

STUDIU



ИССЛЕДОВАНИЕ

RESEARCH

**REALIZAREA
DREPTULUI LA LIBERA
CIRCULAȚIE ÎN
REGIUNEA DE EST A
REPUBLICII MOLDOVA**

**РЕАЛИЗАЦИЯ ПРАВА
НА СВОБОДУ
ПЕРЕДВИЖЕНИЯ В
ВОСТОЧНОМ РЕГИОНЕ
РЕСПУБЛИКИ МОЛДОВА**

**THE RIGHT TO FREEDOM
OF MOVEMENT IN
THE TRANSNISTRIAN
REGION OF MOLDOVA**



Promo - LEX

RESEARCH

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IN THE TRANSNISTRIAN REGION OF MOLDOVA**

Chisinau 2008

CONTENTS

Introduction	3
Chapter I.	
General overview	4
Chapter II.	
Free movement of persons	8
2.1. Immigration fee and residence fee.....	8
2.2. Recognition of civil status documents	10
2.3. Customs declarations filled in at internal customs check-points	14
2.4. National register	16
Chapter III.	
Free movement of goods	18
3.1. Circulation of vehicles with Moldovan registration plates.....	18
3.2. Circulation of vehicles with Transnistrian registration plates	21
3.3. Carriage of goods across internal borders by natural persons.....	24
Chapter IV.	
Free movement of services	28
4.1. Movement of passenger transportation services	27
4.2. Movement of legal services	28
Chapter V.	
Free movement of capital	31
5.1. Payment of old age pensions to Transnistrian inhabitants.....	31
5.2. Escalation of deposits	33
5.3. Tax amnesty of 27th April 2007	36
Conclusion	39
List of abbreviations	41

■ INTRODUCTION

This paper is oriented to the large public and, particularly, to those concerned with the Transnistrian conflict and/or with the problems local inhabitants are forced to face as a result of the existing conflict and tension it causes.

The situation today, i.e. 17 years since Moldova proclaimed its independence and was recognized a state of law, is that on Nistru river there is a *de facto* „border” dividing Moldova into two parts. Unfortunately, one part of its territory is outside the control of constitutional authorities. Because of this so-called „border” the inhabitants of the country as a whole and of the region in particular face various problems, and the observance of their rights continues to be a desideratum yet hard to achieve.

This study aims to analyze the real situation in the region as reported by those, who benefitted from legal assistance in the framework of the project and, respectively, to analyze the European standards, the national and local legislation (that of the *MRT*), which governs to right to free movement.

The study was developed in the framework of the project of „Advocating for respect of human rights in the Transnistrian Region of Moldova”, implemented by Promo Lex Association in April 2007-May 2008. The financial support for the implementation of the project was granted by Swedish Helsinki Committee for Human Rights.

CHAPTER I

■ GENERAL OVERVIEW

The history of Europe at the end of XXth century was marked by a huge event, i.e. the collapse of the socialist system and the dissolution of the USSR. Thus, 15 new countries made their appearance on the European map. The Republic of Moldova was one of them, resulting from the former MSSR. The echo of this dissolution is still present today. It is particularly vivid in the few conflict areas that had been maintained in the former soviet empire by former USSR KGB structures and are now placed under the control of Russian Federation's secret services.

The leadership of soviet security structures resorted to various sabotage actions, including the creation, fortification and maintainance of certain separatist entities on the territory of the newly created states for the aim of preventing them from obtaining their total independence. An identical scenario was used in many regions. However, only 3 such conflict outbreaks are still unsolved, namely in Georgia – Abkhazia and South Ossetia, and in Moldova – Transnistria. Clearly those conflicts lead to multiple difficulties on the international arena, but those who mainly suffer are the inhabitants of those regions, who have to face various problems every day.

The Eastern region of Moldova, also known as “Transnistria”, “Transdnestria”, „MRT”, „RMT”, “PMR” or “Pridnestrovie” is a separatist area spread on approx. 4000 km², i.e. 12% of Moldova's territory and situated at its Eastern border with Ukraine. In this sense, we have to note that there is a formal border along the Nistru river between the territory placed under the control of constitutional authorities and the one placed under the effective control of the self-proclaimed MRT¹. The region is divided into 5 districts and 2 municipalities, its administrative center is located in Tiraspol town, which is the largest municipality in the region and second largest in the Republic of Moldova. In 1989 Moldovan/Romanian nationals constituted 39,9 % of local population, Ukrainian nationals represented 28,3% and Russians - 25,4%². The preliminary results of the 2004 census organized by the self-proclaimed authorities in the region showed that its population was 555,5 th. inhabitants, i.e. more than 170 thousand less than in 1989. If we were to trust the results of this census organized by the separatist authorities, Moldovans constitute only 31,9%, Russians - 30,3 % and Ukrainians - 28,8%³.

In Soviet times the region of Transnistria of the MSSR concentrated more than one third of the entire industrial production. Its industrial complex included the

1 With few exceptions, for instance Cosnita, Dorotcaia, Pirita, Pohrebea, Corjova, Cocieri, Vasilevca and Molovata Noua villages located on the Eastern bank of Nistru River, but placed under the jurisdiction of constitutional authorities, while the Bender, Proteagailovca, Gisca, Merenesti, Chitcani and Cremenciug situated on the right bowk of the Nistru River are under the control of the separatist authorities .

2 M.Grecu, A.Taranu, Study on the „Policy of linguistic expurgation in Transnistria”, Chisinau 2005. Goskomstat. Results of the All-Union census of 1989. Moscow, Gosstatizdat, 1990

3 M.Grecu, A.Taranu, Study on the „Policy of linguistic expurgation in Transnistria”, Chisinau 2005
I. Cramarenco, Olivia-Press, 7.09.2005

following branches: power industry, ferrous metallurgy, mechanical engineering and metal-working industry, electrical industry, chemical industry, woodworking industry, furniture industry, printing industry, glass industry, light industry, construction material industry.

The most successful company is the MMF (Ribnita town) established in 1985. In 1998 the MMF was reorganized in a closed joint stock company. The factory was for some time owned by Ukrainian investors, and was subsequently sold to the Russians. Today the factory belongs to the company of the well-known Russian multimillionaire Alisher Usmanov. The said factory enjoys special attention because the MMF is today a modern and highly productive company using internationally progressive technologies, which outputs continuous steel billets, high-, low-carbon and low-alloy small-section rolled steel bars and wire rods in line with CIS standards and standards of the leading countries in the world.

The *MRT* territory also includes thermal power plants (CERS Moldova from Cuciurgan, CES from Dubasari on Nistru River). In Soviet times CERS Moldova did not only satisfy the needs in electricity of the entire Moldavian Soviet Socialist Republic (in the event of a continuous production process), but also managed to export electricity to the Ukrainian SSR and a few other CMEA member states (Council of Mutual Economic Assistance). Originally CERS Moldova was sold to an unknown company registered in Belgium for the price of 24 mln USD, only 2 mln of which were transferred to the *MRT* budget. Consequently, CERS Moldova was acquired by a Russian energy giant and continues to be under the ownership of RAO ES.

The *MRT* territory is also intersected by two international railways and two highways of international importance. To our regret, the railway often becomes the object of pressures coming from the Transnistrian part against the Moldovan one. It was usually closed when the Moldovan part tried to somehow interfere in the region. Today Moldova has built a branch to the railway that goes around the region of Transnistria;⁴ nevertheless, the length of the additional railway certainly affects both the economic activity in the region as well as the additional expenses incurred by economic agents for transportation. The highways are almost abandoned because of the fact that carriers prefer to find other alternatives to them in order to avoid the risk of unpredictable situations. The *MRT* territory is also crossed by three gas mains with sufficient capacity to deliver gas to Moldova and its neighboring countries.

Even from what we have described above, the interest of the former soviet structures overtaken by the Russian Federation for this territory and for the economic potential in the region is self-evident. Thus, the Eastern part of Moldova (Transnistria) was to and rapidly became a "black hole", in which a small group of people managed to take over companies, which were once fruitful and strategic for the development of the entire country. The population of the country, including Transnistrian inhabitants, were deprived of any right on public assets, such rights being abusively and illegally distributed among those, who by violent means took over

4 www.nr2.ru/kyev/59502.html

and continue to keep control over the region. The instauration of the separatist (pro-soviet, subsequently pro-Russian) regime in the *MRT* was successful contrary to the will of most inhabitants; however, it happened due to the use of violent and military means, with the direct involvement of the armed forces of the Russian Federation, a fact that was also confirmed by a ECHR decision⁵. An idea that was still popular on the international arena was that the roots of the conflict lay in ethnical principles, and Russia's involvement is needed to stabilize the situation and defend the rights and interests of Russian citizens living in the region.

However, the main proof that the conflict happened between the Republic of Moldova and the Russian Federation results from the Agreement on principles of peaceful settlement of the armed conflict from the Transnistrian region of the Republic of Moldova that was signed by the latter⁶.

Various methods were used in order to preserve the region under control, including open military influence and intervention and even economic and political support, which resulted in a region that is totally dependent on Russia. The maintainance of such control could not certainly take the form of a dictatorship, which is why a „democratic“ governing system was created in the territory, based on people's „freedom of speech and will“. In parallel to that a legal system was being developed similar to the legal system of the Russian Federation. To our regret, constitutional authorities adopted a neutral position regarding the events in the region and decided to ignore and exclude local inhabitants from its area of protection.

From this point of view the inhabitants of the Eastern region of Moldova are in the state of total uncertainty, being forced to live according to the normative acts approved by the secessionist leadership, which do not have any real legal power since the authorities that issued them are not recognized on the international level. However, the local population and those who visit the region are most affected when facing obstacles that hinder their right to free movement.

We shall note that the right to free movement is secured both by the national legislation of the Republic of Moldova and by that of the Russian Federation. In this sense, the Agreement on principles of peaceful settlement of the armed conflict in the Transnistrian region of Moldova includes a separate article⁷ stipulating that „the parties to a conflict deem any sanctions or blockades to be inadmissible. In this respect, any obstacles hindering the movement of goods, services and people shall be promptly removed,...“. This provision of the agreement is very welcome, but, unfortunately, it faces the same destiny as many other laws and normative acts adopted in Moldova – there is no mechanism for their implementation. Moreover, the current situation is that this agreement helped separate the spheres of influence of constitutional authorities and the self-proclaimed structures supported by the Russian Federation. Multiple control posts that create obstacles to free circulation were established instead of the free movement stipulated in the agreement.

