisfaction of the elderly' requests. Not only is it necessary to improve the public social service system, but also to increase the role of the family and society in supporting and helping the elderly[20].

According to the Global AgeWatch Index 2014, RM ranks 96th in quality of life of the elderly. The low rank is a result of the low quality of healthcare services, welfare, and quality of life in general[21].

A positive trend in the evolution of the elderly social protection system is the Government's commitment in establishing the National Council for the Elderly in 2015. The formation of this Council will be made at the recommendation of the UN Economic Commission for Europe (UNECE) and UN International Institute on Ageing from Malta. The establishment of the National Council for the Elderly in 2015 is foreseen in the Program for Mainstreaming the Ageing Issues in Policies, approved by Government Decision No 406 of June 2, 2014, which has an independent and consultative status, which aims at promoting and coordinating issues pertaining to ageing in society. The Council will help the elderly to participate actively in the society in social, cultural, economic, and political areas[22].

10.2.2. Social services system

The RM Government shows an obvious interest in facilitating the social inclusion of persons with disabilities. During 2010-2014, a number of social services were established at the national level which aimed to ensure their deinstitutionalization and integration into families and communities. These social services include:

- A personal assistance service that was established;
- Mobile team services that were developed;
- A number of community centers and special services were established, with quality standards being developed for them.

According to MLSPF data[23], at the end of 2013, 117 centers and 55 different types of specialized services for children, adults, and elderly with disabilities were operating in communities countrywide, with roughly 5.000 beneficiaries[24].

15 http://www.promis.md/analitica/evolutia-reformelor-sectorul-social-2010-2014/, (accessed on December 4, 2014).
16 http://www.statistica.md/newsview.php?l=ro&idc=168&id=4529, (accessed on December 4, 2012).
17 Law No 166 of July 11, 2012 on the Approval of National Development Strategy "Moldova 2020", available at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=345635
18 http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353338
19 Ministry of Economy (2014). Information Note - Poverty in the Republic of Moldova in 2013.
20 Decision No 406 of June 2, 2014 approving the Program for Mainstreaming the Ageing Issues in Policies.
21 http://www.btv.md/moldova-daleko-ne-samaea-privlekatelinaea/?lang=ro, (accessed on December 24, 2014).
22 http://www.demografie.md/index.php?pag=news&opa=view&id=411&tip=noutate&start=20&l, (accessed on December 24, 2014).
23 MLSPF (2014). Report on the social protection of people with disabilities and implementation of the Action Plan of the Strategy on Social Inclusion of People with Disabilities for 2010-2013.
24 http://www.promis.md/analitica/evolutia-reformelor-sectorul-social-2010-2014/, (accessed on December 4, 2014).

The personal assistance service is developed and provided to facilitate the social inclusion and support of people with severe disabilities.

However, the social services system does not meet the social inclusion needs of all people with disabilities in RM. In fact, a series of difficulties hold back this service, raising the following points:

- The allocated funds for this service do not cover the needs of the 8,000 persons who need it. Families of persons with disabilities encounter the majority of difficulties;
- It is necessary to extend the personal assistance service in schools to facilitate the educational inclusion of children with disabilities. Children with severe disabilities, who need education inclusion, do not benefit from the personal assistance service as they are wrongly regarded as care service;
- Currently, the personal assistance service is especially provided for bedridden persons with severe disabilities. The staff employed for such service is oriented particularly for assurance of personal care, without any social or educational inclusion.

In the Transnistrian region, the social service system designed for people with disabilities is still based on institutionalization, which limits social inclusion of people with disabilities.

10.3. Right to health care

10.3.1. Maternal health care

The RM Government is interested in improving the maternity protection by developing national programs and strategies focused on maternal health, access to services during pregnancy, birth and postpartum period. Maternity protection in the health system is provided by Law No 411 of March 28, 1995 on Health Care and Law No 138 of June 15, 2012 on Reproductive Health. RM has 38 maternity hospitals (obstetrical wards) offering obstetric care, including emergency services[25], which include: Institute of Scientific Research for Mother and Child Care maternity (ICRMCC), three municipal maternities and 34 obstetrics wards in district hospitals, that annually have about 39.000 births[26].

RM has committed to the continuous strengthening of health service for women and children, set in the Millennium Development Goals (MDGs)[27] by reducing the maternal mortality rate by three quarters before 2015. The first MDG target set for 2015 refers to the RM commitment to reduce the maternal mortality rate by three quarters from 53.2 to 100 thousands live births in 1990, to 16.0 in 2006, 15.5 in 2010 and 13.3 in 2015.

Also, maternity protection is regulated by the current regulatory framework, which includes:

- **National Health Policy of RM for 2007 - 2021** (Government Decision No 866 of August 6, 2007), which states that it will ensure that all pregnant women, regardless of ethnicity, social and marital status, political affiliation, or religion are entitled to fair and free access to a defined volume of quality health services during pregnancy, birth and postpartum period;
- **Health Care System Development Strategy for 2008 - 2017** (Government Decision No 1471 of December 24, 2007), with the objective to "Improve maternal and child health by establishing regional services for children";
- **National Reproductive Health Strategy for 2005 - 2015** (Government Decision No 913 of August 26, 2005), one of the overall objectives is to reduce maternal morbidity and mortality by improving the quality and increasing the accessibility to health services.

According to the legislation in force, the Ministry of Health (MOH) is responsible for implementing the maternal health policies. The National Reproductive Health Service was established for this purpose, and consists of 47 reproductive health care offices that operate within Family Doctors' Centers throughout the country. However, the access to reproductive health services is not enough for all categories of women due to the low level of information and few contraceptives that are available for free[28].

25 Maria TARUS, Improving the Maternal Health: Contribution of the Civil Society and Private Sector to the Achievement of the National MDG 5 in RM / Maria TARUS; Inst. for Public Policy, Center for Economic Development, Expert-Grup Independent Think-Tank. - Ch. : Institute for Public Policy, 2012, p. 12.

26 Diana CHEIANU Andrei, Social Monitor, Reproductive Health: Individual and Collective Benefit, IDIS "Viitorul", Chișinău 213, p. 22.

27 Government Decision No 288 of March 15, 2005.

28 Maria TARUS, Improving the Maternal Health: Contribution of the Civil Society and Private Sector to the Achievement of the National MDG 5 in RM / Maria TARUS; Inst. for Public Policy, Center for Economic Development, Expert-Grup Independent Think-Tank. - Ch. : Institute for Public Policy, 2012, p. 12.

Although in recent years effective measures have been taken to ensure access for women during pregnancy and childbirth to quality services, problems still occur, including:

(a) Persistence of informal payments in maternities - even if RM law envisages free medical services for pregnant women. According to some surveys conducted by Transparency International, roughly 70% of the population bribes doctors, with the highest informal payments being made in maternity hospitals[29]. The value of the "gratitude" for doctors' services varies between 100 and 300 Euro for every childbirth. This information is confirmed by participants in the sociological study "Identifying the Needs for Protection of Maternity and Parental Rights". According to the opinions of those interviewed in RM, the problem of bribing persists at childbirth, revealing the *"persistence of bribery in maternity hospitals- medical attention at birth depends on the money he/she received from the parent."*[30] This is a violation of the right to receive qualitative and free health services during birth, an act of corruption, and discrimination based on material status.

> *"You should have money with you, to thank the midwife, women who will take you to the bathroom...", "We are now in poverty. For the hospital you pay how much you think is necessary...", "Pay as you wish and which you think is proper, so that you are neither cheap, nor feel embarrassed"*
>
> *http://www.zdg.md/investigatii/cat-costa-sa-devii-mama*

(b) The right to be informed about the existing services of mother and child health care is violated. Respondents of the previously mentioned sociological study [31] state that in most cases doctors violate their rights, namely the right to be informed about the existing pre-natal training courses, the services of preparation for childbirth, the right to benefit from reimbursed medicine during pregnancy and after birth, and the child's right to a check-up at home after birth.

When asked "who violates the rights of parents more often" answers indicate state institutions, with the highest rate being held by medical institutions - 52%[32].

> *The family doctor visited us at home once (the child was 10 months old), though the doctor is obliged to make weekly visits at home during the first month after birth. Meanwhile he wrote in the child's medical book that he visited us weekly (a Mother).*

(c) An inaccessible perinatal health system for people with disabilities - the current health system of RM is not ready to provide accessible services to future mothers with disabilities. This situation is determined by the inaccessible infrastructure: unsuitable lavatories and inadequate gynecological offices for the needs of women with disabilities and, on the other hand, from the discriminatory attitudes and/or presence of stereotypes among health workers about the ability of a woman with disabilities to give birth and take care of a child. This is confirmed by Director of the Mother and Child Center, Mr. Stefan Gatcan, who recognizes that both the hospital he manages and other health care facilities do not have adapted lavatories. Promises have been made regarding the gynecological offices and lavatories, but it is left at the discretion and competence of each institution to comply with the UN Convention and prevent discrimination of people with disabilities[33].

10.3.2. Specialized therapy and rehabilitation services for children with autism and their families

Child autism has become an increasing reality in RM. According to the World Health Organization statistics, the number of children with autism spectrum disorders (ASD) is increasing worldwide. International studies show that 1 in 88 children in the world have such a disorder[34].

MOH announces that 180 children with autism were recorded in 2013, most being registered in Chisinau -147[35]. At the same time, experts in the field say that, thus far there are no official statistics on the number of children diagnosed with ASD.

29 http://www.zdg.md/investigatii/cat-costa-sa-devii-mama, (accessed on December 1, 2014).
30 "SBS-AXA" Centre of Sociological Investigations for Social Association for the Protection of Maternity and Parental Rights "MAMI", sociological report "Identifying the Needs for Protection of Maternity and Parental Rights", p. 21.
31 *Ibidem*
32 *Ibidem*
33 http://discriminare.md/mamele-cu-dizabilitati-stigmatizate-de-medici-lipsite-de-conditii-adaptate/, (accessed on November 29, 2014).
34 http://autism-aita.galantom.ro/andreicornelia1, (accessed on November 30, 2014).
35 http://www.realitatea.md/situa-ia-copiilor-cu-autism-din-moldova-evaluata-de-organiza-ia-interna-ionala-autism-speaks_9603.html, (accessed on November 30, 2014).

Children with autism permanently need health services, medical, psycho-pedagogical, psycho-behavioral, and speech rehabilitation. Currently, there is no state institutions specialized in autism therapy and no official program of early intervention for children with ASD (Applied Behavior Analysis, Treatment and Education of Autistic and Related Communication Handicapped Children, and Picture Exchange Communication System). The existing rehabilitation services and therapy for children with autism are paid and provided for only by private or NGO entities[36].

Unfortunately, due to lack of concern at the Government level so far, there are not any accurate official statistics on the number of people with autism in RM. Professionals from the health system report higher growth rates each year of children who end up diagnosed with autism spectrum disorders (ASD).

Aliona Dumitras, Executive Director of SOS Autism

The Republican Center for Children is the only public institution that provides rehabilitation services for children with autism, paid from the MOH budget and Mandatory Health Insurance Fund[37], but the 10 days of rehabilitation on a quarterly basis is insufficient. Additionally, this center does not have qualified specialists in autism therapy.

Parents pay MDL 100-150 for one hour of specialized therapy for children with autism, while at least five hours of therapy a day are recommended to rehabilitate children with autism. Thus, due to the lack of therapy and rehabilitation services provided by state organizations, parents have to pay monthly from MDL 1,800 to MDL 7,000-8,000.

Because of limited access to early intervention and rehabilitation services for children diagnosed with ASD, the following rights are violated:

- **Right to health care** that is guaranteed by Article 25 of the UN Convention on the Rights of Persons with Disabilities; Article 12 of the International Covenant on Economic, Social and Cultural Rights, which RM is part of. At the same time, this right is guaranteed by the Constitution of RM in Article 36, Law No 411 on Health Care and Law No 263 on the Rights and Responsibilities of Patients;
- **Right to rehabilitation, including medical and social rehabilitation,** guaranteed by Article 26 of the UN Convention on the Rights of Persons with Disabilities; Article 43 of Law No 60 on Social Inclusion of People with Disabilities.

10.3.3. Preterm births and infant mortality

The infant mortality rate in RM is increasing. In the first six months of 2014, **194 children died, 15 more than the same period in 2013**. According to MOH data, the worst situation was registered in Bălţi. A high rate of infant mortality has also been recorded in Causeni and Floresti[38].

"There is this problem of education and counseling of mothers, for them to know when and how often to seek health care. There are women who are arriving during an active birth and deliver within a few minutes, just a few hours after admission" said Peter Nedelciuc, director of Perinatology Center of Balti.

Source: *http://www.publika.md/ministerului-sanatatii--rata-mortalitatii-infantile-este-in-crestere-in-moldova_2163801.html*

As part of MDGs, RM assumed the commitment to reduce infant mortality from 18.5 cases per 1.000 live births in 2006, to 16.3 in 2010 and 13.2 in 2015. The ultimate goal set for 2015 regarding infant mortality and the under-five mortality was already reached, with this being one of the most successful areas of high progress. However, there is a distinct inequity in infant mortality, particularly amongst poor children, and those of Roma origin. Once again the gap between rich and poor, and social equity shortfalls is on display. Although considerable efforts are taken to implement interdepartmental cooperation in the medical-social field, the faulty social assistance remains one of the major factors for infant death cases[39].

36 "S.O.S Autism" Association of Parents of Children with Autism in the Republic of Moldova, "Hippo" Behavioral Intervention Center.

37 According to Article 44(4) of Law No 60 on Social Inclusion of People with Disabilities. Available at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344149

38 http://www.publika.md/ministerului-sanatatii--rata-mortalitatii-infantile-este-in-crestere-in-moldova_2163801.html, (accessed on November 28, 2014).

39 http://www.md.undp.org/content/moldova/ro/home/mdgoverview/overview/mdg4/, (accessed on December 5, 2014).

The number of preterm children in RM is decreasing. Currently, the preterm deliveries contribute over 68% of cases of neonatal mortality and 45% of cases of infant mortality[40]. 50% of children with very low birth weight (under 1,500 g) deceased in the early neonatal period,50% of neurological disability is due to preterm infants, and 30% of adult chronic diseases (hypertension, diabetes, metabolic and cardiovascular diseases, mental diseases, etc.) are associated with prematurity[41].

"The National Health Insurance Company allocates MDL 22,000 for taking care of a preterm newborn. But we need MDL 180,000 to maintain one child. USA and European countries spend up to EUR 2,000 per day for a preterm newborn"

Source: *http://evzmd.md/ro/sanatate/item/9703-copii-nascuti-inainte-de-vreme-fiecare-al-cincilea-moldovean-se-naste-prematur.html*

According to NSB data, the number of preterm deliveries saw a 15% increase in the past 4 years[42]. In 2014, 1,915 children were born before the term in RM[43]. For the first time RM recognized the World Prematurity Day on November 17, 2014. To support the *Born Too Soon: The Global Action Report on Preterm Birth* of the World Health Organization, the MOH of RM approved the Initiative "2014 - Year of the Premature Child" *entitled "I also have the right to life" (by Order No 99 of February 12, 2014)*[44].

The following major causes lead to preterm births:

- Lack of effective supervision of pregnant women by family doctors - about 20 percent of pregnant women are not effectively supervised by family doctors[45];
- Lack of information regarding the behavior of pregnant women, nutrition, and risks during pregnancy. Specialists of the Family Doctors' Center pay little attention to prevention of a number of risks that can lead to preterm delivery or fetal disorders;
- The monitoring of many pregnant women is started after six weeks of gestation, missing early diagnosis of infections that could lead to premature births[46];
- Presence of infections - according to doctors, women most often give birth before the term due to genital infections, including sexually transmitted;
- Precarious financial situation and inadequate living conditions. There are cases when preterm births are caused by conditions in which women eat poorly and neglect their health as a result of poverty, domestic violence, etc. This raises the need for close cooperation of medical and social professionals, which is now weak.

Currently, the country's health system does not have all the necessary conditions and resources to take care of and treat children born before the term. A preterm baby must be supervised in the hospital for almost two months. The real cost of the treatment for a child starts from MDL 126,000 and can reach over MDL 167,000 for 42-63 days of treatment[47].

The following difficulties may be encountered:

- Insufficient funds allocated to the health system to take care of preterm children;
- Shortage of medical equipment for preterm newborns. Only two maternal hospitals from RM, both located in Chisinau, have the necessary equipment for preterm newborns. They have recently been modernized, but not entirely. The Mother and Child Institute has 15 incubators (though it needs 18) and only five fans, though twice as many are needed. The lives of children depends on medical equipment needing to be replaced every five years. This has a cost of at least half a million Euros[48];
- The medicine for preterm newborns is expensive. In total 700 doses are needed, but the Government only allocates money for 350.

40 http://www.moldova.org/statistici-alarmante-anul-trecut-circa-2-000-de-copii-din-moldova-s-au-nascut-prematur/, (accessed on December 7, 2014).
41 http://www.ms.gov.md/?q=stiri/ziua-mondiala-prematurului, (accessed on December 7, 2014).
42 http://www.demografie.md/index.php?pag=news&tip=noutate&opa=view&id=438&l=, (accessed on December 6, 2014).
43 http://evzmd.md/ro/sanatate/item/9703-copii-nascuti-inainte-de-vreme-fiecare-al-cincilea-moldovean-se-naste-prematur.html, (accessed on December 6, 2014).
44 http://www.ms.gov.md/?q=stiri/ziua-mondiala-prematurului, (accessed on December 7, 2014).
45 http://www.publika.md/ziua-mondiala-a-copilului-prematur--marcata-pentru-prima-data-si-in-moldova_2157691.html, (accessed on December 8, 2014).
46 http://www.publika.md/ziua-mondiala-a-copilului-prematur--marcata-pentru-prima-data-si-in-moldova_2157691.html?signed_request=, (accessed on December 7, 2014).
47 http://evzmd.md/ro/sanatate/item/9703-copii-nascuti-inainte-de-vreme-fiecare-al-cincilea-moldovean-se-naste-prematur.html, (accessed on December 7, 2014).
48 *Ibidem*

CONCLUSIONS

RM law provides all the guarantees for the exercise of the right to work, social protection, and health on an equal and equitable basis. However, there are instances of discrimination in the exercise of these rights, particularly for vulnerable groups, such as Roma people with disabilities.

Right to work:

Pregnant women, mothers with children under the age of three, and/or with many children encounter discrimination in respect to exercise their right to work. Thus, they encounter employment difficulties or continuation of their professional activity if the employer discovers that they are pregnant. At the same time, women encounter difficulties in reconciling personal and professional life, due to the lack of care and education services for children, in particular for children aged 0-3, and due to a lack of a legal framework that would facilitate a more active involvement of fathers in child care and education.

Although Law No 60 of March 30, 2012 on Social Inclusion of People with Disabilities, Article 34 (4) foresees that "employers, regardless of the legal form of organization, who according to the staffing list have 20 employees and more, shall create or reserve jobs and employ people with disabilities amounting to at least 5% out of the total number of employees". At the end of 2013 only 0.8% of the employees were people with disabilities.

There are discrepancies in the employment of Roma and non-Roma people: 29% of Roma people are unemployed or do not have a job, a rate that is double that of non-Roma people.

Right to social security:

The elderly are exposed to the risk of poverty. The state pension/social insurance system covers only the minimum needs of the elderly, and is not enough for a decent living. The average monthly pension covers only 79.1% of the subsistence minimum level for the elderly in 2013.

In 2014, the personal assistance service for people with severe disabilities was not provided to all people, according to their needs. At the same time, even if this service is intended to facilitate the social inclusion of and care services for people with disabilities, the employed staff focuses only on the provision of personal care, with zero attention paid to social or education inclusion.

Right to health care:

Maternal healthcare continues to be a challenge for the healthcare system in RM. The biggest hurdles encountered by pregnant women and mothers in exercising their right to health care are the following: informal payments in maternity hospitals; failure of health workers to inform about existing maternal and child healthcare services, and availability of perinatal medical services for women with disabilities.