5 Case of *Ilascu and others versus Moldova and Russian Federation*.

6 Agreement signed on 21st July 1992 by the President of the Republic of Moldova, Mircea Snegur, and the President of the Russian Federation, Boris Eltsin

7 Article 5 of the Agreement

Moldova's external policy was chaotic from the very moment of declaration of its independence, which only suspended and froze the conflict. Relatively recently its external policy was oriented and focused on its approximation to the European Union (EU) and, consequently, on the harmonization with its standards. The fundamental principles of the EU set forth in the Treaty of Rome (1957)⁸, to which Moldova is trying to adhere, regard the right to free movement through the light of four important aspects, i.e.:

- free movement of persons;
- free movement of goods;
- free movement of services;
- free movement of capital⁹

We have to say that these liberties granted from the very establishment of the EEC aimed at a step-by-step approximation of the economic policies of its member states for a harmonious development of economic activities, a sustainable and balanced growth, a growing stability, an accelerated growth of the standard of living and closer mutual relationships. Moreover, these standards prove to work efficiently and settle problems regarding the observance of the right of free movement in various European countries, which, in our opinion, can be a good example for Moldova in how to solve the problem of free circulation within the country. Since Moldova strives to adhere to these standards and since such liberties are more explicitly defined in European regulations we shall make an analysis of the existing situation in Moldova based on these regulations.

Certainly, the signing parties to the 1992 Agreement followed the same goals internally. However, all provisions on freedom of movement are still declarative.

State institutions¹⁰ and non-governmental organizations in Moldova developed and published multiple reports, studies and researches on the observance of human rights over the years. Almost each of them bring up various situations and problems related to the violation of the right to free movement. Such violations are mostly generated by the insufficient or discriminatory regulation in the respective field.

In this respect, due to our broad experience of representing victims of abuses caused by constitutional and self-proclaimed authorities, as well as having broad and diverse information materials at our disposal, we aimed to develop a study specialized on freedom of movement. To make the study more concise it is structured according to the four aspects of freedom of circulation secured by EU standards and includes a description of the real situation in the respective field, an analysis of the identified problems and factors that contributed and still contribute to the violation of the right, as well as authors' conclusions for each such situation.

8 www.eur-lex.europa.eu/ro/treaties/dat/11957E/word/11957E.doc

9 Article 3 of the Treaty of Rome

10 www.ombudsman.md/Rapoarte/R_anuale/

CHAPTER II

■ FREE MOVEMENT OF PERSONS

The concept of free movement of persons implies primarily the free circulation within a certain territory, as well as the abolishment of all border checks. Generally speaking the concept of freedom of movement also implies certain potential discriminations related to:

- conditions of entry/exit from the territory of a country;
- conditions of work and employment;
- conditions of remuneration¹¹.

Apparently these conditions must be regulated when certain borders between countries are crossed, but the reality proves that in Moldova's case this regulation is also necessary for internal borders. Even though on the international level Moldova's territory is recognized together with the Transnistrian region, Moldova does not hold a *de facto* control over its territory from the left bank of Nistru River. Moreover, various problems are caused by the existence and operation of two different systems of law in these territories.

2.1. Immigration fee and residence fee

The fact that visitors coming or passing through the Transnistrian region of Moldova are to pay certain fees is an important aspect of the freedom of movement in the region. This situation mostly affects those who reside on the right bank of Nistru River and work on its left bank or are otherwise forced to often cross this „border” and get into the region.

The migration fee was first introduced in the spring of 2003 together with the creation of the migration service within the ministry of home affairs of the MRT¹². The migration fee is equal to one conventional minimal salary, i.e. approx. 0,63 USD. The criteria for exemption from payment of this fee were specified in the local budget for each individual year. The migration fee was abolished from 01.01.2008 through the budget law for the respective year. The formal reason that the activity of the migration service of the MRT was 100% financed from receipts served as grounds for abolishing the fee. There is no real information regarding any type of calculations of the income obtained from collecting migration fees. Nevertheless, following the said amendments to the local legislation, representatives of the ministry of home affairs of the MRT stated that they needed a supplement of approx. 1,2 mln. US dollars to cover the difference in financing. Thus, we can conclude that the annual receipts of the MRT's migration service from migration fees only constituted approx. 1,2 mln. USD.

11 I.Pascal, S.Diaconu, C.Vrabie, N.Fabian "Free movement of persons", Bucuresti 2002

12 www.nr2.ru/kiev/151070.html

These fees were originally collected from all visitors or people passing through the region. In the meantime in year 2006 several groups of people were exempt from migration fee payment according to art.19¹³ of the budget „law”. It is important to note here that those who were exempted from the migration tax were inhabitants of villages that according to the constitution of the *MRT* are included in its territory. Those villages are Molovata Noua, Hagimus, Cocieri, Vasilevca, Dorotcaia, Pirita, Cosnita, Pohrebea and Copanca. Moreover, the exemption from payment of the migration tax was valid for inhabitants of villages located at a distance of 500 meters from the *MRT* „border”.

In reality this norm was functioning, except the last note related to the localities placed at a 500m distance from the „border”. Sanatauca village located on the right bank of the Nistru River less than 500m away from the so-called border is a relevant example in this sense. Its inhabitants were forced by the *MRT*'s migration service to pay the transit fee. Merely in fall 2007, as a result of public information and sensitizing activities, most of Sanatauca village inhabitants refused to pay those illegal fees. It is to be noted that non-constitutional authorities did not exert any kind of pressure in response to such refusals and allowed access to the region. On the other hand, those who were not aware of these provisions or did not insist too much continued to pay the migration fee. This successful example was not disseminated to other localities because of the amendments to the budget law of the region for year 2008.

In line with the 2008 budget law of the region, all provisions regarding the migration fee were excluded, i.e. all people visiting or passing through the region were consequently exempted from paying these fees. So, starting from 1st January 2008 Moldovan citizens were exempted from paying the migration fee. This decision adopted by the Tiraspol leadership was saluted by all those who either transit or visit the region. Moreover, the decision was also welcomed by the parties involved in the negotiation process regarding the settlement of the Transnistrian conflict, being interpreted as a step toward the improvement of the situation between the conflicting parties¹⁴.

Today no migration fee is collected for less than 10 hours stays in the region. When crossing the „border”, migration service officers make people fill in a form qualified as „migration chart”, which specifies visitor's identity data, day and hour of entry in the region. It takes approx. 20 minutes to fill such a form, which makes „border” crossing longer than customs checks. Moreover, in the spring of 2008¹⁵ the migra-

13 The following groups of people are exempt from paying the fee enforced on citizens who enter, exit and transit the *MRT* territory:

- a) foreign citizens with documents evidencing their birth within the limits of the *MRT* territory, who enter and leave the *MRT* territory;
- b) Russian and Ukrainian citizens transiting the region;
- c) representatives of diplomatic missions who hold diplomatic passports;
- d) foreign citizens staying on the *MRT* territory according to an invitation issued by state governance and power structures;
- e) for entry and exit – citizens with permanent residence in *MRT* settlements, including those placed under the temporary control of constitutional authorities of the Republic of Moldova (the villages of Molovata Noua, Cocieri, Vasilevca, Dorotcaia, Cosnita, Pirita, Hadjimus, Copanca, Pobrebea), as well as people who live in the 500meter range from the border.

14 www.besarabia.info/2007/10/03/post5560.html

15 www.novaiaagazeta.org.ru/index.php?newsid=225

tion service was provided with specialized equipment designed to register all people going in or out of the region. The „Sprut“ program was created based on these data. The program analyzes the data and identifies the individuals who exceeded the sojourn deadline, as well as individuals placed under search or those who evade military service in the region.

Anyone who should stay in the region longer than 10 hours will be forced to register with the migration service. The registration is done automatically when crossing the „border“ instead of being done by the migration service officers at the place of residence. This procedure is qualified as temporary registration on the *MRT* territory. The possibility to stay in the region for more than 10 hours (those who exceed this deadline are deemed by the secessionist authorities to reside in the region and, respectively, are to be registered) is taxed twice higher than the migration fee, which amounts to approx. 17 MDL (approx. 1,10 Euro). Anyone who would fail to respect the 10 hour deadline risks to face administrative proceedings in line with the provisions of art.192 of the code on administrative infractions of the *MRT*¹⁶, which stipulate the possibility of instituting a penalty of up to 5 conventional units, i.e. approx. 50 MDL (approx. 3,1 Euro).

CONCLUSIONS:

- because of internal regulations during years 2003-2007 the migration fee affected those, who either passed through or visited the Eastern region, to the extent of over 8,1 mln dollars;
- during years 2006-2007 citizens of the Republic of Moldova were discriminated as compared to citizens of the Russian Federation and Ukraine by being forced to pay this fee;
- even though the migration fee was abolished, new fees, which are twice as high as the previous ones, were instituted instead for visits exceeding 10 hours in the region.

2.2. Recognition of civil status documents

Another obstacle to the enforcement of citizens' freedom of movement results from the fact that civil status documents issued by the secessionist authorities are not recognized by the competent Moldovan authorities. The enforcement of the right to free movement is, in principle, directly related to identity documents since almost each of the above-mentioned guarantees of the right to free circulation cannot be enforced if identity documents are missing. In line with the provisions of the current legislation identity documents are issued by the competent structures of the MID and civil status documents serve as basis for this purpose. The relation

16 Article 192. The violation of norms of stay of foreign citizens and apatrides in the *MRT*, as well as the infringement of norms of transit through the *MRT* territory.

Any violation of the norms of stay in the *MRT* by foreign citizens and apatrides, i.e. their stay in the *MRT* without a residence permit or based on invalid documents, or failure to comply with the established registration procedure or with the established procedure of change or choice of domicile, or refusal to leave when the residence deadline is due, as well as any failure to follow the norms of transit through the *MRT* territory shall lead to a warning notification or forfeit in the amount of up to 5 (five) conventional units *MRT*.

is quite simple: the lack of civil status documents makes it rather difficult to get the identity documents done, and once an individual does not hold identity documents the said individual will not be able to exercise its right to free movement, especially when speaking of the free movement of Moldovan citizens abroad. In this sense, any obstacle to the issue of civil status documents can be qualified as limitation of the right to free movement.