Child mortality continues to be a challenge for the country's health system, with a child mortality rate that is increasing. In the first six months of 2014, 194 children died, an amount that is 15 more than during the same period in 2013.

Children with autism and their families do not have access to therapy and specialized rehabilitation services. These services are not free and are provided by private or non-governmental organizations. The parents of a child with autism spectrum disorders (ASD) have to pay a sum from MDL 1,800 to MDL 7,000-8,000 for rehabilitation services for their child.

RECOMMENDATIONS

1. In the final reading approve the legislative amendments that would introduce paternal leave (for fathers). This would envisage the following elements: (I) 14-day leave in the first 100 days since the child is born, (II) paid from public funds, (III) in proportion to 100% of the salary[49];
2. Amend the Criminal Code, by adding a new Article - 183, with the following content: "The refusal to employ or a dismissal of a pregnant women or an employee who has children under the age of six years shall be punished by a fine in the amount of 600 to 800 conventional units, or unpaid community service from 160 to 240 hours, with a fine imposed on the legal entity, in the amount of 1,000 to 3,000 conventional units, with the deprivation of the right to perform a certain activity for 1 to 3 years[50];
3. Develop support services to assist with the employment of persons with disabilities;
4. Provide funds for training and skills development opportunities for Roma people while ensuring territorial employment agencies address all types of discrimination when developing and implementing employment programs;
5. Adjust the social insurance system to provide fair pensions that are proportionate to the minimum subsistence of the elderly;
6. Adjust the social aid system to ensure a minimum guaranteed monthly income for the elderly without other support means, and in particular for solitary persons or those who have dependants;
7. Provide on a mandatory basis personal assistance service to children with disabilities, who are included in the education system or need support for school inclusion;
8. Develop and implement an early intervention program, tailored to the individual needs of a child with ASD, immediately available and applicable after or before the diagnosis, if parents notice the autism spectrum disorders at home and/or in therapeutic and education centers (from the age of maximum 2-3 years);
9. Improve the quality of health services in maternity hospitals by training health staff, improve conditions for mothers and children, and confirm that maternity hospitals from RM are "mother and child friendly";
10. Approve, by the Government, the Regulation on the Organization and Operation of Early Childhood Intervention Services that would ensure multidisciplinary cooperation of the medical staff from maternity hospitals and preterm child care units with rehabilitation institutions and social workers from the education and social areas. The aim of the cooperation is to increase access to quality services for preterm children, but also for other groups at risk along with the active involvement from central and local authorities in supporting families with preterm children[51];
11. Strengthen the oversights system of preterm newborns, including in regions, to reduce the risk of developing various diseases[52].

49 "La Strada" International Women Rights Protection and Promotion Center, Women's Law Centre, etc., Gender Equality Agenda, Proposals for the Government Program on Gender Equality Promotion for 2014-2018.

50 Tatiana MACOVEI, Peculiarities of Women's Legal Labor Relations, author of the PhD thesis, as a manuscript under UDC Number: 349.2/.3–055.2(043.2), Chisinau 2014, p. 21.

51 http://www.ms.gov.md/?q=stiri/ziua-mondiala-prematurului

52 *Ibidem*

CHAPTER 11

THE RIGHT TO VOTE AND BE ELECTED

Author: Nicolae Panfil

Executive Summary

The Constitution of the Republic of Moldova (RM) and the Election Code (EC) guarantee the right of citizens to vote and be elected. The parliamentary elections on November 30, 2014 gave citizens this opportunity to make active and direct use of their electoral rights and served as a test for how these rights have been ensured and guaranteed by various electoral stakeholders. At the same time, electoral rights were challenged due to legislative gaps, deficiencies in the administration of the electoral process, and the existence of social and political practices or conditions with a negative impact.

The amendments to the electoral law less than a year before the elections established the tone for the intervention of political actors in the elections in disregard of the recommendations provided by the Code of Good Practice in Electoral Matters of the Venice Commission. The majority of the amendments to the electoral legal framework directly affected the parliamentary elections of November 30, 2014 – we refer here to the failure to ensure a comprehensive training of electoral officials, the poor functioning of the State Voter Registry (SVR) on Election Day, and limiting the right to vote for the holders of Soviet passports who have not changed them prior to Election Day.

Of equal significance are several procedural issues that marked the conduct of the entire electoral campaign. The setting of the Election Day by the Parliament represented a test of its good faith as announcing the date of elections much earlier than required by the EC, the Parliament left room for violations of campaigning rules. The procedures for registration of electoral candidates, independent candidates, and political parties, also proved to be ambiguous, discriminatory, and allowed abuses.

Another crucial issue for the November 30, 2014 elections was connected to ensuring the right to vote for different categories of voters, and in particular voters living in Transnistria, living abroad, and voters with disabilities. Although the difficulties in ensuring the right to vote for each of these social categories are different, it is clear that the electoral rights of these people are only ensured if there is political resolve, a professional administration of elections, and if continual effort is made to identify practical solutions that guarantee the right to vote.

Lastly, respect of the right to vote, be elected, and the quality of the electoral process were examined in terms of ensuring the financial transparency of the electoral campaign for parliamentary elections of November 30, 2014. At the same time, having analyzed the legal prerequisites for financing the election campaign along with the financial reports of the candidates, and having estimated the costs of services and goods declared by them, we conclude that the principle of equality of candidates in the election campaign was not fully ensured. Given the multitude of problems that exist in this area, there is an urgent need to adopt and implement a package of laws regarding the financing of political parties and electoral campaigns, and further develop the capacities of relevant institutions to monitor the funding of political parties and candidates.

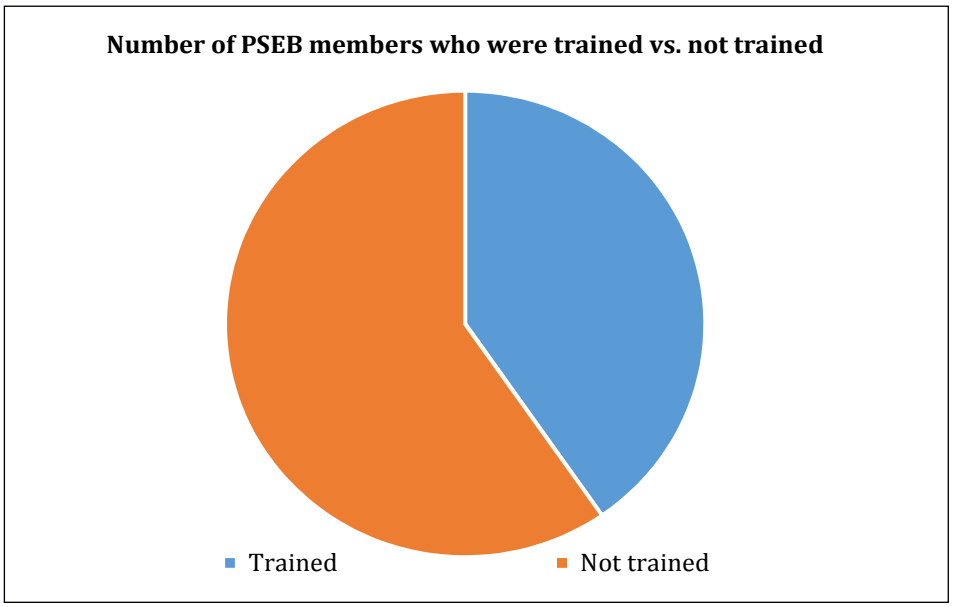
11.1. The evolution of the electoral law and the impact on the organization of the November 30, 2014 election

Regarding the parliamentary elections of November 30, the electoral legislation saw four changes to the EC, all finalized prior to the setting of the elections date[1]. Although the European Commission for Democracy through Law (the Venice Commission) recommends refraining from amending electoral laws at least one year before elections, Parliament disregarded this. Of the four laws adopted to amend EC, three contain provisions that directly envisaged the parliamentary elections of November 30, 2014.

1 Decision no. 81 of May 28, 2014 of the Parliament on setting the date for parliamentary elections, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=353308

The first amendment to EC[2] targeted changing the conditions of organizing the training for electoral officials and the elimination of the obligation of parties to delegate representatives to training courses organized by the Center for Continuous Electoral Training (CCET) to prepare and certify future members of electoral bodies. The Government, the Central Electoral Commission (CEC) and the Legal Department warned Parliament[3] of the negative effects on the reduction of efforts to professionalize electoral officials. Even so, the CCET continued its activities and carried out two training programs in 2014: the National Programme for Training and Certification of Potential Members of Polling Station Electoral Bureaus (PSEBs) (*342 seminars with duration of 8 hours for 10,371 people, 96% were included in the Registry of Electoral Officers (REO*) and a Training Program for Members of Electoral Bodies of the Parliamentary Elections (*175 members (55%) of the District Electoral Councils (DECs) and 7110 members (52%) of PSEBs)* conducted in October-November 2014 (1-day trainings for the DEC members and 2.5-hour trainings for PSEB members).

Diagram 1



Although CCET made efforts to fulfill its mission, the data presented above shows that the training was very limited in time and just over half of PSEB members benefited from these seminars. Consequently, PSEB performance was poor, as shown by the findings of Promo-LEX on Election Day[4], which revealed that the PSEB members admitted one or more errors in 245 tabulation protocols (TPs) (12.3%), and that in approx. 8.4% of the PSEBs the vote count procedure was not fully respected. A detailed analysis of 245 protocols based on information presented by the CCET on training members of the respective electoral bureaus revealed that only 850 members of PSEBs (60%) were trained by the CCET. In 9% (21) of PSEBs, none of the members were trained, and only in three PSEBs (1%), all members received training. While the data presented above are not sufficient to form a complete picture of the skills of PSEB members, they reveal the importance of high quality, continuous training of electoral body members.

On April 11, 2014 the Parliament adopted Law no. 61[5], which eliminated Soviet passports from the list of documents that made voting possible. Following the debates on this subject, the Government has committed to seek replacement alternatives for Soviet passports until September 1, 2014[6]. Subsequently, the OSCE/ODIHR Election Observation Mission (EOM) for the November 30, 2014 parliamentary elections noted "the authorities

2 The Draft Law No 435 of November 1, 2013 on amending and supplementing the Election Code, adopted by Law no. 18 of March 6, 2014, http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1996/language/ro-RO/Default.aspx

3 See the Draft Law No 435 of November 1, 2013 on amending and supplementing the Election Code and Opinion Government (Government Decision no. 985 of December 6, 2013), http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1996/language/ro-RO/Default.aspx, Minutes no. 153 of the 12/11/2013 CEC meeting pt. 1 of the Agenda, p. 2, http://www.cec.md/files/files/5042_proces_-_verbal_nr.153_din_12.11.2013.pdf, Law no. 435 of November 1, 2013 on amending and supplementing the Election Code, and the opinion of the Legal Department of the Parliament (Dj8 no. 538 of November 29, 2013), http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1996/language/ro-RO/Default.aspx

4 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 29, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

5 http://lex.justice.md/md/352796/

6 Government Decision no. 776 of October 4, 2013 on the "Action Plan on changing Soviet passports".

have made efforts to provide new identity documents to the holders of such passports.[7]" Thanks to these efforts, the CEC announced that 5000 voters could not vote because their only valid ID was a Soviet type passport[8]. For comparison, in 2013, according to the Ministry of Information Technologies and Communications, there were approx. 200,000 Soviet passport holders[9].

Another amendment to the EC sought a change to the deadline of the implementation of the SVR as part of the State Automated Information System "Elections" (SAIS "Elections") and the full transfer of responsibility for the preparation of voter lists to the CEC. Although initially the SVR was to be used in 2015, by Law 74 of April 16, 2014, the Parliament decided to implement the Registry for the parliamentary elections on November 30, 2014. Accordingly, the CEC did not have enough time for a comprehensive testing of the electronic register or the technical capacities to manage it. The CCET trained the 3,606 operators who managed the SVR data on November 12-17, 2014. The OSCE/ODIHR Mission noted: "the CEC regulation regarding the SVR was adopted only ten days before the election and did not provide an opportunity for the stakeholders or observers to study the SVR.[10]"

Subsequently, on Election Day, the CEC saw a massive outage of the electronic voter data processing system. The OSCE/ODIHR EOM found that SAIS "Elections" "...did not work during 59% of the observers' visits. As a result of these widespread technical problems, the staff of PSEBs had to process manually the voter data, and later input them electronically"[11]. The CEC gave assurances that "the situation in the first half of the November 30 Election Day, did not affect the electoral process of ensuring the right to vote for citizens, or other electoral operations, such as counting and tabulation[12]", as confirmed by the Quick count and parallel vote tabulation[13], carried out by Promo-LEX. In conclusion, "the introduction of the SVR would benefit from an early adoption.[14]"

11.2. Procedures for exercising the right to vote and to be elected

11.2.1. Establishing election dates

According to Art 76 para 2 of the EC, the date of the election is set by Parliament at least 60 days prior to Election Day. On May 28, Parliament adopted Resolution no. 81, establishing November 30, 2014 as the date of parliamentary elections, with the decision determined on September 15.

Beyond some positive aspects of an early announcing of the election date, by distancing the date of entry into force of the Parliament decision, a time interval was created (June-September 2014) that allowed some political parties and individuals to carry out campaign activities before the official start of campaigning. The monitoring effort of the parliamentary elections of November 30 carried out by Promo-LEX found multiple cases of electoral posters for various political parties and individuals (PDM, PSRM, PLDM, PL, MPA Forta Poporului, and citizen Renato Usatii), one case of conducting a national primaries campaign for the selection of candidates to the electoral list of PDM, political rallies (PLDM, PSRM) and electoral concerts (carried out by citizen Renato Usatii). As a result, political parties and individuals used gaps in the law to campaign before being registered as candidates.

11.2.2. Registration of candidates

According to Art 1, Art 26 para (1) let. d) and Art 41 para (1) of the EC, the CEC registers candidates in parliamentary elections independent candidates, political parties, other sociopolitical organizations, and electoral blocs. Analyzing the registration process for candidates in the 2014 parliamentary elections, we note the following differences compared to previous elections (*diagram 2*):

7 Statement by OSCE/ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 7, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

8 Statement by OSCE / ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 7, footnote 12, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

9 Explanatory note to the draft Government Decision "On amending some Government decisions", p. 1, http://www.mtic.gov.md/img/d2011/download/2013/09/06/HG_modificarea_unor_hot.pdf

10 Statement by OSCE / ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 6, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true (Regulation on the SVR was adopted by CEC Decision no. 2974 of November 19, 2014).

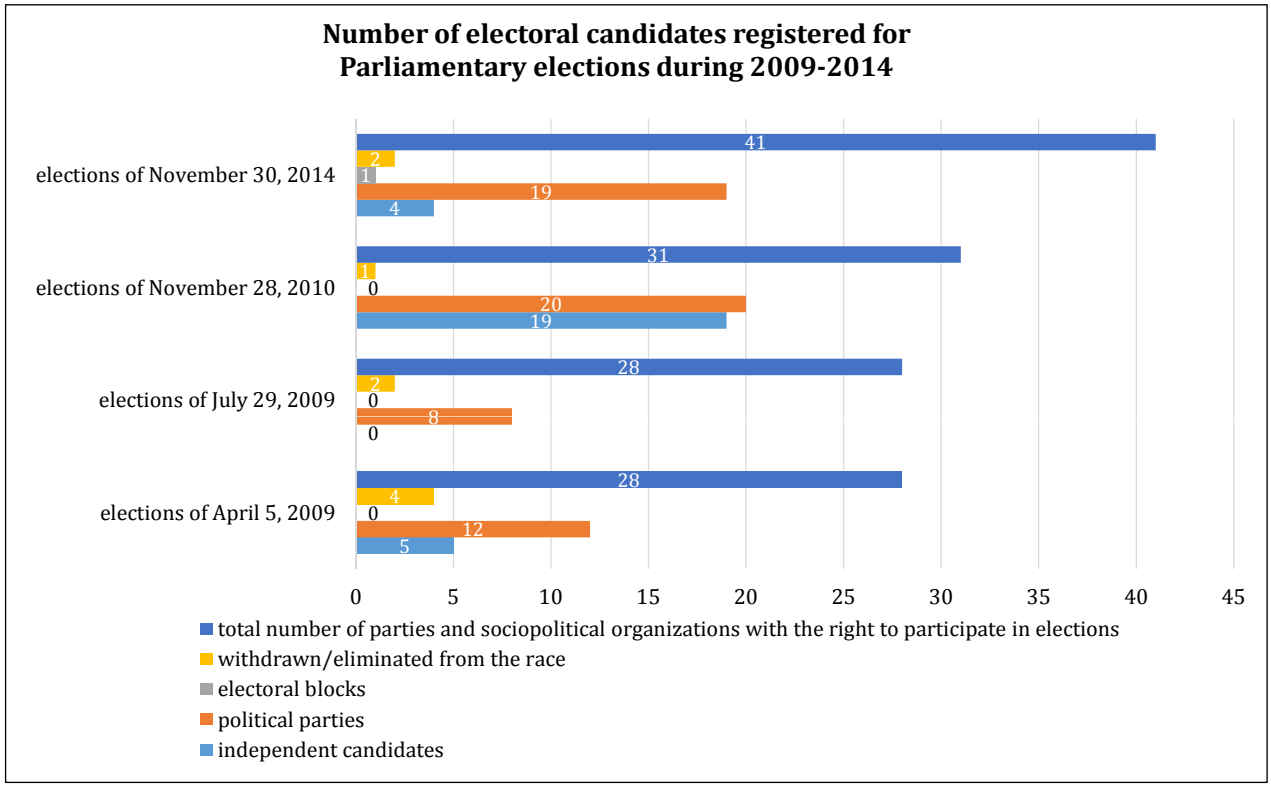
11 *Ibidem,* p. 14.

12 Press Release by the Central Election Commission published on December 3, 2014, http://www.cec.md/index.php?pag=news&id=1042&rid=12463&l=ro

13 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 29, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

14 Statement by OSCE / ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 6, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

Diagram 2



- The number of electoral contestants involved in the campaign for November 30, 2014 decreased by 35% compared to the parliamentary elections of November 28, 2010;
- Only 51% of political parties registered with the Ministry of Justice (MOJ) were involved in the 2014 election, compared to 65% involved in the parliamentary elections of November 28, 2010;
- The number of independent candidates registered in the race for the 2014 parliamentary elections significantly fell (-79%) compared to the 2010 early parliamentary poll.

The causes of the decrease of the number of candidates in the 2014 elections, beyond the sociopolitical conditions and country realities prior to the election, should also be sought in the electoral legislation and procedures for the registration of candidates. In the context of the parliamentary elections, we will refer to several examples that prove the aforementioned, both in relation to independent candidates and political parties:

Electoral legislation discourages independent candidates from running in parliamentary elections

- The registration of independent candidates is difficult, complex, and discriminatory when compared to the registration of political parties as candidates. While independent candidates collect signatures in subscription lists only to run, political parties and blocs can already conduct their campaign, and are able to prepare documents for registration at the beginning of the electoral period. "None of the applicants for subscription lists submitted all the necessary documents to the CEC to be registered as independent candidates before October 15, 2014,"[15] – and finally, of the 17 potential independent candidates, only four ended up running in the election. The Code of Good Practice in Electoral Matters recommends that the "validation of signatures must be completed before the beginning of the campaign"[16];
- The collection procedure and authentication of subscription lists is imperfect, ambiguous, and leaves room for abuse (independent candidates in localities from Transnistria and Bender cannot collect and authenticate signatures at the local public administration. Isolated cases were observed where mayors initially refused the authentication of subscription lists without any justification[17];

15 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 10, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

16 Code of Good Practice in Electoral Matters of the Venice Commission, pt. 1.3.V, http://www.e-democracy.md/files/elections/venice-code-good-practice-19-10-2002-ro.pdf

17 3rd Interim Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 9, http://promolex.md/upload/publications/ro/doc_1415274776.pdf

- Compared to the early parliamentary elections of 2010, the threshold for the funds that could be wired into an independent candidate's electoral account was reduced by 7.68%, while political parties saw an increase of 60.61%;
- On September 15, 2014, based on data provided by the Ministry of Justice (MOJ), the CEC published the list of parties able to participate in the election[18], and included two registered political parties just months before the start of the election period - PP "Reformist Communist Party of Moldova" (PCR) and PP "Patria". After the registration of the PCR at the MOJ, the Party of Communists (PCRM) filed an action in court demanding that the registration of PCR be cancelled on the grounds that it used a logo identical to that of PCRM and would mislead voters. On October 10, 2014, the CEC registered the PCR as a candidate, and on October 13, 2014, PCRM challenged the CEC decision on PCR registration, thus extending the legal dispute to the campaigning. The Supreme Court (SCJ) ultimately upheld the CEC decision to register the PCR, but on November 4, 2014, the Court of Appeals issued a decision requesting the MOJ to suspend the PCR registration as a party[19]. The MOJ did not observe the Court of Appeals decision, and the CEC did not have any grounds to review the decision on the registration of the PCR for the election. "This created an uncertainty regarding the PCR inclusion on the ballot, despite the court decision that required the MOJ to suspend PCR's registration as a party[20]";

Registration of political parties as electoral contestants was conducted among disputes with the involvement of the MOJ, the CEC and courts of law

- Given the importance of the MOJ in establishing the list of political parties who can participate in elections, and its poor reaction in the above context, we point to other situations to clarify the institution's accountability. In the list of parties entitled to participate in elections[21], one may find the European Action Movement (PMAE) party under no. 25 - although they announced their merger[22] with the Liberal Party (PL) in 2011, they have not yet been removed from the list of political parties. At the same time, PL was not registered as an electoral bloc in the election, and PMAE members were included in PL's candidates' list.

11.3. Respecting the electoral rights of other categories of voters in the elections of November 30, 2014

Some categories of citizens faced difficulties in exercising their right to vote. Among social categories that were not able to exercise fully this right were citizens residing in Transnistria, voters living abroad, and voters with disabilities.

11.3.1. Participation of voters from the Transnistrian region

The participation of voters from Transnistria in electoral processes in RM is one of the most significant problems faced by all relevant actors during electoral campaigns. Major difficulties include the ability to establish electoral bodies in the region, authorities' failure to ensure security and control over the electoral process, and a socio-political environment that is not conducive to campaigning activities.

In previous elections, the CEC encountered difficulties in forming electoral bodies in the region, in particular because political parties and some public authorities under the jurisdiction of the central authorities (courts, councils) failed to fulfill their legal obligation to propose members to the respective DEC and PSEBs. After the 2010 adoption of amendments to Art 27 para 4 and Art 29 para 11 of the EC[23], these difficulties should have disappeared as the possibility of forming DECs and PSEBs by the CEC using the REO. However, the CEC did not use the REO to create electoral bodies in the region. Promo-LEX found that "the CEC failed to take decisions establishing District Electoral Council no. 3 in Bender and District Electoral Council no. 37 for the localities on the left bank of the Nistru before the deadline for establishing DECs.[24]" Furthermore, the CEC "did not use its right to open special polling stations for these two administrative units. On the other hand, with significant delay

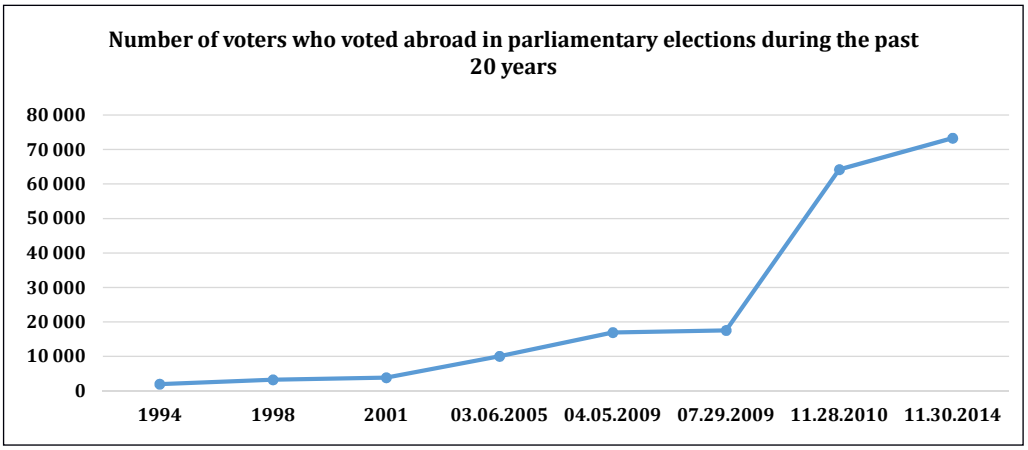
18 http://cec.md/files/files/listapartidepolitice_2388104.pdf
19 Statement by OSCE / ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 13, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true
20 *Ibidem,* p. 2, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true#page=9&zoom=auto,0,-255
21 CEC Decision no. 2664 on the list of parties and other sociopolitical organizations with the right to participate in the parliamentary elections on November 30, 2014, http://cec.md/index.php?pag=news&id=1001&rid=11564&l=ro
22 PL and PMAE signed a merger agreement on March 9, 2011, http://www.pl.md/libview.php?l=ro&idc=78&id=2234&t=/Presa/tiri/A-fost-semnat-acordul-de-fuziune-MAE-si-PL
23 Law no. 119 of 18.06.2010: http://lex.justice.md/md/335036/
24 2nd Interim Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, 2014 Promo-LEX Association, p. 8, http://promolex.md/upload/publications/ro/doc_1413464915.pdf

from the provisions of the electoral timetable, i.e. on November 4, 2014, the CEC issued an order ruling that Transnistrian voters can exercise their right to vote on supplementary voter rolls in 26 PSs already created in Cahul (1), Chisinau (5), Anenii Noi (3), Dubasari (9), Causeni (3), Criuleni (1), Stefan Voda (1), Rezina (1), Balti (1), and Florești (1).[25]" Those approx. 211,329 voters residing in the Transnistrian region, according to the CEC, were to vote at the 26 polling stations mentioned above. By comparison, "...the voters who did not have a domicile or residence registration or cannot prove their residence may vote at any polling station in RM by submitting a declaration on refraining from multiple voting.[26]" Given all the above, we conclude that voters in Transnistria were at a disadvantage and discriminated against when compared to voters in other regions.

11.3.2. Participation in elections of voters residing abroad (diaspora)

The Constitution guarantees the right of every citizen to vote and requires the state to ensure that conditions are met for the exercise of this right, regardless of geographical location (at home or abroad).

Diagram 3



Based on this requirement, the CEC currently uses approximately nine articles[27] of the EC and two Regulations[28] that describe in detail the organization of the voting abroad.

Despite the evolution of the legal framework and ample practice of organizing elections abroad in the recent years [29], members of the diaspora still cannot fully exercise their electoral rights (*diagram 3*). In addition to financial, logistical, and security challenges that do not allow the conduct of exhaustive measures for organizing elections, there are two major causes hindering the exercise of their electoral rights – the large number of citizens abroad eligible to vote, and the lack of accurate information on their geographical distribution.[30] In absence of this information, the CEC developed an online platform, alegator.md, which allows citizens abroad to register in advance on voter lists in their country/town of residence, and as a result, be removed from the primary voters lists in RM.

The CEC determines which polling stations are open abroad at the Government's proposal[31], but given the small number of citizens who registered in advance (only 2,404 persons[32]), the criteria that led the Government to determine the number of polling stations to be opened abroad and their geographical distribution remain unclear.

25 3rd Interim Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 8, http://promolex.md/upload/publications/ro/doc_1415274776.pdf

26 CEC Decision no. 3108 of November 24 on the conditions of voting for voters who do not have a home or residence registration, http://cec.md/index.php?pag=news&id=1001&rid=12282&l=ro

27 Arts. 2, 22, 26, 29¹, 39, 49, 53, 58, and 63 of the Election Code.

28 Regulation on the voting for citizens living abroad, http://cec.md/index.php?pag=news&id=1002&rid=554&l=ro and the Regulation on the preliminary registration of citizens voting abroad, http://cec.md/index.php?pag=news&id=1352&rid=11592&l=ro

29 The number of polling stations opened abroad steadily increased during the last elections April 5, 2009: 33 polling stations, November 28, 2010: 75 polling stations, November 30, 2014: 95 polling stations.

30 Valerian TĂBIRTĂ, Victor KOROLI, Study: "Moldovan citizens' access to vote abroad", p. 4, http://alegeliber.md/wp-content/uploads/2014/12/Studiu_Accesul-la-vot-al-cetatenilor-Republicii-Moldova-in-strainatate.pdf

31 Art 29¹, letter. 3 of the Election Code, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312765

32 http://www.osce.org/ro/odihr/elections/moldova/126775?download=true according to OSCE/ODIHR preliminary report, only 1,700 citizens registered in advance.

Subsequently, the Government Decision no. 872 of October 20, 2014[33] left room for interpretation and political disputes on this subject.

A special controversy on this topic was the opening of only five polling stations in the Russian Federation. In addition to the active debates on this subject at the CEC[34], on November 17, 2014, Igor Dodon and Ion Ceban (PSRM) notified the Constitutional Court requesting constitutional control of the respective Government decision, but the Constitutional Court[35] declined their request.

OSCE/ODIHR noted that "insufficient transparency of the criteria for determining the number and location of polling stations abroad contributed to perceptions among a number of key players that the government sought to discourage voting in the Russian Federation, while the number of polling stations in other countries was increased.[36]" Despite the fact that the Government offered explanations[37] to their decision to open polling stations in Russia, both the OSCE/ODIHR[38] and Promo-LEX[39] noted a lack of transparent criteria and arguments justifying the decision on the number and geographic distribution of polling stations.

11.3.3. Participation of voters with disabilities

The participation of voters with disabilities[40] in the electoral process was recently brought to the attention of the authorities and the civil society. Since 2010, several laws (including Law no. 60 of March 30, 2012 on the social inclusion of persons with disabilities), government decisions, and regulations were adopted to ensure the rights of persons with disabilities. During this period, RM also ratified the UN Convention on the Rights of Persons with Disabilities[41].

Progress was made in adopting the legal framework and its adjustment to international standards, however, in practice the electoral process was marked by a series of problems for people with disabilities, authorities, and civil society organizations:

- The absence of relevant statistics[42] on the disability types did not allow for a proper documentation of the participation of persons with disabilities in elections, which impedes the adoption and implementation of policies to make electoral processes more accessible to the needs of different groups of persons with disabilities;
- Candidates' electoral platforms addressed the needs of persons with disabilities declaratively, and were more focused on their protection and less on their social inclusion[43];
- The EC regulates only three ways to vote (ordinary vote, assisted vote, and vote at the location of the person / by mobile ballot box), and persons with disabilities do not have procedures, facilities, and appropriate, accessible, and clear voting materials;
- "Approximately 70% of public institutions and social facility premises in the country do not have access ramps that ensure access for persons with disabilities[44]";
- 63% of PSEBs monitored by the OSCE/ODIHR EOM were inaccessible to voters with disabilities[45];

33 Government Decision no. 872 of October 20, 2014 on the organization of polling stations abroad, http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=355195 (most polling stations abroad were opened in Italy (25), Romania (11) United States (6), France, Portugal, Russian Federation (5 per each country).

34 Minutes no. 206 of the ordinary CEC meeting of October 24, 2014, item 2 of the agenda, p. 9-17, http://cec.md/files/files/pr-vb206241014_7644994.pdf

35 Decision no. 11 of November 18, 2014 of inadmissibility of the referral no. 58a/2014 on the constitutional control of Government Decision no. 872 of October 20, 2014 on the organization of polling stations abroad, http://www.constcourt.md/ccdocview.php?tip=decizii&docid=150&l=ro

36 Statement by OSCE/ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 2, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

37 http://www.europalibera.org/content/article/26648465.html, http://www.noi.md/md/news_id/49897#close

38 Interim Report of the OSCE/ODIHR on the Observation of Parliamentary Elections of November 30, 2014, p. 1, http://www.osce.org/ro/odihr/elections/moldova/126775?download=true

39 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 13, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

40 According to the Ministry of Labor, Social Protection and Family, on 1 January 2014 there were 183,416 disabled persons in Moldova, or approx. 5% of the total population.

41 http://www.mpsfc.gov.md/file/tratate/Conventia_ONU_%20dizab_ro.pdf

42 The NSB uses three degrees of disability - medium, accentuated, severe, http://www.statistica.md/newsview.php?l=ro&id=4253&idc=

43 The Coalition for Free and Fair Elections and Keystone Human Services International Moldova, press release: "Social inclusion of persons with disabilities in the electoral agenda of political parties", November 18, 2014, http://alegeliber.md/?p=1996

44 http://m.noi.md/md/news/33877, http://mdrc.gov.md/public/files/Not_informativ_GUVERN_DEZABILITATI.docx

45 Statement by OSCE/ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 14, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

- The EC (Article 13, para 1, letter b) restricts the voting rights of persons declared incapacitated by a final court decision. The OSCE/ODIHR EOM noted that "the practice of courts ruling comprehensive tutorships for older persons and persons with disabilities automatically deprives them of their right to vote, in violation of international standards[46]";
- The media and the candidates did not use alternative forms of communication with voters with disabilities (publications in Braille, sign language, phonetic system or plain language texts that are easily understandable), and thus, deprive them of information on electoral processes.

However, despite these issues, we note that both the CEC and certain civil society organizations made efforts to ensure the participation of voters with disabilities in the November 30, 2014 poll, such as:

- Efforts have been made to facilitate access for voters with disabilities to polling stations: a number of polling stations were moved to ground level, and access ramps were installed at 30 polling stations[47];
- Premiere polling stations were equipped with uniform polling booths, equipped with a separate booth for the vote of people with disabilities[48];
- In 58 polling stations, the CEC approved and certified the voting procedure using the template envelope for voters with visual impairment (in partnership with several civil society organizations, including with the involvement of persons with disabilities);
- The CEC accredited 31 people (including 19 people with physical, hearing or visual impairments) as national election observers on behalf of the "Motivatie" Association;
- The CEC developed materials to motivate people to vote and informing about the electoral process (didactic methodical film: "The direct and secret vote of persons with visual disabilities through the envelope template", poster: "Voting step by step for persons with disabilities");
- The CCET conducted an audit of polling stations in terms of their accessibility for persons with disabilities, voiced, recorded, and distributed an audio Voter Guide, a methodological film dubbed in sign language, integrated the issue of accessibility in its training programs, and developed an e-learning module on this topic;
- The official website of the CEC has a partially adapted version for visually impaired people;
- On Election Day, the CEC made use of a sign language interpreter who, through the media, informed people with hearing impairment about the electoral process.

Given the progress and the issues outlined above, we must emphasize that the efforts initiated by the CEC and civil society organizations have to be constant and systemic in order to ensure full electoral rights to persons with disabilities.

11.4. Transparency of campaign finances in the November 30, 2014 poll

Campaign financing was one of the most intensely debated topics of the November 30, 2014 election. The focus of the debates was on the lack of transparency of financial resources and the insufficient measures to verify candidates' finances and ensure their equal opportunities in the campaign.

The issue that started the debate on the use of financial resources in the election campaign came about when several political parties and individuals conducted electoral activities before the official start of the campaign. Some political parties argued that these activities do not represent campaigning and the financial resources spent for them would be included in the end-of-year financial reports the parties submit to the MOJ. "Promo-LEX observers found 41 cases of electoral activities conducted before the opening of bank accounts marked Electoral Fund.[49]" The CEC lacks effective levers that would require political parties to respect the legal provisions mentioned above.

An important aspect of the campaign was the fund threshold set by the CEC that can be transferred to a candidate's account. Without an underlying motivation for this decision, the CEC established the amount of 55 million lei (*60.61% higher than in the parliamentary elections of November 28, 2010*) as the threshold of funds that can be transferred to the electoral fund of a political party or bloc and as a result "indirectly admitted the increase of the

46 *Ibidem,* p. 6, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true
47 *Ibidem,* p. 5, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true
48 CEC Report on the results of parliamentary elections of November 30, 2014, p. 4, http://cec.md/files/files/raporttotalizarealegeri2014din5decemredactat_5373809.pdf
49 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 31, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

threshold beyond which a candidate could be excluded from the race, if it is found that they failed to declare or exceeded the set threshold by 5%, as provided in Art 69 para 4 letter a) of the EC.[50]"

The most intense debate related to campaign finance related to the revenues and expenditures reported by the candidates. According to Art 38 para 8 of the EC, candidates are required to submit financial reports to the CEC every two weeks.

Diagram 4

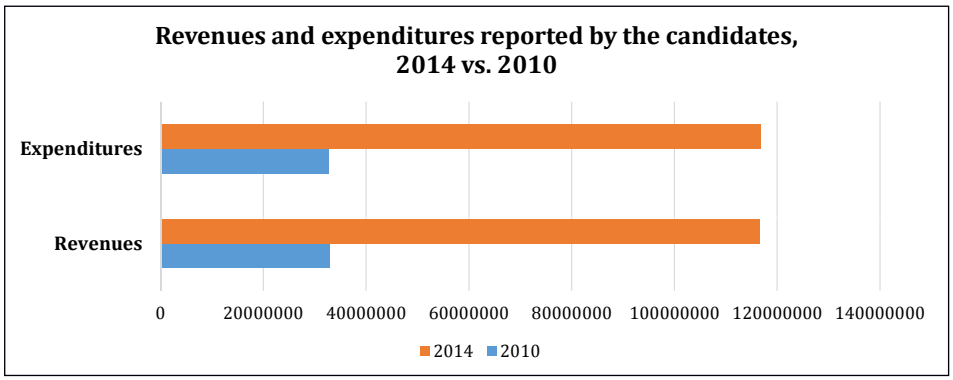
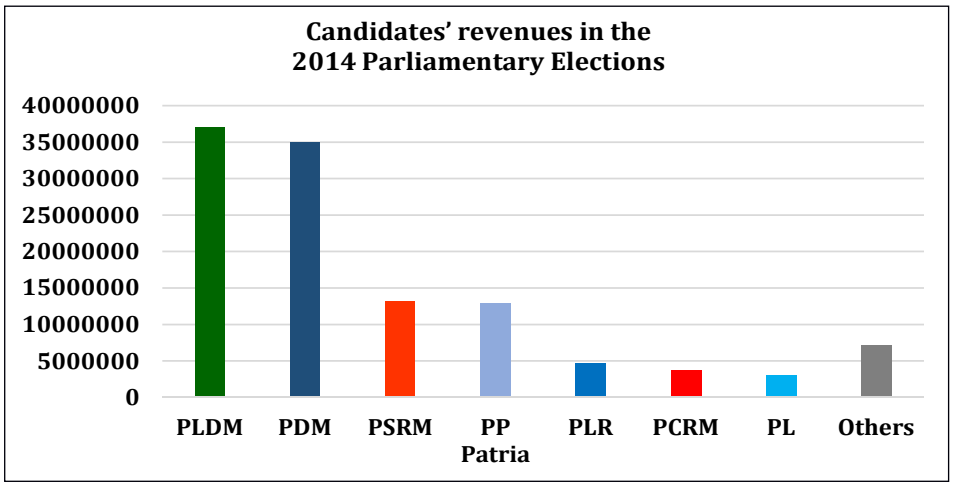


Diagram 5



"According to the final report on the amount of contributions received by candidates throughout the electoral campaign, of the 26 candidates, 23 indicated transfers to their "Electoral Fund" accounts. The total income declared by these candidates is 116,721,720 lei,[51]" *(diagram 4).* The Liberal Democratic Party (PLDM) and the Democratic Party of Moldova (PDM) received roughly 60% of the total revenues earned by candidates (*diagram 5*). The majority of the revenues were collected as donations from individuals (2,244 people), legal entities (four companies), membership fees (118 people), revenues from other sources (transferred from the accounts of two political parties), and loans (one candidate).