A relevant case in this respect is that of citizen V.G., who had officially married and received a marriage certificate in Soviet times. Since he resided with his family in the region of Transnistria he also „acquired” the MRT citizenship without, though, waiving Moldovan citizenship. While dwelling in the said region the two spouses dissolved their marriage in the Camenca registry office, which is placed under the control of secessionist structures. Meanwhile, the former wife changed domicile to a CIS country. The validity of V.G.’s foreign passport, which was issued by Moldovan authorities, expired at a certain moment. V.G. decided therefore to get a new passport and, consequently, paid a visit to the competent authority in Moldova, which further requested a marriage or divorce certificate needed to certify some relevant data to be included in the passport. The individual supplied the certificate of divorce issued by Transnistrian structures and was refused in his request for a new passport, because the divorce was to be registered by Moldovan competent authorities. V.G. shall have to initiate new divorce proceedings in a national court to get a new passport.

At the same time it is to be noted that today people born in the region of Transnistria can acquire Moldovan citizenship due to the fact of being born on its territory. *De jure* birth certificates issued by secessionist authorities are not recognized by constitutional authorities. Nevertheless, based on those birth certificates, with an attestation of birth issued by the respective medical establishment attached, Moldovan registry offices can issue duplicates of such birth certificates in line with the standards stipulated in the Moldovan laws. Therefore, *de facto* such documents are recognized, since civil status documents issued by constitutional authorities certify *de jure* the birth of an individual.

Thus, we find ourselves in a situation when civil status documents issued by secessionist authorities are not officially recognized, but even so, part of them can be recognized indirectly by a certification of certain concrete facts or events. Such situations may arouse confusion since we are speaking of different civil status documents (birth and divorce certificates, for instance) being issued by one and the same non-recognized authority.

In line with the provisions of art.3 of the Law nr.100 of the Republic of Moldova „on civil status documents” of 26th April 2001, civil status documents are genuine state records, which certify facts and events influencing the appearance, amendment or cessation of an individual’s rights and obligations and characterize one’s legal status. The same law classifies civil status documents into five categories, namely:

- birth,
- marriage,
- dissolution of marriage (divorce),

- change of surname and/or given name, and
- death documents.

All such documents are governed by one single law, which, respectively, makes their registration and issue procedure unique. Civil status documents' registration is performed in the name of the state by civil status authorities only, which exist in each residential town of the district.

In line with art.20 of the afore-mentioned Law only the following documents can serve as grounds for releasing a birth certificate:

a) an attestation of birth issued by the medical establishment, where the individual was born;

b) a medical birth certificate, issued by a private sanitary establishment and signed by the doctor, who assisted birth or who was contacted by the mother after birth (when the birth happened outside the sanitary establishment) or by a private doctor who assisted birth;

c) a protocol and certificate confirming child's gender and age – in the event of birth registration for a found child.

Should any of the aforesaid documents be lacking, child-birth registration shall be performed based on a court decision regarding the establishment of the fact of birth by a concrete woman.

In line with the provisions of art.29 of the Law nr.100 of 26th April 2001, the act of birth should by all means include the identification data from the attestation of birth. Consequently, the birth certificate shall include a note referring to the act issued by the authorities from the left bank of Nistru River.

We must now pay attention to the provisions of art.8 of the Law nr.100, which regulate the issue of duplicates of civil status documents. It is therein stipulated that duplicates of civil status documents shall be released only in the event of deterioration or loss of a civil status certificate. In such cases the registry office shall identify the respective civil status document and shall release a new certificate bearing the remark of „Duplicate“. This therefore serves as another confirmation that constitutional registry offices recognize *de facto* the acts of birth of children born in the region of Transnistria.

A thorough analysis of this issue points out to the use of double standards by Moldovan registry offices, contrary to the legal provisions.

The release of legal duplicates of civil status documents proves to be reasonable only if birth certificates issued by the secessionist authorities serve as grounds for this purpose. Otherwise, if medical certificates serve as grounds for the release of duplicates instead, duplicates should be replaced with original birth certificates.

The reality shows that birth certificates issued by the secessionist authorities to children born in the region of Transnistria are generally taken as grounds for the release of legal birth certificates. Therefore, if we were to compare the two birth certificates, i.e. the Transnistrian and Moldovan ones, belonging to one and the

same child born in the region of Transnistria, we would note that the Transnistrian certificate is issued prior to the Moldovan one and that the data indicated in the section specifying that “the birth was inscribed in the civil status registry under nr. ___, year ___, month ___, day ___ by ___” are identical in both cases, i.e. the said sections include identical data. This proves that birth certificates released by Moldovan registry offices to children born in the Moldovan region of Transnistria are based on certificates issued by the secessionist authorities. Constitutional authorities thus recognize the documents released by Transnistrian registry offices.

The case of death certificates is similar to that of birth certificates. The relatives of a deceased person receive a death certificate duplicate instead of an original one. They should supply for this purpose the death certificate released by the secessionist authorities and, respectively, the extract issued by the medical establishment certifying the fact of death (and which served as grounds for the release of the death certificate in the *MRT*).

The situation regarding the recognition of civil status documents is the result of the lack of a normative act that would clearly and explicitly regulate the recognition and confirmation procedure and criteria for civil status documents issued by the secessionist authorities. The civil status document recognition procedure used today is the result of an experience accumulated in time and of the implementation of GD nr. 959 of 9th September 2005 „on measures of securing the confirmation of citizenship and documentation of the population from the left side of Nistru River (Transnistria)”¹⁷. According to this decision the MID has the obligation to apply a simplified procedure of confirmation of Moldovan citizenship to individuals residing on the left bank of Nistru River (Transnistria) and to issue identity documents from the national passport system to the said group of citizens on a free-of-charge basis. Thus, MID took the easiest way out and did not develop any normative act that would clearly regulate the recognition and confirmation procedure for documents issued by the secessionist authorities. Instead, it left it all to the employees working in the system according to their experience. Still, even if there is broad experience in the field, the lack of a clear regulation will create the necessary premises for corruption and protectionism.

CONCLUSIONS:

- there is a need to develop a normative act from the regulation point of view that would expressly define the recognition, certification and legalization procedure of civil status documents released by Transnistrian authorities in order to prevent duplicatory attitudes;
- the differentiated approach characterized by the use of double standards on people regarding similar issues stirs up discontent.

17 www.mdi.gov.md/img/gudn/codecs/959_2005-09-09.doc

2.3. Customs declarations filled in at internal customs check-points

Another problem identified by inhabitants from the left bank of Nistru River is the forced requirement to make verbal and written customs declarations at internal customs check-points. They qualify this procedure to be illegal and humiliating, since it does not imply that they leave or enter the customs territory of the Republic of Moldova.

This problem mostly affects the inhabitants of Pohrebea, Dorotcaia, Cosnita and Piritia villages, who are forced to cross the internal border every day. This internal customs check-point is located in the immediate proximity of the bridge over the Nistru River, on the Chisinau – Cosnita route, and isolates the two localities placed under the control of constitutional authorities on the right bank of Nistru River. Other secessionist customs check-points are located at the exist from Dorotcaia and Pohrebea villages. The inhabitants of the four above-mentioned settlements are, therefore, doubly isolated by customs check-points.

The declaration procedure enforced on the inhabitants of the region can generally be of two types: verbal and written, depending on the situation and remaining at the discretion of customs officers. If verbal declarations take less time and people are already used to them, there were cases when individuals were forced to fill in written declarations for the goods they carried. Any movement of goods results in special check procedures, which obviously imply a limitation of the right to free movement. If the withdrawal of the internal customs check-point placed by the secessionist authorities cannot be solved yet, independent of the will of constitutional authorities, the existence of an internal customs check-point in the Republic of Moldova stirs up the dissatisfaction of all citizens residing in these localities.

The inhabitants of the afore-mentioned villages tried to protest repeatedly against the existence of such customs points; however, state authorities did not make any effort to withdraw it. Moreover, in the spring of 2008 few other movable premises that serve as offices to customs and police officers were dislocated in the adjacent territory to the said customs check-point.

Other localities of the Republic of Moldova placed within the security zones, such as the districts of Floresti, Soldanesti, Rezina, Orhei, Criuleni, Anenii Noi, Causeni, Stefan Voda and Dubasari, find themselves in a similar situation.

According to the provisions of p.23, art.1 of the CC of the RM, a customs declaration is a unilateral document, by which an individual manifests his/her will to place the goods he/she carries with a certain customs destination, under the forms and procedures stipulated by the customs legislation. Still, in line with the provisions of art.173 of the CC of the RM a customs declaration should be filled in only for goods and means of transportation that cross the customs frontier. The provisions of para.3, art.4 of the CC of the RM set forth that the state frontier of the Republic of Moldova, the area of free zones and customs warehouses make up all-together the

customs frontier of the Republic of Moldova. Therefore, *de jure*, an individual crossing the customs frontier also crossed the state frontier. In this case the customs declarations imposed on inhabitants from the left bank of Nistru River are illegal, since they had not crossed the state and customs frontier of the country.

Moreover, the carriage of goods in and out of the territory of the Republic of Moldova by natural persons is governed by the Law nr.1569 of 20th December 2002. According to the provisions of art.4 of this law¹⁸, only goods carried across the customs frontier of the Republic of Moldova shall form the subject of mandatory declaration.

All afore-said legal provisions lead to the conclusion that the written customs declarations imposed on those, who reside on the left bank of Nistru River, when going through the internal customs check-points are abusive and illegal.

In this sense we shall note that the enforcement of written customs declarations is periodical and non-uniform, depending on the will and competence of customs officers. Nevertheless, it is worth to mention that the inhabitants of the four villages hereinabove named declared to be also dissatisfied with the fact that they were forced to fill in written customs declarations, while international passenger buses going to and leaving Ukraine do not draw up such written customs declarations when passing through the internal customs check-points, even though their passengers are clearly entering or leaving the customs territory of the Republic of Moldova.

Such a discriminatory and illegal attitude toward the population from the left bank of Nistru River and toward the four villages, in particular, generates hostility toward internal customs officers and, consequently, leads to conflicts.