Note that the media and investigative journalists pointed to the accumulation of revenues in the candidates' election fund accounts. According to an investigation by the Center for Investigative Journalism[52], several candidates collected financial resources in the form of donations from their candidates to MP, some of which donated more than their earnings in the last 1-2 years, while others were unemployed according to their income declarations. There have also been cases in which employees of state companies made donations in a centralized manner to a party associated with the head of the respective institution.

50 *Ibidem*

51 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 32, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

52 Center for Investigative Journalism, Investigation "How much does an MP seat cost?", December 10, 2014, http://anticoruptie.md/investigatii-jurnalistice/cat-costa-fotoliul-de-deputat-cele-mai-scumpe-mandate-le-revin-pdm-18-mln-lei-si-pldm-16-mln-de-lei/

In 2014, candidates' expenditures were 3.55 times bigger when compared to the 2010 parliamentary election (*diagram 4*) and largely reflected the cost of electoral advertising (*diagram 6*). Compared to the threshold set by the CEC, official expenses of candidates reached the following figures: PLDM - 67.2%, PDM - 63.7%, the Socialist Party of Moldova (PSRM) - 24.1%, Political Party «Patria» - 23.5%, Liberal Reformist Party (PLR) - 8.4%, PCRM - 6.9%, the Liberal Party (PL) - 3.7%, and others - 13%.

Diagram 6

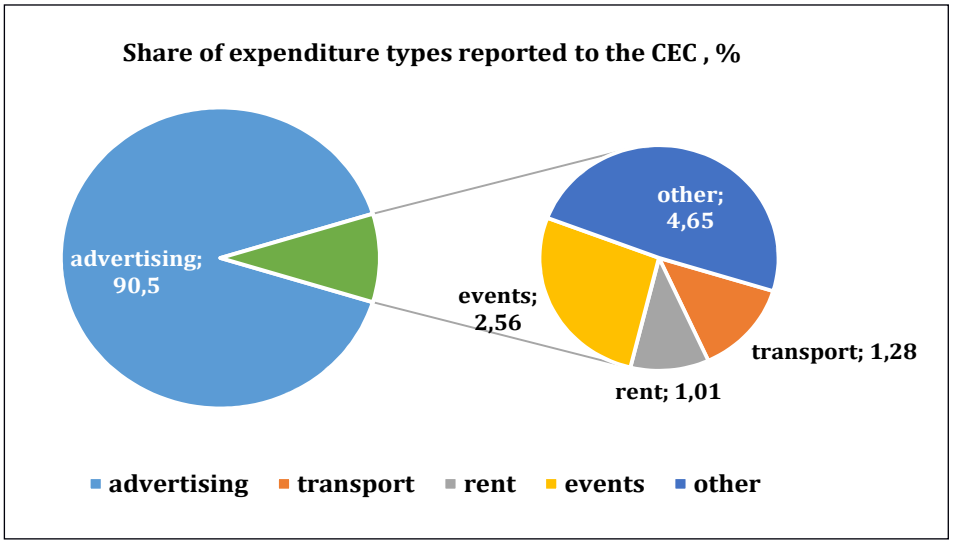


Diagram 7

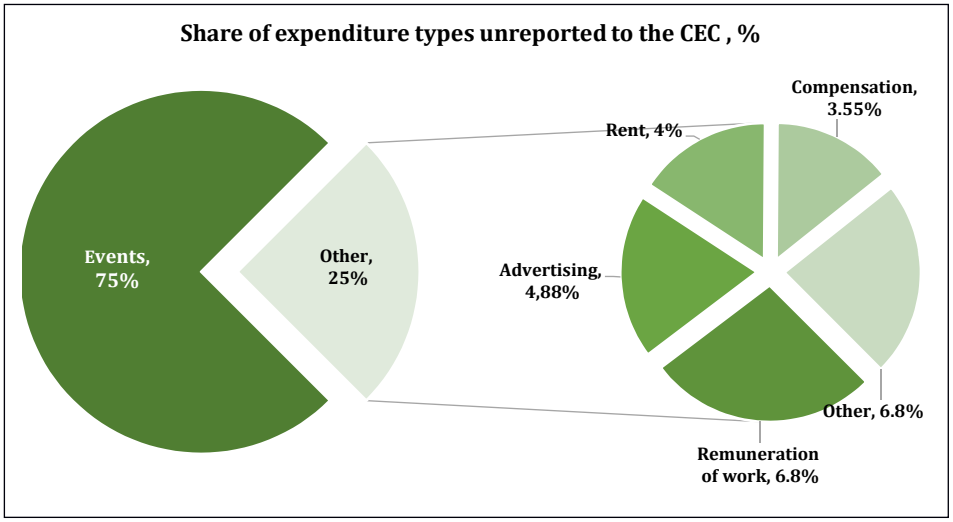
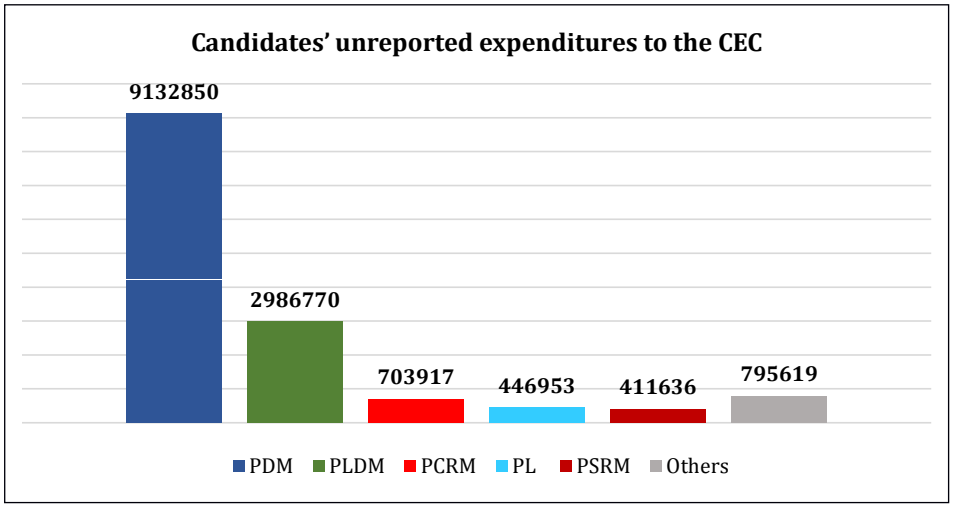


Diagram 8



Promo-LEX made an estimate of candidates' expenditures unreported to the CEC. According to these estimates, unreported expenditures reach a total of 14,916,866 lei, of which approx. 75% are associated with the costs of events (*diagram 7*). Unreported expenditures are distributed among the candidates as follows: PDM - 9,592,846 lei, PLDM - 2,965,895 lei, PCRM - 703,917 lei, PL - 446,953 lei, PSRM - 411,636 lei, others - 795,619 lei (*diagram 8*). Comparing the data to the official expenditures of the candidates, we find that "two candidates have exceeded the 5% quota that triggers the risk of cancellation of the registration for failing to declare campaign expenses.[53]"

Based on the above, the OSCE/ODIHR EOM stated that "the CEC mandate and capacity to verify the candidates' financial reports and monitor campaign financing remains limited[54]", and that it remained more focused on verifying compliance of financial reports with the bank reports on their transactions during the campaign. "This has reduced the capacity of the CEC to establish the origin of election funds and overall reduced the transparency of the process.[55]"

However, for the first time the CEC made use of Art 36 of the EC and called for the elimination of a candidate from the elections on the grounds of use of funds from abroad. On November 26, 2014, based on information provided by the General Police Inspectorate, the CEC asked the Court of Appeals in Chisinau to cancel the registration in the poll of the candidate PP Patria. The CEC application was admitted by the Court of Appeals and subsequently maintained by a SCJ decision.

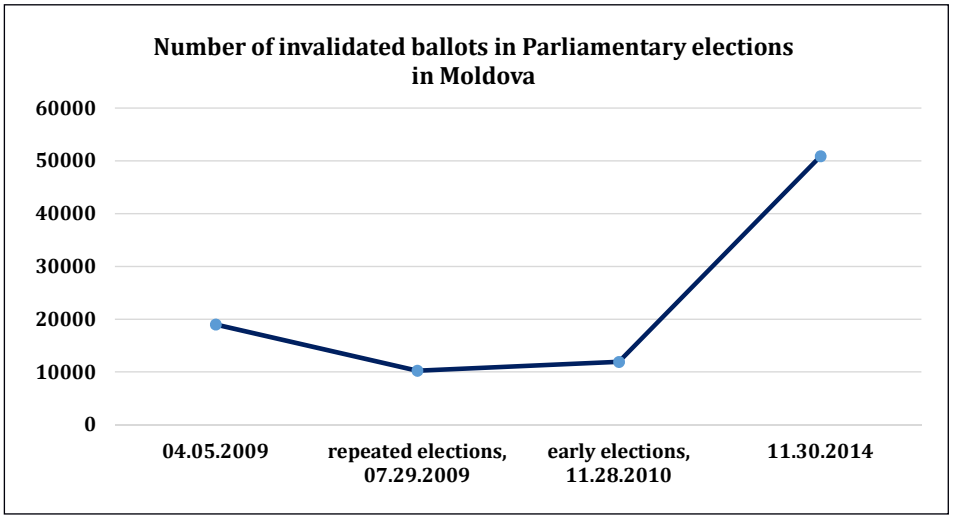
This episode widely resonated in society and launched strong, controversial responses among the electoral actors. Although no official data can confirm this, on Election Day PP Patria supporters displayed a form of protest behavior by voting for their candidate despite the fact that it had been excluded from the race (the ballots, which had already been printed, contained PP Patria in the list). This is indirectly demonstrated by the large number of invalidated ballots in the November 30 election compared with previous elections (*diagram 9*).

53 Final Report on the Election Monitoring Effort for the Parliamentary Election on November 30, 2014, Promo-LEX Association, p. 6, http://promolex.md/upload/publications/ro/doc_1423148702.pdf

54 Statement by OSCE/ODIHR November 30, 2014 parliamentary elections on preliminary findings and conclusions, p. 9, http://www.osce.org/ro/odihr/elections/moldova/128551?download=true

55 *Ibidem*

Diagram 9



The problems outlined above display the shortcomings of the electoral legislation and of the importance of ensuring transparency of campaign finances and providing equal opportunities for candidates. In this regard, "campaign financing continues to require both legal regulation and better supervision.[56]"

CONCLUSIONS

The parliamentary poll of November 30, 2014 was marked by a series of problems that could affect the citizens' right to vote and to be elected. All have different causes, be it changes in the electoral legislation impacting the ballot results, deficiencies in the administration of the electoral process, and the persistence of practices and socio-political conditions that can negatively impact electoral rights. During the reporting period, the electoral legislation was amended four times, and three amendments relate directly to the elections on November 30, 2014. Thus, the Parliament amended the conditions of the training and certification of the members of electoral bodies, eliminated the Soviet passports from the list of documents allowed the vote, and modified the entry into force of the provisions regarding the SVR.

The Parliament's Decision on setting the election date was used by some political parties and individuals as a cover for electoral activities before the official start of the campaign. Similarly, unequal registration conditions were reported both in relation to independent candidates and political parties.

A distinguishing feature of the 2014 election campaign was that in which different categories of voters exercised their right to vote. In this regard, continuous efforts are needed to provide conditions to exercise their electoral rights for voters from Transnistria, citizens living abroad, and voters with disabilities.

Another important conclusion is the need for ensuring transparency of the financing of political parties and electoral campaigns. The monitoring of electoral finances of the candidates in the November 30, 2014 poll showed that efforts are needed to improve the regulatory framework, and build the capacities of oversight institutions that can monitor party and candidates' finances, as well as strengthen the civic monitoring of the elections.

56 *Ibidem*

RECOMMENDATIONS

1. Amendments to electoral legislation should be made after consultations with stakeholders and in strict accordance with the recommendations of the Venice Commission;
2. Adopting a favorable legal framework for the activity of the CCET in training and mandatory certification of future members in electoral bodies and operators of the SVR;
3. The replacement of Soviet passports with new IDs should be finalized to guarantee the right to vote of persons with such identity documents in the 2015 local general election;
4. The deficiencies in the operation of the SVR should be analyzed and addressed before the 2015 local general election;
5. The notions and terms provided in the EC on the setting of the election date, the start of the electoral campaign period, and start of campaigning should be interpreted and specified;
6. The mechanism for the registration of independent candidates in the election should be revisited to provide them equal opportunities in relation to other candidates, and in line with the standards of the Venice Commission;
7. The MOJ shall respect and fully implement in a timely manner all legal provisions and court decisions relevant to the work of the CEC;
8. The Registry of Electoral Officials should be used to fill in the membership of electoral bodies in the localities from the left bank of the Nistru to ensure citizens' voting rights in the region;
9. The mechanism (website) for early registration of voters abroad should be improved and actively promoted;
10. Eliminating the political factor (Government, Ministry of Foreign Affairs and European Integration) and developing a transparent and objective mechanism for determining the number and the locations of polling stations to be opened abroad;
11. The CEC should adopt a Regulation that ensures accessibility of the electoral process to persons with disabilities;
12. Article 13, letter. 1 point. b of the EC on the exercise of electoral rights by persons declared incapable by a final decision of the court should be revised;
13. A mechanism should be developed and introduced in the EC to establish a uniform and constant threshold on funds that can be transferred to the campaign fund of the electoral contestant;
14. A gradual legal liability should be introduced for failure to declare, or for exceeding the threshold for funds transferred to the campaigning account of an electoral contestant;
15. Establishing a mechanism for checking/estimating financial resources undeclared by candidates and to ensure electoral campaign transparency;
16. Sanctioning electoral candidates who violate requirements and deadlines for financial reporting during the campaign that is provided by the electoral legislation;
17. The MOJ should verify financial reports of political parties for 2014 and identify revenue sources and purpose of expenses prior to the official start of the electoral campaign;
18. Candidates and political parties should monitor each other's activities and report to electoral authorities on the use of financial resources in the campaign;
19. The bill on financing political parties and electoral campaigns should be passed in the second (final) reading in Parliament, and duly implemented.

CHAPTER 12

RIGHT NOT TO BE DISCRIMINATED, PROHIBITION AGAINST DISCRIMINATION

Author: Ana Furtuna

Executive Summary

Despite the legal and political commitments taken by the Republic of Moldova (RM) to align the national legislation to international human rights standards, RM still faces major problems related to the observance of human rights and non-discriminatory principles. For the third consecutive year, indicators in the National Human Rights Index are troubling with discrimination on a number of criteria that are below a reasonable level.

The establishment of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (CPEDEE) failed to change the dynamics of this issue. Further, the activity reports submitted by the Council[1] confirmed civil society fears that the actions taken to resolve a case of discrimination were minimal.

This report aims to analyze and present the most pressing issues met by CPEDEE and to identify the most discriminated groups.

In this respect, this report identifies legal barriers, focusing on the deficiencies of Law 121/2012 on Ensuring Equality and the Contravention Code of RM (CContr), as well as institutional and administrative barriers.

This report presents daily statistics on CPEDEE decisions, and litigation cases to other actors in the field, focusing on two criteria: disability and sex/gender.

12.1. General situation of discrimination/background information

The period before and after the implementation of the Law on Equality (start date January 1, 2013) showed a less than encouraging practice regarding proper understanding of discrimination and interpretation of Law 121/2012. The changes are slow moving, almost at an insignificant pace, despite trainings provided for judges[2], prosecutors[3], and lawyers[4][5].

Therefore, less than perfect statistics exist that pertain to the observance of human rights and non-discrimination.

Experts have evaluated the general situation in RM in 2014 according to the data submitted on the protection and safeguarding of fundamental human rights, by an average of 5.64 points out of 10. This mark displays that human rights is below the satisfactory level, with a number of registered violations that affect a large number of people. These violations are systemic, and occurring with a greater frequency, while the State system approaches them only in an incomplete and scattered manner.

Discrimination in different respects receives poor marks, with the exception of political discrimination. All of these were given marks below the satisfactory level, of 6 points out of 10.

1 http://egalitate.md/index.php?pag=page&id=850&l=ro, (accessed on March 20, 2015).
2 Workshop "National and International Anti-Discrimination Standards" organized by the National Institute of Justice (NIJ) in collaboration with the Office of the UN High Commissioner for Human Rights (OHCHR) and CPPEDEE for 50 judges and prosecutors (during April 10-11, 2014, September 18 – 19, 2014, November 20 – 21, 2014).
3 http://discriminare.md/100-de-judecatori-au-discutat-aprins-cum-sa-examineze-cazurile-de-discriminare/, (accessed on November 19, 2014).
4 http://discriminare.md/avocatii-moldoveni-in-fata-provocarii-de-a-reprezenta-cetatenii-discriminati-in-instanta/, (accessed on November 19, 2014).
5 Trainings for lawyers and human rights activists organized by the Joint Programme of Council of Europe and European Union (EU) "Strengthening the capacity of lawyers and human rights activists for the national application of the European Convention on Human Rights (ECHR) and the European Social Charter (revised)", http://www.coe.md/

The lowest score of the 8 discrimination categories[6] in the questionnaire was:

- Sexual orientation - **3.54** out of 10 points (- 0.13 compared to 2013);
- Disability - **3.79** out of 10 points (- 0.21 compared to 2013);
- Material or financial situation (poverty) - **4.42** out of 10 points (+ 0.25 compared to 2013).

The situation **worsened** in:

- Discrimination on **political** grounds - an annual decrease of 0.27 points (from 6.44 points in 2013 to 6.17 in 2014);
- Discrimination on grounds of **disability** - an annual decrease of 0.21 points (from 4.00 points in 2013 to 3.79 in 2014);
- Discrimination on grounds of **sexual orientation** - an annual decrease by 0.13 points (3.67 points in 2013 to 3.54 in 2014)[7].

Based on a survey from 2014 conducted by the Institute for Public Policy[8], the most discriminated categories in RM are:

- Poor people - 31.9%
- Elderly people - 28.8%
- People with mental disabilities - 25.7%
- People with physical disabilities - 23.9%
- People of the LGBT community - 19.9%.

One in three respondents of this study believes that in the past five years discrimination has increased. In these five years, the dynamics of most discriminated groups remains the same.

12.2. Functional capacity of the Council on prevention and elimination of discrimination and assurance of equality

Once the Law on Equality entered into force, CPEDEE started its activity to implement this law. However, as in the case of the law, we have witnessed a selection process that never seemed complete. The attitude of Special Committee members clearly displayed that the established intention was to set up a passive and politically manipulated body[9].

CPEDEE was established in 2013 as an autonomous authority with the status of legal entity. The establishment and functioning of the Council was provided and regulated by Law 121/2012.

12.2.1. Legislative barriers to the well functioning of CPEDEE

On March 15, 2014, CPEDEE submitted its first activity report[10] to the Parliament, which only confirmed the fears of civil society representatives on the limited action taken to resolve cases of discrimination. This structure cannot impose penalties, which damages its authority both in the eyes of those who committed acts of discrimination and in the potential victims of discrimination. According to Law No 121/2012, the Council finds offenses with discriminatory elements in accordance with CContr, while the penalties are applied by courts of law[11]. Thus, the application of sanctions is incomplete both in complaint resolution time, with a general limitation period of three months for administrative liability[12], and with regard to the court judgments.