CONCLUSIONS:

- the customs authorities of the Republic of Moldova established certain non-transparent and non-predictable administrative practices and formalities, which are not stipulated by the legislation, that limitate citizens' right to free movement.

18 Article 4. Goods declaration procedure

(1) The goods carried by natural persons across the customs frontier shall form the subject of mandatory declaration in line with this law, the Customs Code and other normative acts adopted correspondingly, except the currency values specified in art.31 para.(1) lit.d).

(2) When bringing goods in the Republic of Moldova, natural persons shall declare then and pay the import fees to the customs office dislocated at state border crossing points.

(3) When taking goods out of the Republic of Moldova, natural persons shall be entitled to clear them with the internal customs check-points.

(4) Natural persons are entitled to verbally declare the following goods:

a) personal products brought into the country, as well as goods specified in the annex hereto;

b) goods brought into the country other than those specified under lit.a), whose customs value does not exceed 200 EUR and which are not for sale or production purposes;

c) goods taken out of the country, whose customs value does not exceed 1000 EUR and which are not for sale or production purposes;

d) goods specified in art.8 p.1) lit.a) and pt.2) lit.a).

(5) Goods brought into and taken out of the Republic of Moldova via international mail deliveries or in a check baggage shall be declared in written form in line with the established procedure.

2.4. National register

An urgent issue that affects the freedom of movement of people living in territories placed under the effective control of secessionist authorities is related to the fact that they are forced to register their domicile on a certain address; consequently, they are forbidden to reside elsewhere if such a registration is missing.

This procedure takes root in Soviet times and bears the common name of „propiska” (in Russian). The essence of this procedure lays in the fact that individuals who lacks the said registration cannot exercise some of their rights (the right to vote, to employment etc.). Moreover, residence in another place than the registered one can form the subject of administrative and criminal proceedings.

This registration procedure was also valid for the Republic of Moldova until 1997, when the CC ruled such norms to be unconstitutional¹⁹. By this Decision the CC ruled that the existence of the concept of „residence permit” in the legislation of the Republic of Moldova, its use in social relations comes in contrast with constitutional norms and principles and hinders the enforcement of the right to freedom of movement, which enables all Moldovan citizens to establish domicile or residence in any settlement of the country. In other words, the CC noted that the establishment of domicile or residence is a right, not an obligation, of an individual. Consequently, the lack of such registration cannot lead to any bans, limitations or sanctions. Finally, the CC ruled that such norms are unconstitutional.

In 2001, when PACE identified some deviations related to the obligativity to register a residence or domicile permit in the former USSR countries, as well as the fact that such actions hinder the right to freedom of movement and choice of place of residence inside the respective country, it issued the resolution 1544 (2001)²⁰. In this resolution former USSR countries are urged to undertake a thorough review of national laws and policies with a view to eliminating any provisions which might impede the right to freedom of movement within internal borders. In line with this resolution, the old internal registration system must be used exclusively for information purposes and must not affect the freedom of movement. Moreover, the resolution points out that an individual’s right to acquisition of citizenship, access to education and health care, right to pension and social indemnities, access to employment and equal access to property rights, and even the right to vote cannot depend on this residence registration system.

The region of Transnistria is governed by a local Constitution, whose article 25 secures the right to freedom of movement and free choice of place of residence. Nevertheless, this hierarchically superior norm to all other normative acts is not observed.

The CoAI of the *MRT* includes three articles, which represent a flagrant violation both of international norms and standards, as well as of own, local constitutional norms.

19 www.constcourt.md/decisions_ro/1997/16.htm

20 www.bice.md/UserFiles/File/Rec_APCE_rom/AP1544.doc

Thus, art.186 of the CoAI of the *MRT* provides for the possibility to initiate proceedings against an individual for the lack of an identity document or a permanent or temporary residence registration. Such an „offence” may be sanctioned with up to 30 ru mzp (expected minimum wages), equal to approx. 19,5 US dollars. A repeated offence of this nature can be sanctioned with up to 50 conventional units *MRT*, i.e. approx. 32,5 US dollars.

Art.188 of the CoAI of the *MRT* also provides for the possibility to initiate proceedings against public individuals responsible for enforcing internal registration rules, who allowed residence without an identity document or registration. Such an offence can be sanctioned with up to 100 conventional units *MRT*, i.e. approx. 65 US dollars. The same article provides for the possibility to initiate proceedings against citizens, who allowed residence without a passport or registration in their own domicile. Such an „offence” can be sanctioned with up to 50 conventional units *MRT*, i.e. approx. 32,5 US dollars.

Art.189 of the CoAI of the *MRT* instituted the possibility to initiate proceedings against employers, who offer employment to individuals with no identity documents or residence or domicile registration. The fine for such „offences” mounts up to 10 conventional units *MRT*, i.e. approx. 6,5 US dollars. A repeated offence of such nature committed within a one-year deadline can be sanctioned with a fine of up to 100 conventional units *MRT*, i.e. approx. 65 US dollars.

CONCLUSIONS:

- the obligation of having a residence registration and to reside on the address appearing in the registration is unconstitutional and illegal, and comes in contrast with the international acts ratified by the Republic of Moldova;
- the fines established for the non-observance of mandatory registration are disproportional and exaggerated;

CHAPTER III

FREE MOVEMENT OF GOODS

According to the provisions of the Treaty of Rome, the free circulation of goods is applied to all commodities originating from the member states and other countries entitled to circulate on the community territory. For this purpose, the parties organized activities aimed at regulating four interrelated fields, namely:

- abolishment of customs documents in intracommunity trade,
- community rules governing the free circulation of goods,
- fortification of external borders,
- cooperation between administrations²¹.

Meanwhile, certain measures were taken for promoting uniform standards for goods, as well as common metrological units.

Goods are generally defined as products of economic activity and can be classified into two large groups: foodstuffs and industrial products. Industrial products in their turn are very diverse (cosmetics, fertilizers, perilous chemical substances, textile, glass, shoes, electrical appliances, motor vehicles, pharmaceutical products, toys etc.).

3.1. Circulation of vehicles with Moldovan registration plates

The official number of population residing in settlements from the left bank of the Nistru River and Bender municipality amounts to approx. 230763 Moldovan citizens²². The same source notes that approximately 415508 people do not have a registered address, but are holders of identity documents. A large number of them reside on the left bank of the Nistru River, but do not apply for residence registration for various reasons. This hypothesis is confirmed in statements given by the Ministry of Reintegration, which alleges that over 400000 inhabitants from the region have received identity documents free of charge.

Official statistical data show that 4234 vehicles are registered on the left bank of the Nistru River, including Bender municipality²³. Consequently, 4234 people at least fall or can fall under the incidence of the said phenomenon. In fact, this number is a lot higher, since many of the local inhabitants register their vehicles in localities limitrophe to the security area (Floresti, Soldanesti, Rezina, Orhei, Criuleni, Anenii Noi, Causeni, Stefan Voda, Dubasari districts, in particular). Respectively, it is quite difficult to make a real assessment of the impact of this phenomenon on local inhabitants.

21 I.Pascal, S.Diaconu, C.Vrabie, N.Fabian "Free movement of services", Bucharest 2002

22 www.mdi.gov.md/stat1_md/

23 www.mdi.gov.md/stat7_md/

Owners of vehicles with Moldovan number plates residing in the territory placed under the control of unconstitutional structures cannot circulate freely on the left bank of the Nistru River. Owners of such vehicles face problems when crossing the so-called border between Moldova and the *MRT*, where they register all transportation entering or leaving the *MRT*. Thus, any individual that intends to have a longer stay in the region must register their vehicle with the respective border services. Otherwise, there might be problems when leaving the territory. Vehicle registration implies a process of filling in a customs declaration, which forces the vehicle owner to comply with the customs procedures dictated by the customs regime – temporary entry on customs territory. In parallel the vehicle owner is obliged to leave the territory of the *MRT* with this vehicle within approximately two months after his entry. In order to secure a „free” movement of the vehicle its owner shall pay a fee amounting to 0,18% of vehicle’s price. This amount is a fee designed for the „customs” procedures. Vehicle’s price is calculated based on an assessment, and all related expenses are also charged from the owner of the vehicle. The assessors increase vehicle prices on purpose in order to increase the customs duties collected from the owners, respectively. For instance,²⁴ an 18-year-old Mercedes 609D (minibus) manufactured in 1988, was assessed in 2006 for a price of 10720 US dollars, though its real price did not exceed the amount of 8500 US dollars. Anyway, the customs duties were calculated based on the assessed amount.

Any failure of owners of vehicles with Moldovan number plates fail to observe the terms indicated²⁵ in the customs declaration în declarația vamală shall serve as grounds for legal proceedings²⁶ and shall result in fines varying between 50 and 100% of vehicle’s price, with or without its arrest. For this purpose, the „customs authorities” are particularly keen in following the circulation of such vehicles.

Owners of vehicles with Moldovan number plates can conventionally be divided into two groups. The quantitatively smaller first group includes individuals, who have not yet acquired the „*MRT* citizenship”²⁷, and the larger second group, respectively, includes those who have already acquired the aforesaid citizenship. Except being limited in their right to freedom of circulation on their vehicles on the territory controlled by the secessionist regime, individuals pertaining to the first group are also persecuted for the aim of being forced into applying for the *MRT* citizenship.

This phenomenon was brought to the notice of constitutional authorities; some cases were even discussed in the Parliament of the Republic of Moldova. To our regret, authorities’ response was insufficient, and today we still register cases of limited circulation of vehicles with Moldovan number plates on the left bank of the Nistru River. Constitutional authorities should at least have made efforts to force

24 C. P.’s case from Promo Lex practice

25 There were cases when vehicles were detained even though the deadline specified in the customs declaration was not overdue. Even so, the vehicle was detained anyway. C.E.’s case from Promo Lex practice

26 These individuals can be brought before justice in accordance with the provisions of art.353 of the “customs code of the *MRT*”

27 Today over one hundred people acquire the *MRT* citizenship every month. The acquisition of *MRT* citizenship after 17 years of its „independence” and sovereignty serves once more a confirmation of the fact that people are forced into applying for it against their will

the secessionist authorities to observe „their own“ legislation and, thus, reduce significantly the violations against citizens.

This situation affecting the owners of vehicles with Moldovan number plates is primarily conditioned by the local discriminatory „legislation“, which, in its turn, is abusively applied by the *MRT* „customs“ officers.

Thus, in line with the provisions of art.38 of the CC of the *MRT*²⁸, „All individuals are equally entitled to bring in and take out goods and vehicles from the territory of the *MRT* ... under the terms stipulated herein. No one shall be deprived of or limited in their right to bring in and take out goods and vehicles from the territory of the *MRT*, except the cases stipulated in this code and other legislative or normative acts of the *MRT*“.

As we noted hereinabove, *MRT* customs officers force owners of vehicles with Moldovan number plates to undergo a customs procedure for temporary entry of goods on the customs territory of the *MRT*. This procedure is governed by chapter 11 of the CC of the *MRT*. It is important to note that in line with the provisions of art.90 of the CC of the *MRT* temporary entry is a customs regime, which allows for the use of the goods on *MRT*'s customs territory or outside its boundaries, accompanied by total or partial exemption from customs duties or taxes. Article 93 of the CC of the *MRT* sets forth that the deadline for temporary entry shall be indicated by the customs authority of the *MRT*, based on the purpose and specific circumstances of each case, being though limited to two years.

Normally, taking into account the situation in the region and based on the provisions of local legislation, *MRT*'s „customs“ authorities could specify larger deadlines of up to 2 years for the temporary entry of vehicles with Moldovan number plates on its territory. However, such deadlines are usually limited to only 2 months in reality. Maximum deadlines are not used, since this would have a significant impact on *MRT* budget receipts. In the case of citizen C. P. we can note that the latter paid an amount of approximately 20 US dollars each second month. Consequently, in two years he managed to contribute with a total amount of 240 US dollars to the *MRT* budget. Therefore, if the provisions of the local legislation would have been observed, the *MRT* budget would have never collected 220 US dollars from one single individual. We believe no further comments are needed.

CONCLUSIONS:

- the „local legislation“ provides for the possibility to use vehicles with Moldovan number plates on the territory placed under the control of secessionist authorities. It also provides for the possibility of total or partial exemption from certain duties or taxes. In reality such norms are not applied; moreover, people are charged with a customs duty in the full amount of 0,18% of vehicle's price.

28 The text of the customs code of the *MRT* can be found on www.customs.tiraspol.net/content/section/6/54/

3.2. Circulation of vehicles with Transnistrian registration plates

In the context of what was mentioned above, we can also note a tendency related to the limitation of freedom of circulation for vehicles with Transnistrian registration plates on the territory of Moldova. A first step toward this was made in 2001, when constitutional authorities started a campaign of limitation of the freedom of circulation for vehicles with Transnistrian number plates. As a result of this campaign, Romania banned the entrance of these vehicles on its territory, and the entry of Romanian vehicles on the left bank of the Nistru River was also banned in response. From that moment on owners of vehicles with Transnistrian number plates can only circulate on the territory of Moldova, including its Eastern part, and Eastward outside its boundaries, i.e. in Ukraine and the CIS countries. The circulation of such vehicles in European countries was, consequently, forbidden.

This state of things was maintained until the end of 2007. At the end of year 2007 police officers intensified their activities related to the confiscation of number plates from vehicles registered in Transnistria. At a press conference held on 25th September 2007²⁹, the Head of the General Police Department on Public Order within the Ministry of Home Affairs, Mr. Mihail Cibotaru, declared that the police were confiscating the registration plates of vehicles registered in Transnistria because they did not comply with the national standards, which had been harmonized with the international ones. At the same time he noted that until that moment of time (i.e. 25th September 2007) 4058 of the 5895 cars with Transnistrian number plates, which had undergone a check, belonged to inhabitants from the right bank of the Nistru River.

An unofficial source mentions that approximately 160000 vehicles are registered in the Eastern part of Moldova. This significant figure is conditioned by the fact that vehicle registration costs in the MRT amount to merely 30% of the costs of such registration with the constitutional authorities. At the same time, the MRT allows for the registration of vehicles, whose age exceeds the one allowed by the Moldovan legislation. The MHA mentioned in its statements that a large part of these vehicles were owned by citizens of the Republic of Moldova residing on the right bank of the Nistru River. The MHA insists on the fact that these people are not patriots, and the procurement of vehicles with Transnistrian number plates is illegal.

During the Government Session of 7th November 2007, Vladimir Molojen, the Minister of Information Development, introduced two projects focused particularly on the issue of vehicles with Transnistrian number plates:

- on the approval of a bill on the documentation of certain groups of vehicles;
- on the approval of the Temporary regulations for the free circulation of vehicles with unregular documents and number plates in the Republic of Moldova.

29 www.dejure.md/index.php?go=news&n=1092

In a press conference that followed after the session Mr. V. Molojen stated that the two projects had been approved. Moreover, according to the statements issued by V. Molojen to the mass media, the said projects enforced certain restrictions related to the circulation of unregularly registered vehicles in Transnistria on the territory of the Republic of Moldova starting from 1st January 2009 and outside its frontiers starting from 1st January 2008. To our regret, these projects cannot be accessed on the official pages of the Government and Ministries concerned. At the same time, the bill was never addressed to the Parliament.

These normative acts could certainly have cleared up the situation of circulation of these vehicles, and the delay in their approval only makes people more suspicious. In the event that these normative acts would be functioning, vehicle owners would have the chance to legalize some apparently illegal investments. Second, this would motivate the owners of such vehicles residing on the left bank to register their cars legally, which would allow for a free circulation of such vehicles in any direction outside Moldovan territory. The biggest advantage of these normative acts would have been, in our opinion, the establishment of a deadline for the re-registration and regularisation of vehicles with Transnistrian number plates. This would have set an end to the import and registration of vehicles in Transnistria, since people would be aware that the goods they invest in cannot be used and legalized. There is still hope for a solution today; however old cars from Europe are still procured in Transnistria.

The authors of the study requested the projects and documents that had been voted on the session of 7th November 2007 from the Government; such documents were not yet produced originally because of technical reasons related to their editing (such an answer was sent in January, when the documents in question were to come into effect), and subsequently because of bearing a confidential character. The legal proceedings of forcing the Government to supply such public information is on the role, but no final decision was ruled yet.

The circulation of vehicles with unregular number plates is forbidden in Moldova from a legal perspective. This is set forth in p.121 of the Highway Regulations³⁰, which specifies the exploitation of vehicles through the withdrawal of number plates in cases when the number plate does not meet the established standards is forbidden. We shall note here that the said Regulations do not provide for any facilities for citizens residing on the left bank of the Nistru River, which is why we cannot understand the discriminatory attitude adopted toward all owners of such vehicles residing on the right bank of the Nistru River. Moreover, all drivers that were identified to be using vehicles with Transnistrian number plates, which had not been registered according to the established procedure, shall face administrative proceedings in line with the provisions of para.3, art.120 of the CoAI of the RM³¹. Home affair services are competent in settling the cases of administrative infrac-

30 Government Decision no.713 of 27.07.1999 "on the approval of the Highway Regulations" published on 05.08.1999 M.O. nr.83-86

31 Car owners using vehicles that have not been registered in the established procedure and/or who do not hold a mandatory insurance policy against civil liability for vehicle owners can be sanctioned with a fine amounting from one to three conventional units

tions stipulated in art.120 of the CAI of the RM. In an administrative proceeding the competent services for settling the case have the task to clarify all the aspects and circumstances of each case in an accurate, objective and timely manner, to settle it in severe accordance with the legislation, and the identify the causes and circumstances that contributed to committing the administrative offence³². Thus, home affair services must examine each case of use of vehicles with Transnistrian number plates, as well as to identify the causes and circumstances that contributed to committing such offences. Should police authorities have accomplished with their job responsibilities and legal provisions, they would and should have addressed solutions to the Government for this problem, since it is not an occasional one but has extended in a massive way for more than 16 years. From this point of view the accusations brought by the vice-minister of the interior, Mr. Andrei Pogurschi, on 24th April 2008, during a plenary session of the Parliament³³ against owners of vehicles with Transnistrian number plates, charging them with lack of patriotism, are, as we see them, ridiculous as long as the MHA and other competent authorities have done nothing during 16 years to stop those violations and, respectively, are to be held responsible for the growing importance of the phenomenon.

Article 234 of the CAI of the RM³⁴ specifies the circumstances that exclude proceedings in cases of administrative infractions. However, we cannot say that the said article provides for a certain circumstance that would exclude administrative proceedings based on the criterion of residence in a certain part of the country, which is why we can be certain that the permission to circulate freely with vehicles with Transnistrian number plates granted to inhabitants of the region is discriminatory. Moreover, the lack of clear and explicit normative acts regarding the vehicles registered on the left side of the Nistru River, as well as the possibility to undergo a repeated registration creates the necessary premises for the owners of such vehicles residing on the right bank of the Nistru River to acquire *MRT* citizenship and, respectively, to travel freely with such vehicles.

CONCLUSIONS:

- constitutional authorities do not take efficient steps toward settling the situation and reducing the effects of the limited circulation of vehicles registered in the *MRT* on the Moldovan territory and abroad;

32 See art.232 of the CAI of the RM

33 www.parlament.md/news/plenaryrecords/24.04.2008/

34 Article 234. The circumstances that exclude proceedings in cases of administrative offences
Proceedings in cases of administrative infractions cannot be initiated, and if initiated should be ceased subject to the existence of the following circumstances:

- 1) lack of the act of administrative infraction;
- 2) the fact that the offender had not yet reached the age of sixteen when the administrative infraction was committed;
- 3) irresponsibility of the individual committing an illicit action or inaction;
- 4) the fact that the individual reacted in a situation of urgent need or legitimate defense;
- 5) issue of act of grace, should it provide for the annulment of the application of an administrative sanction;
- 6) abrogation of the document establishing administrative liability;
- 7) should the deadline set forth in article 37 hereof become overdue before the examination of the case of administrative infraction;
- 8) the existence of a decision issued by a competent authority (official) regarding the application of an administrative sanction on the same act and against the same individual charged with administrative liability or existence of a non-abrogated decision to close the file on administrative infraction, as well as the existence of a criminal file;
- 9) the death of the individual that makes the subject of the initiated proceedings

- national normative acts provide for the possibility to restrict the circulation of vehicles with Transnistrian number plates, but such limitation is selective, discriminatory, and is oriented only to drivers residing on the right bank of the Nistru River;
- constitutional authorities have „developed“ certain normative acts intended to govern the legal registration of vehicles with Transnistrian number plates; however, such documents have not been made public, moreover, access to them is blocked even when they are supposed to have entered into effect;
- because of the lack of such normative acts Moldovan citizens residing on the right bank of the Nistru River are forced to acquire the *MRT* citizenship in order to use such vehicles freely.