6 Disability, racial or ethnic origin, age, material or financial situation (poverty), religious beliefs or affiliation, political membership or convictions, sexual orientation and/or gender identity.
7 http://www.drepturi.md/ro/index-drom-2014 and http://www.drepturi.md/ro/index-drom-2013
8 http://ipp.md/libview.php?l=ro&idc=150&id=715&parent=0
9 The procedure of selection was hampered, the meetings were postponed at the initiative of the Special Committee members, because of other commitments, possibly more important; the Law was not followed, because "at least three of the members had to be licensed professionals in law," or at this stage only one member has this license - Doina Ioana Straisteanu; the attitude of some members of the Special Committee was not always neutral towards certain candidates, who have subsequently been rejected. The members of the Special Committee came up with an immediate solution to extend the membership of the Council from 5 to 7 members, an idea that was abandoned at the same moment.
10 http://egalitate.md/index.php?pag=page&id=850&l=ro, (accessed on July 15, 2014).
11 Article 12 (1)(k) and Article 15(8) of Law No 121/2012 on equality.
12 Article 30(2) of CContr of RM.

During the two years of CPEDEE activity, we noticed the tendency of first instance courts to reject the CPEDEE reports, which leads to having their judgments appealed in the Court of Appeal and, thus, to a delayed examination. In this case the risk of exceeding the limitation period of administrative liability is always looming, in particular if the appellate court decides to remand the case for retrial[13].

A serious issue encountered by CPEDEE concerns the omissions from CContr, either intentionally or unintentionally. Article 71[2], referring to the *"Hindrance of the Council's activity on Prevention and Combating of Discrimination and Ensuring Equality"*, was not found among the offenses that could be detected by CPEDEE. From the activity of CPEDEE, we know that this Article was important, as often "people who have allegedly committed acts of discrimination prevent CPEDEE from examining the complaint by ignoring the inquiries for information, refusing to provide the requested information, refusing access to information of the investigative teams of CPEDEE on the site, ignoring the recommendations of CPEDEE to eliminate discrimination and ensure equality, verbally abusing CPEDEE employees and members when they request information on the case, or taking actions to influence the CPEDEE decision on pending cases.[14]"

Prior to March 12, 2014, CPEDEE prepared reports to prevent the activity, when the Buiucani District Court took a decision to cancel all reports prepared by CPEDEE under Article 71[2], arguing that it is not the responsibility of CPEDEE to establish the offenses found in this Article, which, unfortunately, were true. Although this provision relates directly to the Council's activity, the Buiucani Court decision merely emphasized the unwillingness of courts of law to cooperate on discrimination cases, even though they have responsibilities in preventing and combating discrimination and ensuring equality[15]. In this context, CPEDEE becomes unable to compel perpetrators to provide information and to implement recommendations made on the case. This situation changed with the adoption of *LP113 of July 3, 2014*[16], which introduced addenda to Article 423[5] (1) of CContr.

An additional problem is that according to the amendments made to CContr, CPEDEE can determine offenses only in three fields, education[17], employment[18], and access to goods and services[19]. CContr does not sanction harassment at work by others than to leave it to the employer, however, CPEDEE receives these complaints, as well. It is true that complaints that focus exclusively on harassment at the workplace, without the involvement of the employer, haven't been received so far, but the presence of such cases is visible. ***Case No 074/14, initiated on the complaint of Ms N.G.-J. regarding the discrimination at work by: harassment, sexual harassment, refusal of reasonable accommodation, incitement to discrimination and victimization (DECISION of June 12, 2014)*** can serve as an example.

12.2.2. Institutional and administrative barriers to the well functioning of CPEDEE

In addition to the legal impediments, CPEDEE is also facing institutional and administrative hurdles:

- **A small administrative staff of 20 people.** The problem is twofold. First, 20 people is too few people to deal with the issue of discrimination and to manage such an important task such as protection against discrimination, ensuring equality, and restoration of rights of those discriminated in RM. Recall that CPEDEE responsibilities are not exclusively limited to reviewing received complaints[20]. On the other hand, CPEDEE experienced difficulties in filling vacancies due to the:
  - Low level of training of specialists in preventing and eliminating discrimination;
  - Low level of knowledge, primarily among law department graduates, of standards and practices in the field[21].

13 CPEDEE to Principal of Îl "Liceul Profesional nr. 1", Chisinau mun., http://instante.justice.md/apps/hotariri_judecata/inst/cac/cac.php, (accessed on November 25, 2014).
14 Activity Report for 2013, Chisinau 2014, http: //egalitate.md/index.php? P = page & id = 850 & l = ro, (accessed on October 19, 2014).
15 Article 10(c), Law 121/2012 on equality.
16 Law on amendment of Article 423[5] of CContr, OG209-216/July 25, 2014 Article 451.
17 Article 65[1] (Discrimination in Education), CContr of RM.
18 Article 54[2] (Violation of Equality on the Labor Market), CContr of RM.
19 Article 71[1] (Discrimination in Access to Public Goods and Services), CContr of RM.
20 Article 12, Law 121/2012 on equality; Article 15, Law No 298/2012 on the Activity of the CPEDEE.
21 http://egalitate.md/index.php?pag=page&id=850&l=ro, (accessed on March 20, 2015).

If we are to make a comparison with the National Council for Combating Discrimination of Romania, upon its establishment in 2002, the administrative staff included 50 positions. Currently, they have 89 positions[22].

- **Only one in five members is a public servant with permanent activity** – the CPEDEE President, and the other four that are gathered for meetings, make it impossible to carry out fully the tasks and duties provided by law. Law 121/2012 expressly provides that "The President of the Council works on a permanent basis. The other Council members shall be convened by the President for meetings[23]".
- **The lack of a deputy president function** leads to the institution's dependence on the President, because in his/her absence the right to sign or stamp documents cannot be transferred to another person. On the other hand, being the only person directly responsible for the administration and management of the institution can hinder the involvement of the President in other segments - representing the institution, business trips, hearings, etc. Whatever the case, this dependence only hurts the institution.
- **Limited budget** for an institution that has just begun its activity - MDL 3,814.50 thousand in 2014[24], while the CPEDEE received MDL 1,885.60 thousand for four months of the previous year[25].

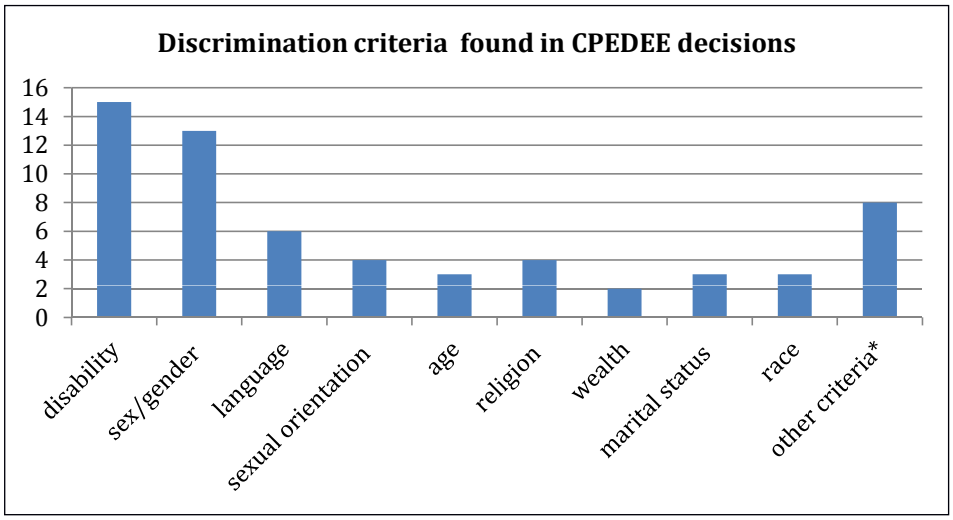
All together, these aspects delay the CPEDEE activity and highlight the institution's inability to come with decisive solutions on cases of discrimination. Additionally, CPEDEE has other time consuming, relevant, and important responsibilities that include analysis and drafting of proposals for the amendment of the existing relevant legal framework, and informing and raising the public awareness of discrimination. This change is impossible as long as the other stakeholders are hesitant.

12.3. CPEDEE practice from the perspective of the most discriminated categories of population

12.3.1. General situation

During 2014, CPEDEE received 151 complaints for review. From this, 61 were declared inadmissible, seven were withdrawn by the petitioners, six were submitted to the relevant body, four petitions required issuance of an Advisory Opinion, and only one complaint was settled amicably. Twelve cases were initiated at their own initiative. In total, 65 decisions were issued, and discrimination was found in 48 cases.[26]

Review of the decisions issued by CPEDEE, show that there are no significant changes in the trends of the most discriminated categories of people. Most received complaints refer to discrimination on grounds of disability and sex/gender, as follows:



22 http://www.cncd.org.ro/files/file/Organigrama%20CNCD%202013.pdf, (accessed on November 19, 2014).
23 Article 11(11), Law 121/2012 on equality.
24 Law No 339 of December 23, 2013 on State Budget for 2014, Annex 2. These amounts were allocated as follows: MDL 1,728.5 thousand for employees' salaries; MDL 352.0 thousand for the remuneration of Council members; MDL 1,243.30 thousand for the payment of goods and services; MDL 435,700.00 thousand for the procurement of fixed assets; MDL 56 thousand for trips abroad.
25 Law No. 249 of November 2, 2012 on State Budget for 2013, Annex No.2.
26 Decisions of CPEDEE: http://www.egalitate.md/index.php?pag=news&id=836&l=ro

12.3.2. Disability discrimination based on the CPEDEE practice and strategic litigation of other stakeholders in the field

There were 14 decisions on disability discrimination that were issued during the reporting period. The most discriminated areas are the following:[27]

Number	No of case	Decision date	Area
1.	030/13	Feb 13, 2014	Public goods and services
2.	047/14	Apr 11, 2014	Public goods and services
3.	052/14	Apr 29, 2014	State qualified legal assistance
4.	090/14	Jun 19, 2014	Violation of human dignity
5.	083/14	Jun 28, 2014	Education
6.	087/14	Jul 4, 2014	Public goods and services
7.	110/14	Sep 9, 2014	At work
8.	122/14	Sep 9, 2014	Education
9.	156/14	Oct 17, 2014	Public goods and services
10.	140/14	Oct 27, 2014	Public goods and services
11.	157/14	Dec 9, 2014	Public goods and services
12.	155/14	Dec 11, 2014	Public goods and services
13.	160/14	Dec 23, 2014	Public goods and services
14.	176/14	Dec 30, 2014	Access to justice

Examples of cases received by CPEDEE are presented below. These illustrate the common subject on the lack of reasonable accommodation and accessibility for people with reduced mobility. Two such cases are presented, the most relevant being (***Case 156/2014 (CA vs. S.R.L. "ADRILUX - COM"), Case 140/2014 (F.V. vs. S.R.L. "OLIMPUS-85"***)) found in the CPEDEE decisions of 2014.

***In Case No 156/2014**, by decision of October 17, 2014 CPEDEE found unanimously that:*

1. *The facts presented in the complaint represent **disability discrimination with regards to the petitioner's access to goods and services,** committed by Club "033" bartender, G.V., according to Articles 1,2 in conjunction with Article 8 of Law No 121 on Equality.*
2. The facts presented in the complaint represent disability discrimination by denying reasonable accommodation, committed by S.R.L. "ADRILUX -COM" towards people with disabilities, in particular towards the petitioner, according to Articles 1, 2 and in conjunction with Article 8 of Law No 121 on Equality.
3. G.V. shall bring his apologies to the petitioner.
4. S.R.L. „ADRILUX – COM" shall undertake reasonable accommodation measures within six months after the issuance of this decision by the Council.[28]

Thus far, CPEDEE has not been informed about actions taken. The likelihood that this will happen is low, given that of the 58 CPEDEE decisions adopted in 2014, only 17 were implemented, 18 appealed, 12 partially implemented, one canceled by the court, and eight have been within the legal implementation period[29].

The implementation period of this decision expires on April 17, 2015. After the expiration of the time period, CPEDEE shall intervene with an injunction requiring that information be submitted on measures taken for the reasonable modification of the venue.

27 Decisions of CPPEDEE: http://www.egalitate.md/index.php?pag=news&id=836&l=ro, (accessed on November 20, 2014).
28 Case 156/14 referred to in the CPPEDEE Decision of October 17, 2014: http://www.egalitate.md/index.php?pag=news&id=836&l=ro, (accessed on November 20, 2014).
29 Report on activity performed in 2014, Chisinau 2015, http://www.egalitate.md/index.php?pag=page&id=850&l=ro, (accessed on March 20, 2015).

***In case No 140/2014**, by decision of October 27, 2014, CPEDEE found unanimously that:*

1. *The facts presented in the complaint represent **disability discrimination with regards to access to public services,** as provided in Articles 1, 2 in conjunction with Article 8 of Law No 121 on Equality.*
2. The facts presented in the complaint represent disability discrimination by denying reasonable accommodation of building and services, as provided in Articles 1, 2 in conjunction with Article 8 of Law No 121 on Equality.
3. S.R.L. "Olimpus-85" shall undertake reasonable accommodation measures within six months after the issuance of this decision by the Council.
4. S.R.L. "Olimpus-85" shall inform the Council within ten days since the issuance of this decision, on taken and planned measures for the implementation of the decision, according to Article 15(5) of Law No 121.

The CPEDEE decision was challenged in court, but the request was withdrawn for several reasons, the most important reason being that the lawyer of S.R.L. "Olympus-85" did not submit the necessary documents attesting that Anatolii Pervanciuc had the necessary powers granted by S.R.L. "Olympus-85". We don't know what would have happened if the lawyer of S.R.L. "Olympus-85" submitted the requested documents, or if he appealed the court resolution of February 23 to the Court of Appeal.

Unfortunately, an overview of the CPEDEE decisions implementation reveals that sanctioning powers are necessary, otherwise the situation cannot be altered besides litigation in court, a practice already used by many other stakeholders in the field.

This was done by Nondiscrimination Coalition that, based on both the worrying statistics on the violation of the rights of persons with disabilities, and on the calls received at the Non-Discrimination Line 08.003.8003 sued, in cooperation with A.O. "MOTIVATIE", two major players in the field of health care and other health services - SRL Birivofarm (Felicia pharmaceutical network) and in the banking and financial field - BANCA DE ECONOMII S.A.

In order to resolve the disputes and in particular the violation of Article 8(d) of Law No 121 of May 25, 2012 on Equality, which states that: *"any form of discrimination on access to banking and financial services is prohibited"*, and Article 8(b) of Law No 121 of May 25, 2012 on equality, stating that: *"any form of discrimination on access to health care and other health services is prohibited"*. In order to complete the initiated trials, the Parties agreed to conclude transactions of reconciliation, with clearly stated conditions[30], such as:

- Banca de Economii S.A./SRL "Birivofarm" ensures the reasonable accommodation of buildings that they own or lease, where the agencies of the Bank are located, by building access ramps, as per section 5.3.1 of Construction Standards, Accessibility of Buildings and Constructions for Persons with Disabilities NCM C.01.06-2007 (MCH 3.02-05-2003) from RM and other practices successfully implemented in the EU (e.g. call button) only if the construction of access ramps in some buildings is not technically possible - within 36 months since the date when the transaction is confirmed by the court;
- Banca de Economii S.A./ SRL "Birivofarm" informs in writing on a quarterly basis AO "Coaliția Nediscriminare" about each building reasonably accommodated by the construction of access ramps according to the above-mentioned standards.

The failure to fulfill the obligations by the set deadlines may serve as a ground for suing without notice, as summary proceedings, according to Articles 344-354 of Civil Procedure Code of RM.

30 http://nediscriminare.md/litigare-strategica/

12.3.3. Gender/sex discrimination based on the CPEDEE practice and strategic litigation of other stakeholders in the field

On the basis of gender/sex 13 decisions were issued by CPEDEE during the reporting period. The reviewed cases revealed the following areas, where gender/sex discrimination is present[31]:

Number	No of case	Decision date	Area
1.	028/13	Jan 21, 2014	Exercise of parental rights
2.	030/13	Feb 13, 2014	Public goods and services
3.	034/13	Feb 13, 2014	Exercise of parental rights
4.	050/14	Feb 22, 2014	Discrimination at work
5.	041/13	Feb 24, 2014	At work
6.	048/14	Feb 24, 2014	Public goods and services
7.	054/14	May 1, 2014	Exercise of parental rights
8.	074/14	Jun 12, 2014	At work
9.	105/14	Jun 19, 2014	At work
10.	087/14	Jul 4, 2014	Public goods and services
11.	108/14	Jul 28, 2014	Violation of human dignity
12.	125/14	Jul 28, 2014	Equal access to protection under the law
13.	098/14	Oct 30, 2014	Access to justice and equal protection under the law

A crucial issue identified by CPEDEE and the Nondiscrimination Coalition is the incite to discrimination and discrimination at work by placing job advertisements specifying the conditions and criteria that exclude or favor certain categories of persons, contrary to Article 7(2)(a) of Law No 121 on Equality. Since 2013, the Non-Discrimination Coalition has sued several web pages such as ***"Makler", "Ilcotex-Prim" Tandem, RNR Group SRL and SRL Inova Group*** *(owners of website: alljobs.md; rabota.md; munca.md).*

Case 41/2013 was initiated by CPEDEE at its own initiative against websites (www.) 999.md , jobinfo.md, joblist.md, rabota.md, alljobs.md, moldovajobs.md, munka.md, birjatruda.md, makler.md and SRL "CAROLINA BULAT", SRL "BULAT-GRUP", SRL "CASTOMAGIC", ICS "LEOGRAND" SRL, SRL "REJANS-PRIM", SRL "BRIGHTS LAND", with the issuance of the Decision of February 24, 2014, in which CPEDEE correctly ascertains discrimination.

Unfortunately, the change primarily only occurred in cases brought to court by the Nondiscrimination Coalition. This ended with transactions of reconciliation, agreed upon before CPEDEE took initiative, through which defendants accepted all the conditions forwarded by the Nondiscrimination Coalition[32].

It is of the utmost importance to note that the strategic litigation in court is far more effective than submitting the case to the Council, as the difficulty and cost to enforce the sanctions, which in turn makes it impossible to use it on every occasion. Empowering CPEDEE with the right to impose sanctions is more than an imperative priority and thus, administrative sanctioning of acts of discrimination is one of the minimal powers that the national institution for preventing and combating discrimination needs to be vested with.

The situation with discrimination is not any better in the Transnistrian region, however, CPEDEE has not thus far received any complaints from the left bank of the Nistru river.

31 CPPEDEE Decisions: http://www.egalitate.md/index.php?pag=news&id=836&l=ro, (accessed on November 20, 2014).
32 http://nediscriminare.md/companiile-makler-si-ilcotex-prim-promoveaza-egalitatea-si-non-discriminarea/

12.4. Deficiencies of the RM law on discrimination

Equal opportunities and prevention of discrimination is a fundamental principle of any democracy that has experienced large scale development. It stirs intense debates in modern societies and its implementation remains an ongoing challenge.

Development of a critical mass of citizens who could promote acceptance of and respect for differences in their daily behavior is not one that changes overnight in any society. It is one that requires analysis and recognition of its own values and fears.

Recently a common claim is that RM law is high-quality, but implementation of that law is poor. However, this analysis found the non-discrimination law still has severe drawbacks.

In the following section the focus will be on several discriminatory aspects related directly to the Law on Equality and CContr.

12.4.1. Law No 121 on equality

The discriminatory provisions in RM law are a relevant source of discrimination. Under Law 121, one of the primary functions of CPEDEE is to review the compliance of the law in force with non-discrimination standards. A part of the discriminatory provisions of the current law were identified while examining the petitions received by CPEDEE. Others have been identified by reviewing the law, performed by the Nondiscrimination Coalition in partnership with CPEDEE.