3.3. Carriage of goods across internal borders by natural persons

De jure, there is no „border“ between the region of Transnistria and the rest of Moldova territory. Nevertheless, *de facto* such a border exists along the Nistru River, except few settlements on its left bank (Corjova, Cocieri, Malovata Noua, Vasilevca, Dorotcaia, Cosnita and Pohrebea, placed under the control of constitutional authorities) and, respectively, few settlements on the right bank placed under the control of the secessionist authorities (Bender, Proteagailovca, Gisca, Merenesti, Chitcani and Cremenciug). This „border“ is *de facto* identified by several check points dislocated on it by the force structures of both sides. These check points include police, customs officers etc. People living in these villages and towns, as well as in other localities placed at a rather small distance from this „border“ are forced to visit the region of Transnistria very often or to maintain economic relations with the region. Many of them even work in the region and are employed with economic agents in Transnistria.

Under such circumstances, the inhabitants of aforesaid localities and other settlements adjacent to the „border“ are forced to develop various economic relations. These economic relations are influenced by the said customs check-points. People carrying certain goods bought in the region of Transnistria across the border into settlements placed under the effective control of constitutional authorities have to undergo frontier checks and pay various duties. This situation has often aroused reactions of discontent, and even public mass demonstrations. It is worth stating the case of Firladeni inhabitants, who organized a series of protest meetings against the dislocation and existence of an internal customs check-point in their locality in the spring of 2008. As a result of these meetings the inhabitants of the village adopted a resolution requesting the amendment of GD no.792, which governs the activity of internal customs check-points and carriage of goods through it, respectively.

Government Decision no.792 of 08th July 2004, „on the approval of the Regulations on carriage of goods through internal customs check-points“ was published in the

MO on 16th July 2004. It has never been amended or reviewed from the day of its publication.

In line with this Decision, „when natural persons, who are not registered as subjects of entrepreneurial activity, carry goods manufactured abroad of unidentified origin for sale through the internal customs check-points, all import duties related thereto shall be calculated and collected integrally from the declared volume”³⁵.

When analyzing the provisions of the aforesaid Regulations we can note that it governs the goods carried through the internal check-points both by natural and legal persons, which are subjects of entrepreneurial activity, regardless of their registration or non-registration with the competent structures of the Republic of Moldova and of whether they do or don't keep relations with the budget and tax system, as well as by natural persons, which are not subjects of entrepreneurial activity.

At the same time, the general procedure for bringing goods in or out of the territory of the Republic of Moldova is governed by the Law no.1569 of 20th December 2002.³⁶ The said law distinguishes several groups of people, where natural persons are identified as residents or non-residents that are not subjects of entrepreneurial activity.³⁷

To paraphrase the legal provision from the afore-mentioned Regulations we can say that any commodity brought out of the region placed out of the control of constitutional authorities and into areas placed under their control shall be imposed with taxes starting with a zero quota, i.e. without any discounts.

It is to be noted, however, that in line with the provisions of art.5 of the Law no.1569 „natural persons are entitled to bring in the territory of the country, without being charged with import duties, any goods other than those specified under lit.a), whose customs value shall not exceed the amount of 200 EUR and which shall not be used in any trade or production activity. In the event that the customs value of such goods exceeds the specified non-taxable quantum, import duties shall be then collected based on the customs value of the respective good (the specified non-taxable quantum shall not cause the taxable value of the good to be decreased)”.

According to the provisions of art.116 of the CC of the RM, „goods that are not designed for production purposes or other commercial activities can be carried across the border line by natural persons under a simplified procedure established by the CS. This procedure can include total or partial exemption from import or export duties, except the tax for customs formalities, as well as the establishment of single customs tariffs and nonuse of economic policy tools as provided by the law.”

35 Para.2, pct.10 of the Regulations

36 Law 1569 “on the procedure of bringing goods in and out of the territory of the Republic of Moldova by natural persons”, M.O. no.185

37 Entrepreneurial activity, business – any activity under the law, except work performed by an individual under a labor contract (agreement) for the purpose of getting an income or which leads to an income regardless of its purpose. Point 16 article 5 Title I Tax Code of the RM

Customs duties' calculation and application procedure is governed by the Law no.1380 of 20th November 1997 „on customs tariff“. The said law³⁸ stipulates that no customs duty shall be payable on personal or household goods imported by natural persons, provided that their value or volume does not exceed the limit established by the legislation in force. Moreover, the destination of goods is identified depending on their volume and value, as well as on the grounds implied by the natural person for their carriage across the frontier in the absence of any reason to trust that the goods do not serve a personal or family purpose. Thus, the law-maker let customs officers decide whether the transported goods serve a personal purpose or are meant for commercial or production activities.

We therefore believe there is an obvious discrepancy between certain laws and a Government decision, respectively. Hence, the decision is inferior to the legal provisions, which should be directly enforced by customs officers. To our regret, customs officers choose to apply the GD, thus generating many justified reactions of discontent among the inhabitants of the region. Customs officers are forced to apply the said provisions in order to secure the receipts in the state budget, or, in other words, in order to substantiate the economic need for the existence of those internal customs check-points.

We really find ourselves in a situation, when people bringing certain goods from the region of Transnistria, even though such goods are not meant for sale but rather serve personal purposes, are charged with taxes. Such circumstances render the discontent of inhabitants residing in close proximity to the region be self-evident. Those who work in the MRT and get salaries paid in Transnistrian rubles, namely the inhabitants of villages, whose geographic positioning and infrastructure enforce the need to keep contact with the region of Transnistria, are the most affected by such provisions.

CONCLUSIONS:

- the customs duties paid by natural persons for the carriage through the internal customs check-points of goods that are not meant for sale are charged in line with the provisions of a Regulation approved by the Government, which comes in contrast with the laws in force governing the customs activity. Such provisions are discriminatory since they provide for facilities in case of transportation of goods from abroad into the customs territory of Moldova.
- Customs officers should apply the legal provisions instead of the GD; still, they do not act accordingly because they are to report a profit received by the internal customs check-point, i.e. they are to prove the economic need for its existence.

38 art.28 of the law 1380 of 20th November 1997 „on customs tariff“

CHAPTER IV

■ FREE MOVEMENT OF SERVICES

The free circulation of services refers to the right to provide services on the territory of the member states from a central office established in the EU. The community law defines the concept of „services“ as an ensemble of services that do not fall under the incidence of provisions referring to the free circulation of goods, capital or persons. It can be clarified using three criteria established under the CJEC jurisprudence in Luxembourg:

- a) The service provider shall be established in a Member State of the EU other than the country of destination, so that an internal EU border is crossed in the process.
- b) The service provider should have been established within the area of the Unified European Market.
- c) Services shall be provided in exchange for a remuneration.

The provision of services is characteristic for any type of activity: TV shows, publicity, financial activities in the bank and insurance field, mediation activities, transportation and tourism, even professional sports, organization of games and loteries and any liberal occupations (doctors, lawyers, architects, accountants).

The free movement of services can be classified into two categories: active and passive free movement of services. Active movement implies that the provider is „active“, i.e. the provider should travel to the client residing in another Member State than the one where the provider is established. The passive free movement of services implies that the beneficiary shall travel to the Member State, where the provider is established, to make a contact or sign an agreement with the latter.

4.1. Movement of passenger transportation services

The association was contacted by few taxi drivers, who reported a problem related to the limitation of movement of such vehicles in areas placed under the control of secessionist authorities. Passenger transportation by car in Moldova is required to be licensed. Therefore, drivers who own a license in Moldova³⁹ faced various difficulties, including the following:

1. Access to the region of Transnistria was denied to cars marked with the labels of taxi companies from Moldova.
2. Access was authorized only after the payment of unofficial fees to *MRT* defense force officers.
3. Access to the region of Transnistria was authorized to vehicles owned by Moldovan taxi companies, but on their way back the defense force officers drew up

39 In Moldova the car transportation of passengers is subject to licensing according with legislation.

reports of administrative infractions committed in the process of rendering illegal services on the *MRT* territory.

Obviously, different drivers were limited in a different way in their freedom of movement, but all such cases root to one single truth – the provision of passenger transportation services by Moldovan taxi companies is banned inside the territory placed under the control of secessionist authorities. Today passenger transportation (taxi services) in the region of Transnistria is not required to be licensed. However, this kind of activity can be performed under an entrepreneur patent.⁴⁰ The provision of such services in exchange for a fee without an entrepreneur patent can be subject to administrative proceedings in accordance with the provisions of para.1, art.162 of the CoAI of the *MRT*.⁴¹

Since employees of control authorities in the region do not recognize the provisions of the national legislation and govern their activity only by local regulations, drivers that work legally in line with the Moldovan laws cannot provide their services in the area placed under the control of the secessionist regime. However, we can note that not even the local legislation is observed by the afore-said employees. There have been cases when illegal fees were charged for access to the region or, even worse, when entry was granted for the purpose of collecting fees for „illegal performance“ of a business activity when leaving the region. Those two cases are nothing else than examples of fraudulence from the part of those people, whose only aim is to take possession of drivers' funds.

The victims of such irregularities do not seek protection with the constitutional authorities, since the latter do not take any efficient action in view of settling the situation.

CONCLUSIONS:

- the provision of services related to business activities in the *MRT* by economic agents registered with the constitutional authorities is impossible if they are not registered with the relevant authorities from the region,
- employees of control authorities subordinated to the secessionist regime extort funds from economic agents under the pretext of „illegal performance“ of business activity.
- there is no efficient national remedy for the defense and protection of these people.

4.2. Movement of legal services

Another aspect of the free movement of services is the impossibility to provide legal services directly to their beneficiaries. Generally speaking, there are few legal

40 www.pravo.ictcorp.biz/text.php?docid=734294&searchtext=&searchname=&searchnumber=82-%C7-III&searchdate1=&searchdate2=&rdi=&view=&auth=

41 Article 162. Illegal performance of business activity
The performance of business activity without having it registered or re-registered according to the procedure established under the law entails the payment of a fine from 50 up to 600 conventional units *MRT*.

specialists and barristers on the right bank of the Nistru River trying to offer legal assistance in the region of Transnistria. There are several circumstances that lead to this situation, namely:

1. Many specialist legal advisers do not wish to work in the region because of the illegal statute of the local judiciary.

2. Legal specialists from the right bank of the Nistru River do not have deep knowledge of the local legislation from the left side of the Nistru River and, respectively, being aware of the impossibility to provide legal services, refuse to provide legal assistance to people residing in the region of Transnistria.

3. There were cases when legal specialists from the right bank of the Nistru River were arrested, ill-treated and threatened after having provided professional services on the left bank of the Nistru River for the purpose of impeding them to do so in the future⁴².

Even if a specialist from the right bank of the Nistru River decides to offer legal assistance to people in a court that is not recognized by the Transnistrian authorities, difficulties will anyway arise. Thus, legal assistance in the region can only be provided by two types of persons:

- individuals with education in the legal field (and not only) on all cases, less the criminal and administrative ones, acting under a power of attorney authorized by a notary public, and
- by barristers, members of the Bar from the *MRT*.

Legal services can be provided under a power of attorney in all types of cases, less the criminal and administrative ones. These provisions are directly stipulated by local normative acts, which govern the possibility of representation for each type of dispute. In such case the development of a power of attorney for participation as representative of the person requesting legal assistance is quite difficult, since, when releasing such a power of attorney, Transnistrian „public“ notarys require the applicant to be a citizen of the *MRT* and to hold a relevant identity document certifying his/her identity and *MRT* citizenship. In essence, such a practice of refusal is illegal even under the provisions of the local legislation,⁴³ which grants to foreign citizens the right to apply for notarial documents, or, in our case, a power of attorney.

Members of the Bar Council of the Republic of Moldova also find themselves in the impossibility to provide legal services freely and directly, since the license issued by constitutional authorities is not recognized by the relevant structures from the left bank of the Nistru River. Under such circumstances, barristers who still decide to offer legal assistance in the region are forced to sign a legal assistance agreement with a barrister from the *MRT*, being further constrained to render their services in latter's presence and with latter's support.

42 www.timpul.md/Rubric.asp?idIssue=377&idRubric=3137

43 www.pravo.ictpcorp.biz/2pdf/2pdf.php?docid=731720

This is why in practice the indirect representation of people before secessionist authorities is most often used. Indirect representation implies a direct agreement with the beneficiary and preparation of all necessary written papers, which the legal assistance beneficiary shall then produce to the authority in charge of examining the case in question. Today this is the most efficient method of all, but it requires additional time for the preparation of all documents, which the beneficiary shall produce in all competent courts, and implies that the beneficiary shall have to visit the legal specialist every time for advice.

CHAPTER V

■ FREE MOVEMENT OF CAPITAL

Free movement of capital aims at removing all restrictions between Member States, at contributing to the establishment of the single market by encouraging other freedoms and at encouraging economic progress by enabling capital to be allotted efficiently. It enables the creation of a financial arena on an international scale and contributes to the implementation of EU economic and monetary policy objectives.

Similar to the free movement of services, the free movement of capital has several identification criteria established under the CJEC jurisprudence. The Court in Luxembourg deems that the “movement of capital” are financial operations essentially concerned with the investment of the funds in question rather than remuneration for a service. In other words, the movement of capital is an autonomous transaction rather than an operation arising from another operation. The CJEC noted further more that the physical transfer of bank notes may not be classified as movement of capital where the transfer in question corresponds to an obligation to pay arising from a transaction involving the movement of goods and services.

5.1. Payment of old age pensions to Transnistrian inhabitants

The payment of old age pensions from the public social security budget, whilst old age pensions are paid by the secessionist authorities, is another issue addressed to the Association for consideration.

Thus, a large number of old-age pensioners notably from security areas, who received an old age pension from the NSSH, were forced into acquiring the *MRT* citizenship. Consequently, they were registered by the relevant authorities from the region of Transnistria and receive an old age pension from these unrecognized structures.

The constitutional authorities responded instantly by ceasing the payment of old age pensions to people, who had already benefitted from such payments from the secessionist authorities. In order to do so, constitutional authorities request from individuals residing in areas placed outside the control of constitutional authorities, and even those residing in areas placed under the control of constitutional authorities, but who were constrained by the circumstances to work for Transnistrian employers, a „certificate of beneficiary or non-beneficiary of old-age pension“. In order to check the accuracy of the information provided by the beneficiaries of the Association, we filed in an interpolation with the Dubasari NSSH, which certified that since year 2003 in Dubasari district there have not been registered any beneficiaries receiving pensions both from constitutional authorities and from secessionist ones.

In line with art.47 of the Constitutional of the Republic of Moldova, the citizens have a guaranteed right to protection and social assistance; consequently, they are entitled to old age security under the form of old-age pensions. In line with art.54 of the Constitution, no laws that surpress or limitate the fundamental human rights and liberties shall be adapted, and even if there are limitations in the exercise of a certain right, the right in question can be used providing that such limitations comply with the unanimously recognized norms of international law, are necessary into the interests of national security, territorial integrity, economic welfare, public order... Moreover, such limitation must be proportional to the circumstances it was caused by and cannot achieve the existence of a guaranteed right.

In the Republic of Moldova an organic law⁴⁴ governs the procedure and terms of payment of public social security pensions, including old-age pensions. Article 2 of the said law stipulates that policyholders residing in the Republic of Moldova, as well as people, who are not policyholders when the pension is assigned, but who nevertheless comply with the terms provided by this law, shall be entitled to receive a pension. The relevant terms are set forth in art.14 of the said law, specifying that the right to an old-age pension shall be awarded if pension age and retirement contribution requirements are cumulatively met.

The authority responsible for the establishment and payment of pensions is, as already mentioned, the NSSH and its territorial subdivisions. Its attributions are specified in art.30 of the above-said Law, according to which it only has to right to control the genuiness of documents certifying the work seniority and secured income. In line with the provisions of art.31 of the named Law, a pension shall be granted to an individual entitled to receive a pension at latter's request, to which all necessary papers should be attached.

We can note that there is no normative act⁴⁴ would specify the documents needed to be attached to the afore-mentioned application. Nevertheless, all territorial NSSH offices have a list of all needed documents for the payment of a pension. The same list is also available on the NSSH web page⁴⁵ as an answer to the question of an individual regarding the documents needed for the calculation and payment of a pension. The list generally refers to four types of documents, namely:

1. Application for pension
2. Identity card, as document certifying person's age
3. Work-record book and other documents on work seniority. Such documents may include military cards, university diplomas, etc., if needed.
4. Certificate on income, secured wage

As far as we noticed there is no legal provision that would force people, who are entitled to an old-age pension, to produce a certificate of whether they do or do not receive such a pension. However, as noted above, the Constitution provides for some cases when interference with the enforcement of fundamental rights is allowed. In this sense we have to say that the deprivation of an aged person - a

44 Law of the RM no.156 of 14th October 1998 "on public social security pensions"

45 www.cnas.md/ro/question/?page=2

citizen of the country - from their pension performed by a public authority for the reason that the individual in question receives a similar pension from another illegal and non-recognized authority lays outside the boundaries of a legal limitation. Such actions are neither in the interests of national security nor in the interests of territorial integrity. Moreover, such actions leave the inhabitants of the left bank of the Nistur River with the impression that they are neglected by the constitutional authorities and even discriminated in certain cases. Such actions can, probably, be partially referred to the principle of preserving the economic welfare of the country; still, they hide some of the guaranteed rights. In our opinion, under such circumstances the interest and care for the citizen should prevail over a country's economic welfare interests.

This situation has another negative effect⁴⁶, since it causes the trust of local inhabitants in the constitutional authorities and, respectively, that of Moldovan authorities in this region to decrease. At the same time, since the Russian Federation provides pension supplements to Transnistrian pensioners⁴⁷, the position of the public toward the two countries is self-evident.

NSSH's request for a „certificate” released by the illegal authorities, especially when such a certificate can lead to a withdrawal of pension from the constitutional authorities, only certifies its legality.

CONCLUSIONS:

- the legislation in force does not make an express provision of the possibility to deprive the citizens of their right to receive an old-age pension for the reason of having received such pension from another non-recognized source,
- aged people residing in the region of Transnistria, who are entitled to receive a pension from the NSSH, are *de facto* deprived of such pension in case if they receive a pension from the *MRT* authorities,
- the discriminatory payment of pensions affects the trust of Transnistrian inhabitants in the constitutional authorities of the Republic of Moldova.

5.2. Escalation of deposits

Free movement of capital is one of the four aspects of free movement. For citizens, free movement of capital means the ability to perform a wider range of operations abroad, i.e. open bank accounts, purchase shares of foreign companies, make investments in highly profitable fields and real-estate transactions. As we can notice, such a freedom is guaranteed in the entire EU, to which the Republic of Moldova attempts to adhere. Nevertheless, Moldova's internal situation related to the free movement of capital, bank accounts, is of a discriminatory nature; we can even say that Moldova is breaching this right.

46 www.olvia.idknet.com/ol82-09-06.htm

47 www.pressa.tm.md/?page=itrec_4&id=28150

According to the Law on escalation of citizens' deposits in the BE⁴⁸, a deposit repayment mechanism was instituted for individuals, who had held funds in the respective bank as on 2nd January 1992. The said mechanism provides for the payment of escalated amounts at beneficiary's request in installments, starting with the first one thousand rubles, as priority, and going further for the account balance exceeding the first one thousand rubles, depending on the year of birth.

When the said Law was passed, there were many cases, when people who held deposits in subsidiaries of the BE requested a deposit escalation and were refused. The reason for such refusals was that the escalation and repayment of deposits of citizens of the Republic of Moldova in BE subsidiaries from the left bank of the Nistru River shall be considered only after the settlement of the financial and budget relations between this area and the state budget of the Republic of Moldova. Since the accounts had been opened in the area placed under the control of secessionist authorities, such deposits have not yet been escalated. It is relevant to note here that a large number of the account beneficiaries are aged people, who should enjoy special care and attention from the state.