12.4.1.1. Lack of a definition for "racism" in Law No 121 on equality

The European Commission against Racism and Intolerance (ECRI) recommended that RM authorities adopt appropriate legislation that would prohibit racial discrimination in a precise and thorough manner. This recommendation is listed in the third and fourth report, published in 2013[33]. If the racial discrimination is prohibited by Articles 1, 2 of Law No 121 on Equality, then the definition of "racism" is missing. Based on the General Policy Recommendation No. 11 of ECRI, racism means *believing that a reason such as race, color, language, religion, nationality, or ethnic origin justifies the disregarding of a person or a group of persons, or justifies the notion of superiority of a person or group of persons.* This definition was reported to Renato Usatai's political discourse that was made public at a press conference, and CPEDEE identified as racist - *see Decision of 13 October 2014 on case 159/14, initiated against Renato Usatii at own initiative*[34].

12.4.1.2. Lack of definition of "sexism" in Law No 121 on equality

CPEDEE issued two decisions that recognized the image of women in advertising as sexist. The Decision of February 24, 2014 on case No 048/14, initiated on its own initiative against Î.S. "Şcoala Auto de Stat" and Radio Plai[35], and the Decision of July 28, 2014 on case No 108/14, initiated against SRL "Bucuria"[36] recognizes that the business entities are responsible for sex-based discrimination by developing and distributing sexist advertisements and images on boxes of the chocolates "Cuconada".

As a guide for its analysis, CPEDEE used the National Programme on Ensuring Gender Equality for 2010-2015, approved by Government Decision No 133 of December 31, 2009 which stipulates, as a means for public awareness: - "a) to encourage the presentation of positive images of women and men and of equal status and responsibilities in public and private areas, b) to combat sexist images in advertising and mass media, c) to raise awareness of human rights among women and men, girls and boys". The concluding observations of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), adopted on October 18, 2013 after examining the combined fourth and fifth periodic report, recommends to RM in points 17 - 18 "[...] *b) To develop a comprehensive strategy across all sectors, targeted at women and men, girls and boys, to overcome patriarchal and gender-based stereotypical attitudes concerning the roles and responsibilities of women and men in the family and in society [...].*"

33 http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Moldova/MDA-CbC-IV-2013-038-MDA.pdf, (accessed on November 20, 2014).
34 http://egalitate.md/index.php?pag=news&id=836&rid=523&l=ro, (accessed on November 24, 2014).
35 http://www.egalitate.md/media/files/files/decizia_cauza_048_radio_plai_7147302.pdf, (accessed on November 24, 2014).
36 http://egalitate.md/index.php?pag=news&id=836&rid=501&l=ro, (accessed on November 24, 2014).

12.4.2. Contravention Code of RM

12.4.2.1. Discriminatory Character of Article 54(4)[37] CContr of RM

In its fourth report, published on October 15, 2013, ECRI stated that some minority religious groups still have problems registering their religious community and openly practicing their beliefs. ECRI noted that the provision of Article 19(1) (d) of Law No 125, which requires the signatures of 100 RM citizens to register a religious community is discriminatory. However, ECRI stated that Article 54(4) of CContr unduly penalizes only foreign citizens for manifesting their religion in public places, this action being prohibited without justification.

12.4.2.2. CContr does not contain provisions on preventing and combating hate crimes

The grounds for discrimination are not incriminated on their own, but only in adjacent circumstances for certain offenses, which contributes significantly to a high level of impunity in the field.

CPEDEE found that the acts of hate that do not result in considerable physical or material damage, as described by law and implemented in practice, are qualified in two provisions of CContr as "slight bodily injury" or "hooliganism". CContr does not include the grounds of hate, or at least prejudice, as being relevant in these two articles, which leads to partial investigation of the attacks as ordinary offenses. With the non-inclusion on the grounds of hate or prejudice, the CContr also provides symbolic sanctions that do not restore justice in an effective way following the crimes motivated by hate or prejudice[38].

12.4.2.3. CContr of RM does not penalize the acts of victimization, incitement to discrimination, racial segregation, direct and indirect discrimination in other areas than education, employment, and access to goods and services

12.4.2.4. CContr does not sanction work place harassment by other persons than the employer

CONCLUSIONS

The past three years have been important for those working in the field of human rights and non-discrimination, as on May 25 2012, the Parliament of RM adopted the Law on equality, which has been a law in development since 2005-2006. Its adoption was an important and necessary step to prevent and eliminate discrimination and ensure equality, but not enough to change the negative indicators registered before the adoption. As a result, the National Human Rights Index still show troubling results.

The institutional framework for preventing and combating discrimination and ensuring equality was established on the basis of Law 121/2012, which aims at ensuring protection against discrimination and equality of all persons who believe to be victims of discrimination. We can say that the Parliament has check marked its commitment taken during the 19th session of the UN Human Rights Council.

However, after almost two years of activity, a number of legal, institutional and administrative impediments have been identified, which leave the CPEDEE unable to solve cases of discrimination.

CPEDEE does not have any power to impose sanctions, which places it at the discretion of courts, where the situation has failed to progress, despite the provided trainings. Thus, there are deficiencies in the application of sanctions both concerning the duration of complaints resolution and the court judgments.

Though recent claims that RM law is strong, but implementation poor, this report found that the non-discrimination law still has obstacles that need to be overcome. Both Law 121/2012 and CContr require revisions, amendments, and addenda to grant full protection to all persons who believe to be or are victims of discrimination.

Moreover, it is necessary to involve all relevant stakeholders and tremendous political will to prevent and eliminate discrimination amongst all categories of people, in particular persons with disabilities and women.

37 Article 54 § (4) of CContr of RM: *(4) "The conduct of religious activity by foreigners in public places without preliminary notification of the Mayor's Office from the respective settlement shall be sanctioned by a fine of 40 to 50 conventional units. [...]".*

38 Activity Report for 2013, Chisinau 2014, http://egalitate.md/index.php?pag=page&id=850&l=ro, (accessed October 19, 2014).

RECOMMENDATIONS

1. Amend the Law 121/2012 which would allow CPEDEE the right to impose sanctions;
2. Add the terms "sexism" and "racism" in Article 2 of Law 121/2012;
3. Given the complexity of cases received by CPEDEE, change the complaints examination procedure;
4. Amend Article 423[5] of CContr by extending the areas where CPEDEE may ascertain offenses;
5. Increase the administrative staff with appropriate funds from the state budget;
6. Change the status of the four members of CPEDEE, expressly stating that they must be CPEDEE employees with the status of civil servant, and have their salaries paid from the state budget. At least three of the five members should hold the status of civil servants with permanent activity;
7. Introduce the position of deputy president to ensure the presence of another person who may act as President during his/her absence for various reasons;
8. Increase the CPEDEE annual budget;
9. Ensure continuous training of CPEDEE administrative staff in preventing and combating discrimination;
10. Exclude or rephrase Article 54(4) of CContr of RM;
11. Amend the CContr by adding provisions on preventing and combating hate crimes;
12. The Concerned public authorities shall implement the CPEDEE recommendations after the issuance of decisions;
13. Empower CPEDEE with the right to impose administrative sanctions for acts of discrimination.

CHAPTER

13

DOMESTIC VIOLENCE

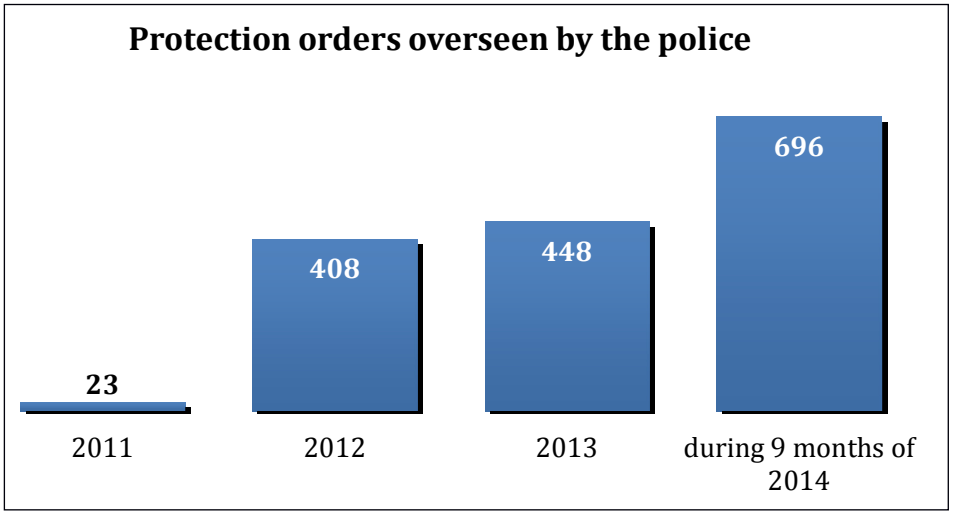
Author: Lilia Potîng

Executive Summary

This chapter addresses the most pressing issues in the area of preventing and combating domestic violence in the Republic of Moldova (RM) in 2014.

Although there was an increase in the number of complaints registered by the authorities on cases of domestic violence in the reporting period, thousands of RM women continue to experience violence. Even if the increase in complaints is due to the increased awareness on the rights of victims of domestic violence, popular awareness of the issue of domestic violence and that it represents a serious violation of human rights remains low.

Diagram 1



There are serious gaps and problems in the national legal framework in enforcing legislation. Shelters for victims of domestic violence are insufficient and there are a number of shortcomings in assisting and protecting domestic violence victims and available rehabilitation services for aggressors.

As mentioned in the previous report[1], cases of domestic violence are not properly investigated, protection orders for victims are not issued or respected by the perpetrators, and victims are left without effective protection.

The authorities continue to apply the legislation unevenly when applying sanctions to offenders for violations of protective measures, and the legal framework for holding them accountable for acts of domestic violence that result in minor or slight injuries.

In order to overcome existing problems, it is absolutely necessary to synchronize the national legal framework to European standards on preventing and combating domestic violence, and to sign and ratify the Council of Europe's Convention on Prevention and Combating Violence Against Women and Domestic Violence[2].

1 http://promolex.md/upload/publications/ro/doc_1403006808.pdf
2 Istanbul Convention on Prevention and Combatting Violence Against Women and Domestic Violence of 2011, in force as of August 1, 2014.

13.1. Failure of the authorities to provide immediate protection to victims of domestic violence due to faulty legislation

When domestic violence occurs, especially at night, and police are called, there is little they can do to help the victim. They can isolate the victim from the aggressor for up to three hours, which by law is the longest a person may be detained at the police station. After three hours, the police must release the abuser so as not to infringe on their rights. Typically, in this short amount of time, the victim is unable to reach a shelter. As it can unfold in most cases, the abuser returns home with more anger and the danger persists that new, more serious violence acts may be committed against the victim.

In this context, we believe that the absence of centers and emergency rooms for victims of domestic violence and absent procedures for issuing emergency restraining orders are serious issues in this regard that must be considered.

Provided that shelters for victims are not available in every district center of the country and that, to qualify for placement, the victims must submit certain documents, including medical certificates, we are in a situation where, in cases of crisis and imminent danger, the victim cannot be taken anywhere.

On the other side of the issue, in order to compel the aggressor to leave the domicile, one needs a protection order that would expressly provide for that requirement. The issue however, is that protection orders are issued, at best, in 48 hours time. As well, the victim cannot apply for a medical forensic examination in the middle of the night and it takes time to conduct the examination and write the report. The application too, for a protection order, may also take several hours. Lastly, the term for examination of the application by the court, by law, can take up to 24 hours.

We believe that empowering the police to issue an emergency restraining order for a limited period would provide a real and immediate protection to victims of domestic violence. A restraining order would increase the victim's protection by allowing the police to intervene immediately and remove the abuser from the home.

Moreover, if necessary, while the restraining order is in force, the victim may prepare an application for a protection order for a longer period to be examined by a court of law.

We would also like to draw attention to the unclear role of the inspectors. Domestic violence most often occurs in homes, where police cannot enter without a warrant for searching the premises and establishing all the case circumstances. Article 12 of the Criminal Procedure Code (CrPC) provides for the inviolability of the home, and according to Article 279 of the CrPC, access to a home is done only with the residents' notification of possible consequences.

According to Article 118 of the CrPC, a search may be carried out only with the written consent of the owners or people who are physically in the house. Thus, there are situations when, upon reaching the location, the police cannot enter the house because the abuser refuses to grant them access. Entering the house can be made with the authorization of an instruction judge, under Article 301 of the CrPC (warrant), but obtaining the warrant takes time. If a police officer enters the house despite the consent of the offender, he or she may be prosecuted under Article 179 of the CrPC, which provides that illegal investigation actions may be punished with two to five years in prison.

In order to streamline the actions of providing immediate protection to victims of domestic violence, it is absolutely necessary to harmonize the national legal framework on preventing and combatting domestic violence to European standards, namely the Council of Europe's Convention on Prevention and Combating Violence against Women and Domestic Violence. We therefore believe that RM must sign and ratify this international document.

13.2. Inefficient collaboration between relevant authorities in preventing and combating domestic violence cases

Under the current legislation[3], local government authorities in charge of preventing and combating domestic violence are the sections/departments of social assistance and family protection, departments of education, youth and sports; healthcare organizations, and divisions of internal affairs.

Under Art.8 (2) of Law 45 on prevention and combating domestic violence, local government authorities shall establish multidisciplinary field teams to this end. Discussions with social workers and the police have revealed that in most cases, these teams exist solely on paper. As stated by our questioners, cases exist when team members do not even know each other, and thus, have never met in session.

3 Art.7 p.(1) let.b) of Law 45 on prevention and combatting domestic violence.

An additional finding is the failure of teachers to report cases of domestic violence that affects minors. School teachers come in direct contact with the students, and they can easily detect if a child was physically or verbally abused (bruises, scratches, etc.) or observe changes in their behavior (the student becoming more shy, is easily startled or, on the contrary, becomes more aggressive, etc.)

As for cooperation with other authorities, we also found that doctors do notify police in cases where the victim ends up in a medical institution and has visible marks of violence.

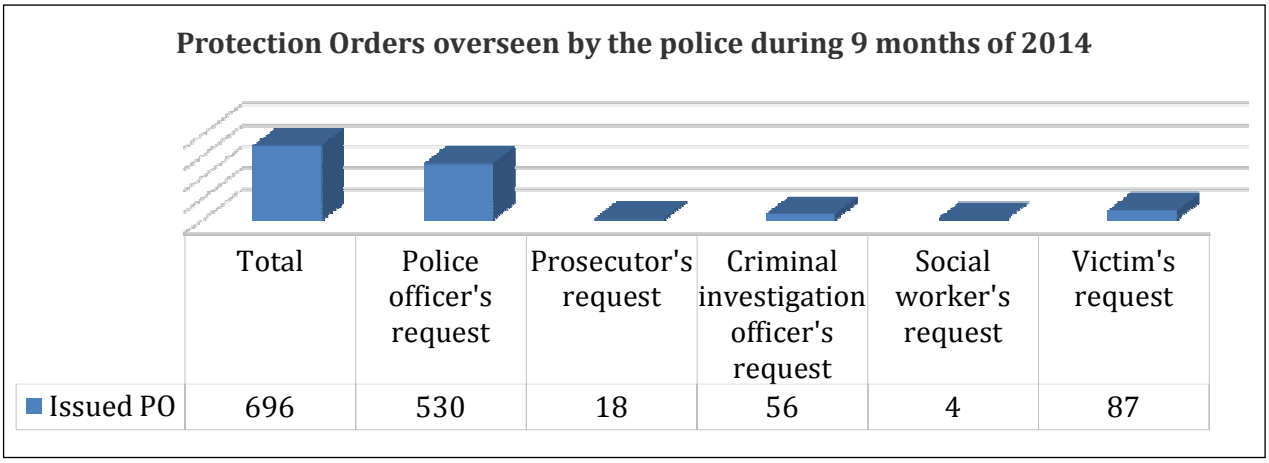
At the same time, it was found that neither police officers nor social workers interact much with one another when dealing with domestic violence in the same jurisdiction. Social workers may become aware of a case of domestic violence but do not inform police in their locality, and do not address the case by getting involved. If the victim complains to the responsible police officer, social workers let police deal with the issue, and believe that they should not be involved, even if by law they are required to contribute to the protection of victims, including by working with the victim. The police record abusers from families where scandals and domestic violence occur in a special register and, during a year, police officers conduct certain preventive measures with these abusers. For their part, social workers could help prevent acts of domestic violence by working or conducting similar preventive actions with the victims or potential victims.

The lack of cooperation between police officers and social workers is observed in cases of enforcement and supervision of the enforcement of protection orders. In most cases, social workers are not even aware of the existence of a protection order and if it has been issued to the victim. If they do, they minimize their actions, arguing that the police are responsible for the enforcement of protection orders and working with the abusers. In defense of social workers and contrary to the law, courts only submit protection orders for enforcement to the police, and not to social workers. On the other hand, social workers show zero interest in working with victims of domestic violence. Therefore, after the violence committed, perpetrators are worked with at a greater rate than are the victims.

According to responses received from 30 social aid and family protection divisions (SAFPDs) at the regional/district level, during the first nine months of 2014, social workers oversaw the enforcement of 426 protection orders for victims of domestic violence. Seven regional/district SAFPDs[4] did not provide any answer to the information requests submitted by Promo-LEX, and five regional/district SAFPDs[5] provided comprehensive responses, which included general data for the time period 2012-2014. This information is not reflected in this report.

According to official data of the General Police Inspectorate (GPI) of the Ministry of Interior (MOI), during the first nine months of 2014, the police oversaw 696 protection orders.

Diagram 2



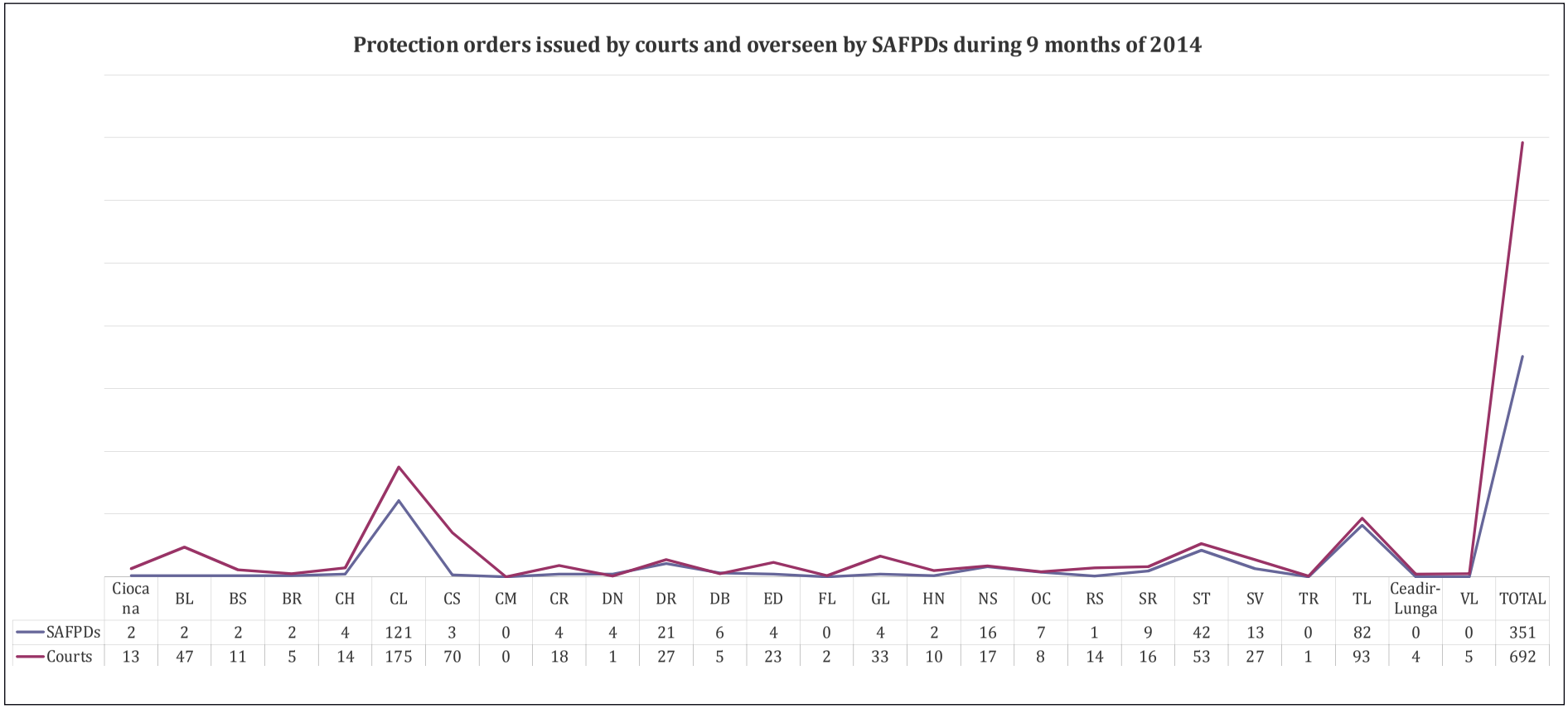
4 Comrat, Ungheni, Leova, and sectors Buiucani, Centru, Botanica and Riscani in Chisinau munic.

5 General Social Security Division Chisinau, Floresti, Ialoveni, Rezina and Soldanesti.

At the same time, according to official data received from 37 local courts[6], during the first nine months of 2014, 771 protection orders were issued for victims of domestic violence.

Following the analysis of data received from SAFPDs and courts in the same sector/district, we can conclude that the courts have failed to send 341 protection orders to SAFPDs, and, respectively, social workers failed to oversee their implementation[7].

Diagram 3



	Ciocana	BL	BS	BR	CH	CL	CS	CM	CR	DN	DR	DB	ED	FL	GL	HN	NS	OC	RS	SR	ST	SV	TR	TL	Ceadir-Lunga	VL	TOTAL
SAFPDs	2	2	2	2	4	121	3	0	4	4	21	6	4	0	4	2	16	7	1	9	42	13	0	82	0	0	351
Courts	13	47	11	5	14	175	70	0	18	1	27	5	23	2	33	10	17	8	14	16	53	27	1	93	4	5	692

6 Courts of Sangerei, Anenii Noi and Orhei failed to reply, courts of Cantemir the Riscani sector court in Chișinău offered general data for the period 2012 – September 2014.

7 Based on the data received from the courts and SAFPDs of Ciocana sector in Chisinau, Balti, Basarabeasca, Briceni, Cahul, Calarasi, Causeni, Cimislia, Criuleni, Donduseni, Drochia, Dubasari, Edinet, Falesti, Glodeni, Hancesti, Nisporeni, Ocnita, Riscani, Soroca, Straseni, Stefan Voda, Taraclia, Telenesti, Ciadir-Lunga and Vulcanesti.

13.3. Refusal to issue protective orders / delay in issuing the order

Any victim of domestic violence may submit an application to the correct court requesting the issue of a protection order, and the prosecutor, social worker, or a police officer may file the application at the victim's request if the victim cannot do that in person. In crisis situations, family members, officials, and professionals in contact with the family, tutors, and others who have information about an imminent danger or acts of violence already committed, may also file applications for protection orders. The judge has 24 hours to examine the application and issue a decision either admitting or rejecting it. In case of admission, the court issues a protection order for a period not to exceed 90 days, which contains certain restrictive measures against the aggressor.

Although the law requires courts to issue decisions on protection orders for victims of domestic violence in no more than 24 hours, in practice, this term was not always observed, with decisions being delayed for various reasons, such as a judge request for additional evidence, suspended hearings when the aggressor was absent, or incidental circumstances of the judges, such as the need to mandatorily participate in the national assembly of judges.

During the reporting period, it was found that the courts usually refused to issue protection orders in cases when only psychological violence was involved. As indicated in the previous report, two problems were identified in this regard: the hostile attitude of judges to statements of the victim, and the victim's inability to obtain a psychological examination report - the only bodies authorized to issue such reports are the National Center for Prevention of Child Abuse (in cases regarding minors), and the clinical psychiatric hospitals, which does issue psychiatric-psychological expertise reports, that focus on the psychiatric and not psychological aspect of the problem.

Victims of domestic violence that claim psychological violence can address a psychiatric institution where they can pass a psychiatric-psychological examination and get help depending on the case. In such situations, the help provided is recorded in the patient's medical records, and not in a psychological expertise report. Psychologists working in clinics do not have the status of judicial experts and the clinical psychologists working in pathological psychology laboratories of the psychiatric hospital are trained and certified in medicine and focus on medical psychology. Under the current legislation[8], the clinics can perform forensic psychiatric expertise and, if necessary, the examined persons can pass a psychological examination. However, under Article 87 para (2) of the CrPC, the opinion of the clinical specialist cannot substitute a judicial expert's conclusion.

The situation of appeals against rulings of the first tier court on the admission or rejection of applications for issuance of protection orders has also not changed. Courts of appeal examine appeals on such rulings for months in a row. As a result, the victim is not granted immediate protection, although the danger to their life and physical and psychological examined after the expiry of the protection order even in absence of cases of domestic violence (for example, in the case of families where scandals occur frequently). In this case, the interested party must abide by a restriction measure prior to the Court of Appeal decision. We believe that such requests should be addressed more expeditiously.

13.4. Uneven application of the law in respect of the sanctioning of perpetrators for violation of protection measures

The local police inspector, in collaboration with the social worker are responsible for notifying the aggressor about the protection order issued against them, its implementation, and the liability for failing to observe it – with the exception of pecuniary protection measures provided for by Art.318/4 para. (2) e) and f) of the Civil Procedure Code (CPC), the execution of which is the responsibility of court enforcement officers (bailiffs).

Under the current legislation, if the perpetrator violates or fails to observe the protection measures, they are liable for the following sanctions: for the first violation, they would receive a contravention sanction under Art.318 of the Contraventions Code (CContr); in repeated violations, after the aggressor was penalized under the CContr, he or she would be held criminally liable under Art.320 of the Criminal Code (CrC) of RM.

According to Art.421 of the CContr, a bailiff shall establish the offense referred to in Art.318. Thus, the finding agent for the contravention of violation of protection measures is the court enforcement officer. In this case, bailiffs act both as an enforcement institution (Art.318[4] para. (2) let. e) and f) of the CPC), and as an inspector/finding agent establishing a violation of the enforcement of issued protection orders.

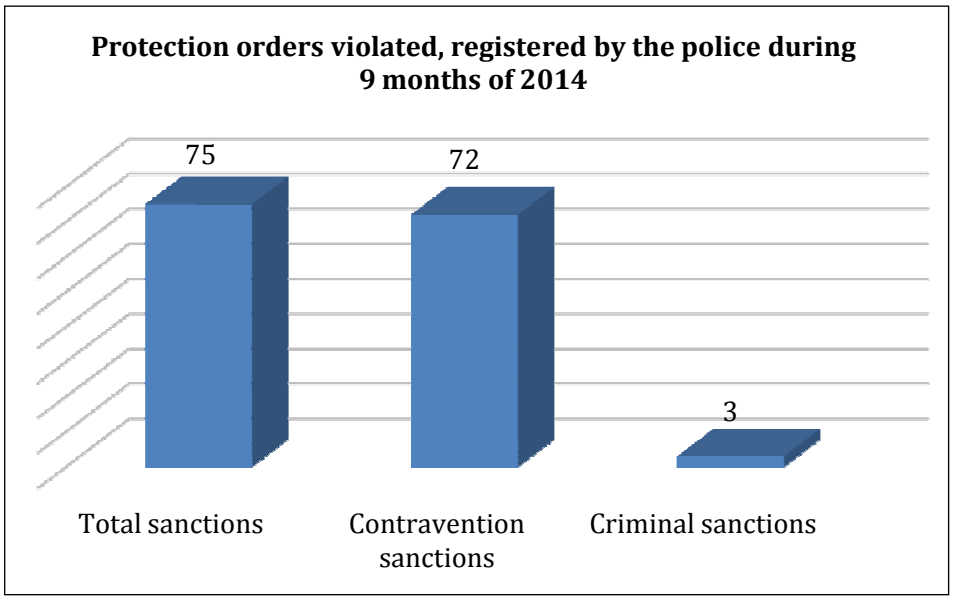
8 Law 1086 of June 23, 2000 on judicial expertise, technical scientific and forensic findings.

Art. 399 let. (2) of the CContr states that a finding agent establishes a violation, while penalties and sanctions for the respective violations are the competence of other bodies, with the inspector's responsibility being limited to submitting to them copies of respective protocols.

Promo-LEX found inconsistencies in applying legal sanctions to offenders for the violation of protection measures, as follows:

- The police collect documentation materials for a contravention file and send it to the bailiff with a proposal to open a contravention case against the aggressor under Art.318 of the CContr. The practice then varies: if the response is positive, the bailiff fills in a protocol on the offense and submits the application to court requesting a sanction, and the court rules on the case. The negative situation occurs when the bailiff refuses to file the offense protocol to court on grounds that the enforcement of protection orders is not in his competence. Note that neither the Court Enforcement Code nor Law 113 of June 17, 2010 on Bailiffs provides for a connection between the bailiffs' competence as a finding agent and as an enforcement agent.
- Under Art.318 of the CContr, police may collect documentation materials and file the contravention case directly to the court, requesting the sanctioning of the aggressor. In such cases, some courts accept the police application, and punish the aggressor, while others dismiss the cases on the grounds that the police lack finding agent competences in these circumstances.
- Under Art.318 of the CContr, police collect documentation materials for a contravention file and submits it to the prosecutor, requesting that a contravention case be filed against the aggressor. The prosecutor then fills in a contravention protocol and submits it to the court. With this information the court, then decides on the contravention case and on the application of sanctions.

Diagram 4



Another problem identified is the procedure for examining contravention cases filed against domestic aggressors under Art.318 of the CContr, which is a common procedure that can last longer. In such situations, police cannot start criminal proceedings under Art.320 of the CrC because there is no decision of applying a contravention sanction to the aggressor.

In effect, while the victim is issued a protection order, the order does not provide the necessary protection, existing as only a piece of paper and as a result, in many cases the perpetrator goes unpunished for violating the order.

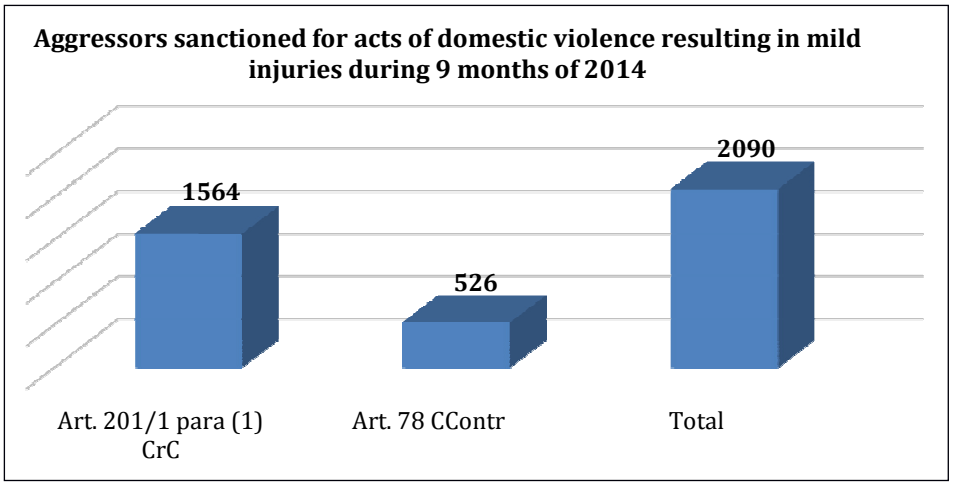
13.5. Uneven practice on punishing perpetrators for committing acts of domestic violence

Although attention was drawn in previous reports to the incorrect application of the law to the holding of perpetrators accountable for committing acts of domestic violence that result in infliction of physical pain or psychological distress (Article 201/1, paragraph 1 of the CrC), the issue remains unresolved.

While sector police officers record the complaints of the victims of domestic violence in their Register No. 1 and pass them along to the prosecution and investigation agencies to be examined under Art. 274 of the CrPC, these bodies issue letters of refusal to initiate criminal proceedings, and start contravention proceedings, prosecuting the aggressors for acts of physical or psychological violence resulting in mild injuries or distress.

As a result, it was found that the acts of domestic physical violence resulting in intentional infliction of mild bodily injury are documented as mere administrative offenses, and are investigated as contravention cases under Article 78 of the Civil Code (CC) to the detriment of the provisions of Article 201/1 para. (1) of the CrC.

Diagram 5



The reporting period has shown that courts continue to apply criminal law unevenly when dealing with cases of domestic violence. Due to this, Promo-LEX repeatedly asked the President of the Supreme Court of Justice (SCJ) to submit a proposal of the SCJ Plenum on issuing a decision or explanatory recommendation concerning the judicial practice of applying legislation regulating sanctions for cases of domestic violence.

13.6. Shortage of rehabilitation centers for victims of domestic violence and services for aggressors

Rehabilitation centers for victims of domestic violence are not available in all district centers of RM. Currently, there are 16 centers across the country that can provide shelter and rehabilitation services to victims of domestic violence, of which only two can provide shelter regardless of the residence/domicile of the victim. Each center[9] is in Chisinau and in order to get a place there, victims need money to travel from their hometowns to the shelters. The remaining centers are, in fact, maternity centers located in various towns throughout RM and which can provide shelter for victims of domestic violence only if they are domiciled or resident in the respective administrative-territorial area. Victims who come from other places can benefit from placement in these centers only after the intervention of the SAFPD, after a lengthy procedure, and only if there are available seats. The number of places offered by the centers is quite small compared to the number of victims who are in need of shelter. In such cases, the victims are essentially deprived of the opportunity to obtain shelter, and are forced to return home to the abuser, or spend the night with relatives, friends, or on the street.

Rehabilitation centers for victims of domestic violence face several problems, such as lack of resources, absent the state support for assistance services provided by NGOs, and the difficulty to protect the victim if the abuser tries to enter the center, as the state does not ensure the security of these facilities.

9 The Association Against Violence „Casa Marioarei", and The Association and Center for Assistance and Protection of Victims and Potential Victims of Trafficking of Human Beings.

In addition to insufficient rehabilitation services for victims of domestic violence, there is also an insufficiency of qualified specialists in RM in this field.

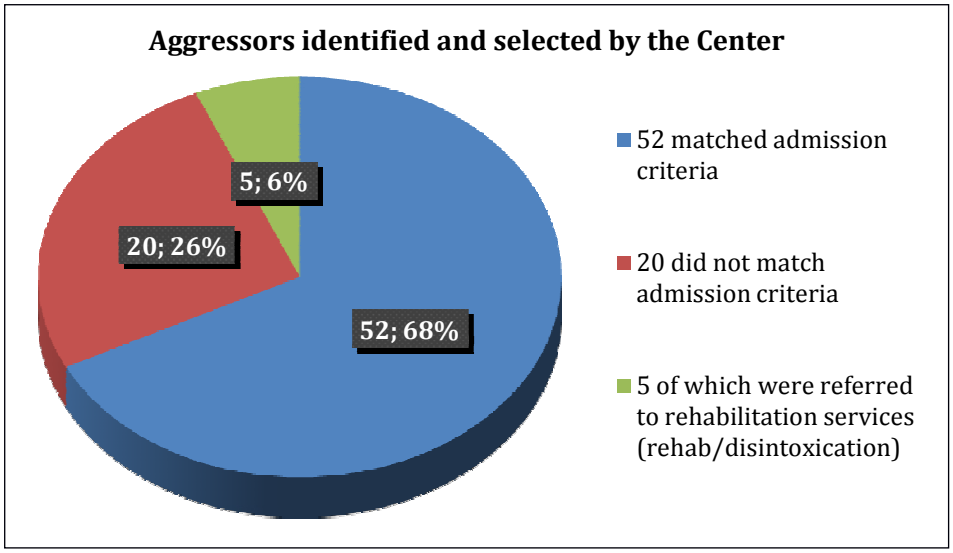
Regarding rehabilitation services for the perpetrators, note that on June 30, 2014, the Government passed Decision no. 496 approving the Regulation for organization, functioning, and minimum quality standards of the Center for Assistance and Counseling for family abusers.

A news broadcast on June 12, 2014[10] informed that the Government of RM would create ten centers for family abusers, however, no mention of a deadline was given. To date, in RM there is only one center where abusers can receive specialist treatment – the Aid and Counseling Center for Domestic Abusers in Drochia.

The Drochia Center identifies, selects, assists, and ensures follow up monitoring of family abusers. Note that alcohol and drug addicted abusers and those with mental illness cannot benefit from the Center's services. They are initially sent to detox and rehabilitation, and afterwards enrolled in the program at the Center.

The Center identified 72 family aggressors, 52 of which met the criteria for admission to the provided assistance programs.

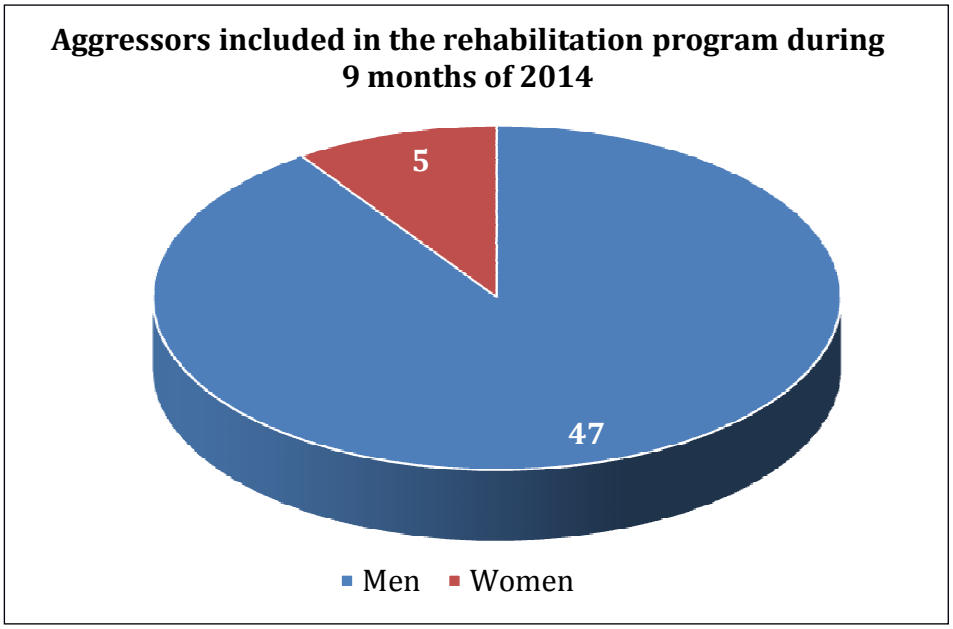
Diagram 6



10 http://www.publika.md/consiliere-psihologica-pentru-agresori--guvernul-va-crea-zece-centre-pentru-combaterea-violentei-in-familie_1966721.html

Throughout 2014, 52 domestic aggressors, that include 47 men and 5 women, enrolled in the rehabilitation program and benefited from the services provided at the Center.

Diagram 7



Of the 52 offenders enrolled in the program in 2014[11], 22 completed the rehabilitation program, 19 are still in process, eight quit the rehabilitation services, and three were eliminated from the program.

The Aid and Counseling Center for Domestic Abusers in Drochia have helped family abusers from Drochia, Briceni, Floresti, Soroca, Riscani, Donduseni and Chisinau and Balti. 60% of the abusers are from the rural areas and 40% - from cities.

The post-monitoring stage for domestic aggressors lasts three months after the completion of the rehabilitation program. During 2014, 27 beneficiaries were monitored at the end of the rehabilitation program, of which only 11 successfully graduated from the program.

11 By the end of November 2014.

CONCLUSIONS

After more than six years when special legislation in this area went into force, Promo-LEX has found that the cooperation of the authorities in preventing and combating domestic violence cases remains inadequate. Social workers seldom get involved in dealing with domestic violence perpetrators and victims, leaving the responsibility to the police. The courts, contrary to law, send protection orders for execution only to police inspectorates, and not to social workers, so that in most cases, the latter are not even aware of the existence of protective measures.

At the same time, we note that due to the gaps in legislation, competent authorities cannot promptly intervene to ensure real and effective protection to the victim by immediately isolating them from the aggressor. This is due to the lack of centers and emergency rooms for victims of domestic violence, and missing regulations on emergency restraining orders that could be issued immediately by police.

Problems remain with the implementation of special legislation on domestic violence. Courts do not meet the 24 hour deadline of to rule on an application for a protection order release, and judges refuse to issue orders to protect victims of domestic violence in cases of alleged psychological violence.

We also found that legal provisions on sanctioning offenders for violations of protection measures and holding them accountable for committing acts of domestic violence that result in minor or slight injury are applied unevenly.

There are only 16 rehabilitation centers for victims of domestic violence in RM, and their capacities are limited. Moreover, the procedure of admitting victims that live or reside outside the administrative-territorial areas pertaining to these centers is too lengthy and complicated.

Rehabilitation services for aggressors are insufficient, as there is currently only a single institution of this kind in RM.

Victims of domestic violence from the Transnistrian region do not have any protection, since there is no «law» in the region governing this issue. If victims of domestic violence were to seek help from the constitutional authorities (courts) for a protection order, its enforcement could not be ensured in the eastern region of RM because the government does not have effective control over that territory.

RECOMMENDATIONS

1. Raise the national legal framework to European standards to prevent and combat domestic violence. Signing and ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence;
2. Establish rules of cooperation between relevant institutions in the area of domestic violence with precise delineation of the duties for each authority;
3. Establish an instrument to enforce the observation of the set deadline for issuing protection orders (24 hours), as well as mechanisms to challenge and/or penalize violations of this term;
4. Ensure a prompt examination of appeals against court rulings on the admission or rejection of applications for protection orders;
5. Ensure that courts immediately transmit (within 24 hours) issued protection orders for enforcement and enforcement supervision to police inspectorates, bailiffs or SAFPDs, as applicable;
6. Adopt a decision or explanatory recommendation of the SCJ Plenum to help establish a unified judicial practice in examining cases of domestic violence and to ensure the prosecution of aggressors under the provisions of criminal legislation and that on the protection of victims of domestic violence;
7. Develop systems for accreditation and purchase of services from specialized NGOs;
8. Increase the number of assistance and protection centers/services to victims of domestic violence;
9. Ensure state-sponsored security of rehabilitation centers for victims of domestic violence;
10. Create emergency rooms for victims of domestic violence in each district center. Provide temporary social housing to victims of domestic violence;
11. Develop rehabilitation services for domestic aggressors.

CHAPTER 14

RIGHT FOR PRIVATE AND FAMILY LIFE

Author: Vitalie Zama

Executive summary

The right to private and family life is guaranteed by Article 8 of the Constitution, Article 8 of the European Convention on Human Rights (ECHR), and by the Universal Declaration of Human Rights. The right to private life consists of several components including, identity, marital status, right to image, religion, and physical and moral integrity.

In this chapter, aspects of private and family life are analyzed including the access and unlawful processing of personal data, video surveillance and privacy, and the protection of privacy of minors in the media.

The first section analyzes the issue of accessing and the processing of personal data by companies.

Section two covers video surveillance and privacy. In particular, it covers the interference in private life by the Ministry of Interior (MOI) after the installation of traffic surveillance cameras on public roads in the Republic of Moldova (RM).

Section three focuses on the issue of privacy of minors in the media, and more specifically broadcasters' compliance with the legal provisions on the protection of minors, and the ethical requirements involved.

14.1. Illegal access and transfer of personal data

The previous report[1] analyzed the issue of improving the legal framework on personal data protection. Particularly, it referred to the introduction of contravention liability for violations of the Law on the protection of personal data (Art 74/1, Art 74/2 and Art 74/3 of the Contraventions Code (CContr)).

Statistics of the operations of accessing and extracting personal data during years 2010 –2013[2]

Year	Consulted (Accessed)	Extracted
2010	1,789,516	275,834
2011	1,505,910	241,973
2012	1,215,257	233,458
2013	1,022,946	214,007

We see a significant decrease in the instances of accessing and extracting personal data, which shows that authorities monitor the processing of personal data and, when necessary, punish those that are guilty.

According to the report on the National Center for Personal Data Protection (NCPDP) for 2014[3], investigations found 55 cases of offenses provided under Arts 74/1 and 74/2 of the CContr, and 34 contravention protocols were filed and sent for examination to courts. However, in accordance with Art 20 para (1) e) of the Law on the protection of personal data, and Chapter II pt. 2 and pt. 3 lit. d) of the NCPDP Regulation, approved by Law no. 182-XVI of July 10, 2008, if a violation of the law of personal data protection is established in addition to conducting regular procedures on minor offenses, depending on the circumstances and gravity of the infringements, the Director of the Center shall sign orders to apply specific measures. In this context, three orders were issued on the termination of the processing of personal data, and one order ruled to suspend such operations.

1 http://promolex.md/upload/publications/ro/doc_1403006808.pdf, (accessed on March 30, 2015).
2 http://datepersonale.md/file/Raport/raport13.pdf, (data for 2014 is not available in the Report of the National Center for Protection of personal data, (accessed March 30, 2015).
3 http://datepersonale.md/file/Raport/Raport%202014%20md.pdf, (accessed on March 30, 2015).

National practice on the contravention liability for violating the personal data regime

In 2014, the judicial practice saw several cases of violation on the legislation of the accessing and processing of personal data by companies, and in particular the lack of registration in the Registry of authorized operators of personal data.

Example: Case-02-4r-12683-23072014-6344[4]

According to the contravention protocol of April 7, 2014 signed by the official examiner on behalf of NCPDP, SRL «L.M.» is accused of violation of Art 74/1 para (2) and Art 74 para (1) of the CContr.

After a complaint filed by M.Z., who requested a verification of the legality of processing her personal data stored in various state information resources, the NCPDP carried out a control and found that O.H., an authorized user and employee of SRL «L.M.», had accessed M.Z.'s personal data from the Registry of immobile assets.

Since the company SRL "L.M." was not registered in the Registry of authorized operators of personal data, and remains unregistered, in its letter no. 02-07/1733 of December 16, 2013, the NCPDP informed the company of the obligation to align its operation in the field of processing personal data to the provisions of the personal data protection legislation. It also demanded that it present in no more than 10 days, information on: a document in which SRL "L.M." regulates the security policy for personal data processed by the company; the reasons for violating Arts 23 and 34 para (4) of the Law on the protection of personal data, regarding the registration of used personal data management systems with the Registry of authorized operators of personal data; the degree of implementation of the provisions of the Law on the protection of personal data and requirements for ensuring the security of personal data processed in personal data management systems as provided by Government Decision no. 1123 of December 14, 2010 when processing personal data in the systems managed by SRL "L.M.".

The company SRL "L.M." continues to conduct personal data processing operations via different personal data management systems, contrary to the law.

Through its inactions, SRL "L.M." committed misdemeanors under Art 74/1 para (2) of the CContr: processing personal data without notifying the control authority in the field of personal data protection, and the processing of personal data by an operator that is not registered as required by Art 74 para (1) CContr; refusal to provide information and documentation requested by the Center while performing its control duties; presenting untrue and incomplete information; failure to present requested information and data in time, as provided by law.

The Buiucani sector court in Chisinau issued a decision on June 6, 2014, found guilty SRL "L.M." of committing a contravention under Art 74/1 para (1) Art 74/2 para (2) of the CContr, and sanctioning it with a fine of MDL 8,000. The appeal court upheld the decision of the first instance court.

The prior report analyzed the case of Vitalie Eriomenco, who on March 29, 2011 was illegally deprived of liberty by the local militia from Tiraspol.

On August 3, 2013, Vitalie Eriomenco and others filed a case in court against the MOI, NCPDP as an accessory intervenient, and Gheorghe Tretiacov on an alleged violation of the right to private and family life and illegal disclosure of personal data to illegal bodies in Tiraspol, and claimed a compensation of moral damages.

On April 23, 2013, the Center sector court in mun. Chişinău ruled to partially admit the application and found an infringement of Article 8 of the ECHR and Art 8 on the Law on personal data protection by unlawful disclosure of personal data to the illegal structures in Tiraspol. The MOI was required to pay Vitalie Eriomenco, Vera Eriomenco, Tudor Eriomenco, Elena Eriomenco, Vladislav Eriomenco, and Ala Gherman moral damages of 32,000 lei for violating Article 8 of the ECHR.

On November 19, 2013, the Court of Appeals rejected MOI's appeal and maintained the judgment of the Chisinau Center sector court of April 23, 2013. The SCJ ruling of May 14, 2014[5] also determined the appeals from Vladimir Tretiacov and the MOI to the Court of Appeal to be inadmissible.

Since 2013, there has been a local regulation on the protection of personal data in the Transnistrian region. The local power structures (militia, migration office, customs and border guards) have a common database on the population, foreigners, tourists, including searched persons, debtors, recruits, etc.

4 Decision of the Criminal College of the Court of Appeals in Chisinau is available at: http://instante.justice.md/apps/hotariri_judecata/inst/cac/get_decision_doc.php?decision_key=608DD44E-3A33-E411-8E3E-005056A5D154&case_title=Dosar-02-4r-12683-23072014-7560, (accessed on March 30, 2015).

5 SCJ decision available at http://jurisprudenta.csj.md/search_col_civil.php?id=9844, (accessed on March 30, 2015).

Since 2014, the local KGB and the communications, information, and media service in Tiraspol have had the power to monitor, verify, stop, block, and punish internet users who post extremist content messages. Under the pretext of fighting extremism and subversive activities, the local KGB is authorized to intercept and process data, and to arrest people.

The fact that this right is not observed, or even understood and protected by the region's "administration" can be demonstrated by a number of cases of intimidation, harassment, or even breaking into people's electronic accounts. For example, in 2014, emails of a local human rights activist were hacked, and a video was broadcast denigrating those who are inconvenient to the "local government".[6] In early 2015, there were reports of harassment and arrest of participants in a protest, in particular those that are active on Internet and social networks.[7]

It is of great concern that the central constitutional authorities cooperate (illegally) with representatives of the institutions that have de facto control over the eastern region of RM, Transnistria. Data exchange and the fact that constitutional authorities share personal data, such as retirement files, criminal records, police employee lists, lists of students or teachers in Latin-script schools, etc., represents not only a serious violation of the national legislation, but also additional risks to these people.

14.2. Video surveillance and protection of privacy

The previous report established that no special law to regulate specifically the procedure and conditions for video surveillance use in RM.

This deficiency was not eliminated in 2014 and on the contrary, beginning in January 2014, the MOI installed several traffic cameras on public roads in RM including:

- At 33 intersections in. Chisinau;
- On 8 public roads in Chisinau;
- On 9 national roads throughout RM.

These cameras were installed without an act of notice or any explanation on the locations selected.

The cameras are divided into the following categories:

- Cameras that record pictures of all vehicles within their view and forward them online continuously to the Single Monitoring and Coordination Center of the MOI;
- Cameras which are part of a system called "radar" that photograph all passing vehicles through the radar area, indicating the speed and simultaneously sending the images non-stop to the Single Center for Monitoring and Coordination.

It is of our belief that these cameras were installed and operate illegally for the following reasons:

The images captured by the cameras interfere with the right to privacy. This can be demonstrated by the fact that the MOI was registered by the NCPDP as a personal data operator and number 0000081-003 was assigned to the road traffic surveillance system "Traffic Control".

Article 8 of the ECHR guarantees the right to privacy. However, in accordance with para (2) of the quoted article, interference of public authorities in the right to privacy is allowed if a measure is provided for by law and constitutes a necessary measure in a democratic society to uphold national security, public safety, economic well-being of the country, prevent disorders or crime, protect health and morals, or the rights and freedoms of others.

In accordance with Article 28 of the Constitution, the State respects and protects intimacy, family and private life. In accordance with Article 54 of the Constitution, this right may be restricted, but the restriction must be prescribed by law, in line with the generally accepted principles of international law, and necessary to the interests of national security, territorial integrity, economic welfare, public order, to prevent mass unrest and crime, protect rights, freedoms, and dignity of others, while preventing disclosure of confidential information or guaranteeing the authority and impartiality of justice.

For these reasons we find that the right to privacy is guaranteed both by the Constitution and by the ECHR. That the right to privacy is not absolute, but relative, and that public authorities may interfere with this right only under certain conditions, namely, if the interference is prescribed by law and pursues anyone (or more) of the purposes listed above.

6 https://www.youtube.com/watch?v=Tm7Dfw6CBkI&feature=youtu.be, (accessed on March 30, 2015).
7 http://media-azi.md/ro/stiri/organiza%C5%A3iile-de-media-calific%C4%83-arestarea-jurnalistului-serghei-ilicenko-drept-limitare, (accessed on March 30, 2015).

Analyzing the national legislative framework, we find that the installation and operation of stationary road traffic surveillance cameras is unregulated by law, and the rules that are in force are limited to:

a) Article 7 letter c) of Law no. 131 of June 7, 2007 on road traffic safety, which states that the MOI may include ensuring traffic direction, oversight, and control by means certified and verified as required by law;

b) Article 25 paragraph 5 points 7), 28) and 29) of Law no. 320 of December 27, 2012, which states the following:

"(5) In performing their duties, the police have the following competencies:

7) Audio and video recording and the photographing of people who violate public order;

28) Photographs, audio, and video recordings to ensure police duties without infringing on the private life of citizens that are guaranteed by law;

29) Video and audio recording of persons arrested for criminal or contravention offenses, photographing them, collect fingerprints and other samples for comparative research or other identification."

With the exception of some general regulations, RM laws do not contain any provisions on the installation and/or operation of stationary surveillance cameras by the MOI.

On December 18, 2014, the Center sector court ruled to uphold the action of NGO "Lawyers for Human Rights" against the MOI. The court found a violation of the right to privacy of the members of NGO "Lawyers for Human Rights" as a result of filming/photographing them along with their cars via the stationary traffic surveillance cameras installed by the MOI.

The court prohibited the MOI from using stationary surveillance cameras installed on the road.

The judgment is not final and binding, and thus can be appealed at the Chisinau Court of Appeals.

14.3. Protection of the privacy of minors in the media

In its Decision no. 74 on June 12, 2014 on the monitoring of newscasts to observe children's rights in accordance with the law, the Broadcasting Coordinating Council (BCC) ruled to conduct a joint project with the Independent Press Association and UNICEF that would assess broadcasters' compliance with children's rights and their respective legal norms.

The monitoring campaign was held between May 14, 2014 and August 18, 2014 on six channels: Moldova 1, Prime, Publika TV, PRO TV, TV 7, and Jurnal TV.

The share of positive, neutral, and negative news, depending on the time period, was as follows:

TV station	Period	Positive	Neutral	Negative
Moldova-1	15.05.14 – 29.06.14	56,48%	26,38%	17,13%
	30.06.14 – 15.08.14	36,55%	32,28%	31,17%
Prime	15.05.14 – 29.06.14	44,59%	30,27%	25,14%
	30.06.14 – 15.08.14	35,59%	16,63%	47,77%
Publika TV	15.05.14 – 29.06.14	41,34%	31,99%	26,67%
	30.06.14 – 15.08.14	18,06%	20,62%	61,32%
PRO TV CHIŞINĂU	15.05.14 – 29.06.14	41,59%	14,84%	43,56%
	30.06.14 – 15.08.14	36,89%	15,56%	47,55%
Jurnal TV	15.05.14 – 29.06.14	38,6%,	25,31%,	36,1%
	30.06.14 – 15.08.14	23,57%	7,43%	69%
TV 7	15.05.14 – 29.06.14	39,2%	47,66%	13,14%
	30.06.14 – 15.08.14	20,93%	40,6%	38,47%

The BCC concluded that television newsrooms typically make the editorial decision to start their newscasts with stories about accidents, fatal cases, disasters, and other serious yet adverse events, and news stories featuring children are typically a priority.

Having analyzed numerous TV reports, the BCC identified specific weaknesses and journalistic practices that do not favor children and that originate from a more formal approach to the legislation on children's rights.

There have been instances where, while making the effort to blur the child's face electronically and not stating their names as a means to protect the child, the reporters make public other details and information about the child such as the name of the village, have the child's relatives on camera, mention which school the child attends, etc., and as a result easily make the child's identification possible.

There are a number of situations where journalists write materials that portray children in a negative or an embarrassing light, and the disclosure of their identity is supposedly justified by the adults' consent to be filmed.

The BCC noted several cases with children interviewed or filmed regarding difficult situations that include maternal death, divorce of parents, and hospitalized after passing a shocking accident.

Stories about suicide or suicide attempts are not common, but when they occur, they typically spark public curiosity and maintain its interest. Two such cases speculated in favor of sensationalism at the expense of the children involved.

The prohibition of discrimination based on ethnicity, nationality, race, religion or disability is one of the few restrictions and limitations on the right to freedom of expression, expressly provided for by Law no. 30 of March 7, 2013 regarding the protection of children from the negative impact of public information. Art 4 para (2) letter c) of the Law provides that: "Radio and television program services are prohibited to disseminate information with negative impact on children or containing any unfavorable or discriminatory reference to their ethnic origin, nationality, race or religion, as well as their disability". The BCC found only a single violation of this provision. In this case it was the dissemination of unfavorable opinions about a representative of a religious group, in which reporters established a causal link between violence and religion. It should be mentioned that the journalists who made this error corrected it on the same day. Even so, this did not prevent the BCC from sanctioning the TV station.

The second characteristic of BCC monitoring focused on the broadcasters' compliance with legal provisions on the protection of children from their exposure to media content that might impair their physical, mental, or moral development.

In general, the rules on dissemination of images that are shocking or likely to have a negative emotional impact on children were respected.

The question does remain open, however, and the editorial policy differs from one TV to the next and from one editor to another, in what may be regarded as shocking, such as verbal descriptions of circumstances of crimes or images of people hit by cars, captured on camera, or fights. Editors frequently admit such details and circumstances of the crimes, taking advantage of the fact that the law does not expressly prohibit them, and thereby neglecting the Journalists' Ethics Code.

CONCLUSIONS

In 2014, the country witnessed a significant decrease of access and extraction of personal data, displaying that authorities monitor the processing of personal data and, if necessary, punish those responsible for violations.

However, the proceedings started against the persons processing personal data during the reference period show that legislation in this area continues to be violated, even if those found guilty of breaching the law on personal data protection are held accountable, and the courts uphold the sanctioning decisions.

During the reporting period, the use of video surveillance technologies by private individuals, public authorities, and in particular the MOI began monitoring road traffic. In this regard, we note a lack of a control mechanism and an appropriate legal framework to allow this interference in private life.

The media continued coverage of materials that leaves minors vulnerable by disclosing information that enables their identification, and without considering the psychological and social effects their coverage may have on children.

RECOMMENDATIONS

1. Continue investigating cases concerning the unlawful processing of personal data and punish those responsible according to the law;
2. Adopt legislation to explicitly regulate the general conditions of use of video surveillance means, including MOI road traffic cameras, locations that can be monitored, limits to the use of video surveillance means, conditions and time limits for collected images and data storage;
3. In producing news stories involving minors, the broadcasters shall consider the need to act in the best interest of the child, which should prevail over other considerations to broadcast the story, such as maintaining the audience, stimulating curiosity or other benefits, even noble ones, of adults;
4. In cases of dramatic stories, it is not sufficient to electronically block the faces of child victims. In such cases, measures must be taken to protect the identity of the victims' relatives and avoid interviewing children who have had a shocking or negative experience.

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