The said law specifies the obligations of the state before the citizens of the Republic of Moldova, who held deposits in the BE on 2nd January 1992 and defines the basic principles related to escalation, as well as payment volume and procedure of the escalated amounts. First, the Law in question stipulates from the very beginning that the state of Republic of Moldova has pecuniary obligations before all the citizens of the Republic of Moldova. Consequently, the state has this obligation before all its citizens, regardless of their place of residence.

At the same time, the Law named hereinabove sets forth the obligation to escalate both the existing deposits in the BE as well as the ones updated as of 29th July 1994. Their balance as of 2nd January 1992 served as basis for this purpose. Article 9 of the said Law⁴⁹ formulates an aspect, which comes in contrast with its purpose; moreover, it is a totally discriminatory norm applied to its citizens from the left bank of the Nistru River.

Thus, citizens who have reached the necessary age and belong to the category of people entitled to escalation and payment of deposits, and who hold all certifying documents in this sense, are refused based merely on the criterion of place of residence and on the fact that their deposits had been made in BE subsidiaries from the left bank of the Nistru River. The state limited the property rights of its citizens from the left side of the Nistru River on discriminatory grounds. Thus, the Parliament offered another reason to local inhabitants to be convinced that Moldovan authorities do not thrive to reunify the country, but rather adopt a discriminatory behavior toward its citizens residing on the left bank of the Nistru River.

48 Law no. 1530 of 12.12.2002 "on escalation of citizens' deposits in the BE" published on 20.12.2002 in M.O. nr. 174

49 art.9 Escalation and payment of deposits of citizens of the Republic of Moldova in BE subsidiaries from the left bank of the Nistru River shall be considered after the settlement of the financial and budget relations between this area and the state budget of the Republic of Moldova

The exercise of rights and liberties recognized in the Constitution⁵⁰ must be secured for all, regardless of gender, race, color, language, religion, political affiliation or other opinion, social or national origin, affiliation to a national minority, patrimony, birth or any other circumstance.

The national authorities have not yet taken adequate steps toward ceasing such violations. This is an entirely unjustified and discriminatory situation, since no one knows when will people from the left bank of the Nistru River get back all their deposits, thus being deprived of the possibility to use their own funds that had been collected throughout their entire lives.

Since the settlement of the financial and budget relations between the localities from the left bank of the Nistru River and the state budget of the Republic of Moldova is equal to the settlement and normalization of the relation between the Republic of Moldova and its area from the left side of Nistru River, no one knows when will this happen. Consequently, a large part of the citizens are excluded from state protection without any credible reason; they are practically deprived of any real possibility to enjoy their own funds, since many of them are old aged people.

The said law implies a severe violation of both the national and international legislation. Thus, the principle of equality secured by the Constitution of the Republic of Moldova, as well as by all international acts ratified by the latter, is the first to be breached. The quintessence of the constitutional norm consists in the fact that all citizens have equal fundamental rights, liberties and obligations, the exercise of which must be granted by the state without discrimination. The European Court constantly recalls in its jurisprudence that the principle of equality and non-discrimination is violated when there is a difference of treatment in analogous situations without providing an objective and reasonable justification, or when there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized. Public debts are guaranteed by the Constitution in art.46, para.(1). According to art.47, para.(2) of the Supreme Law citizens are entitled to old-age insurance. In line with art.126, para.(1) and para.(2), lit. g) of the Constitution, the Moldovan economy is a socially-oriented market economy, and the state must secure the necessary premises for improving the standard of living. The constitutional norms cited above show that the state guarantees its obligations, including the repayment of citizens' deposits placed with the BE, which favors to a certain extent their old-age insurance and helps in other cases when the means of subsistence are lost⁵¹. In our opinion, the Parliament should exclude art.9 of the Law as contradictory to the Constitution.

The abrogation of art.9 of the Law would determine Moldovan citizens residing on the left bank of the Nistru River to believe and feel as part of a unified society, and wish for the reintegration of the entire population of the Republic of Moldova. By adopting such norms the Moldovan authorities therefore only compromise the at-

50 art.16 of the Constitution

51 See the explanatory note to the draft Law on amendment of article 5 of the Law nr.1530-XV of 12th December 2002 on the escalation of citizens' deposits placed with the BE

tempts to settle the conflict with the region of Transnistria. Savings are made on the account of Moldovan citizens from the left side of the Nistru River. A question then arises: *if the state does not wish to protect its own citizens, who should then settle the issue of escalation of deposits held by citizens from the left bank of the Nistru River?*

CONCLUSIONS:

- the escalation of deposits placed with the BE is stipulated by the legislation only for individuals who made such deposits with BE subsidiaries located on the right bank of the Nistru River.
- the refusal to escalate the deposits placed with BE subsidiaries from the left bank of the Nistru River is deemed to be discriminatory and unconstitutional.
- the difference of treatment applied to citizens on grounds of place of residence leads to a complete loss of trust from Transnistrian citizens in constitutional authorities.

5.3. Tax amnesty of 27th April 2007

We already noted above that freedom of movement of capital means to the citizens the ability to perform several economic operations that are guaranteed by the state through predictable and clear normative acts. However, there is one case, as well as many more, in our opinion, in which normative acts are applied in a discriminatory way in relation to certain people or economic agents.

Thus, on 27th April 2007 the Parliament of the Republic of Moldova, on the initiative of the President, approved the Law nr.111 „on amendment of some legislative instruments“. The said law instituted a tax amnesty and capital legalization procedure. In many cases such initiatives were severely criticised by the specialists in the field because of supposedly creating unequal conditions for good-faith companies or persons, who paid all the taxes under the law, and for bad-faith companies or persons, who did not or were not able to pay the said taxes. This is the reason why we shall not further focus on these aspects and rather analyse the situation from the perspective that these initiatives are provided by the legislation and are to function.

The situation about to be described is related to the enforcement of the said law in the field of tax amnesty before an economic agent performing its activity on the left bank of the Nistru River, but registered with the constitutional authorities under the national legislation. The economic agent in question operates in a locality placed under the control of constitutional authorities; still, approximately 80% of its agricultural fields are located beyond the Ribnita-Tiraspol route, i.e. are under the control of the secessionist authorities from Tiraspol.

From 27th December 2006 and until 24.01.2007 the said economic agent underwent a complex inspection of its financial activity for the reporting period of 01.07.2003 – 31.12.2006. The results of the inspection referred to multiple deviations regarding failures to observe the tax legislation. On 24.01.2007 the tax officer drew up a document specifying all the drawbacks that were identified during the

inspection. The said document certified that the company had not paid many fees and taxes, thus failing to comply with the provisions of the tax legislation. On 09th February 2007, based on the afore-mentioned inspection document, the head of the Dubasari STI issued a decision on the case of violation of the legislation. Based on this decision the company was obliged to pay all the taxes and fees, which it failed to pay during the years 01.07.2003-31.12.2006, as well as some penalties in the form of fines and delay interest.

As to the enforcement of the provisions of the Law nr.111 of 27.04.2007 in relation to the economic agent, the head of the company filed in a demarch requesting the application of a tax amnesty, debt abrogation, annulment of the sequester on account and repayment of the amount debited from company's account in June 2007, after the Law no. 111 had entered into force. In the month of July 2007 the head of the Dubasari STI issued an answer, in which the request was denied for the reason that „the amounts calculated as a result of the documentary inspection were inserted in the database after 01.01.2007 and until 11.05.2007, which render the application of tax amnesty to the taxes and fees calculated based on the said decision impossible“.

According to the Law nr.111 of 27th April 2007, tax amnesty is the annulment of debts reflected in the accounting system of the GSTI and NSSH, including the special accounting system, as on 1st January 2007, with respect to taxes, fees, other payments, delay interest payments and fines afferent to the state budget, public social security payments, and medical insurance premiums that were not paid before the day of enforcement of this chapter, including those delayed and deferred (repeatedly deferred) according to the legislation in force.

This provision stipulated for the annulment of existing debts on 1st January 2007 and did not refer to the situation reflected in the GSTI accounting system etc. Thus, the law did not specify when was the real situation until or after 1st January 2007 reflected; it rather mentioned the de facto situation of 1st January 2007, regardless of the moment of its determination. Taking these into account, we believe the provisions of Law nr.111 apply as well to the economic agent in question, since its debts can be referred to the period of 01.07.2003-31.12.2006 and can therefore form the subject of tax amnesty.

In line with the provisions of para.3, art.28 of the Law hereinabove named on tax amnesty, the subjects of tax amnesty shall include legal and natural persons, who have debts reflected in the accounting system of the GSTI, NSSH, including the special accounting system, as on 1st January 2007, with respect to taxes, fees, other payments, delay interest payments and fines afferent to teh state budget, public social security payments, and medical insurance premiums that were not paid before the day of enforcement hereof, including those delayed and deferred (repeatedly deferred) in line with the legislation in force.

On 08th June 2007 GD 638 was approved, which approved the Regulations „on tax amnesty enforcement procedure in the accounting system of the GSTI“. The provisions set forth under lit. a), pct.4 of the said regulations stipulate that „the balance

subject to annulment of principals shall be calculated as the difference between the quantum of the balance as on 1st January 2007 and the amount paid to cover the said debt between 1st January 2007 and 11th May 2007". Thus, the STI could only proceed to the annulment of existing debts until 11th May 2007. Contrary to such provisions, the STI debited company's account illegally in June 2007, i.e. with a one-month delay.

It is worth to note that the draft law on tax amnesty was accompanied by an information note made public on the official WEB page of the Parliament⁵². The said information note stated that „on 1st January 2007 the total amount of debts of economic agents before the national public budget constituted approximately 2 billion MDL". This information was also certified by the Ministry of Economy and Trade in a report⁵³ „on the social and economic progress of the Republic of Moldova in the 1st semester of year 2007". The report mentions that „On 30th June 2007, debts on tax obligations payable to the national public budget amounted to 2116 mln MDL, i.e. 168,4 mln MDL less than at the beginning of the year".

Nevertheless, on 16th August 2007 the GSTI organized a press conference⁵⁴ and announced that „state budget debts were annulled⁵⁵ in the amount of 3099,2 mln MDL". But there was no remark that the tax amnesty was finished and, consequently, debts to the national state budget were further to be annulled. At the end of year 2007 the GSTI informed that according the afore-mentioned Law concerning the tax amnesty the total amount of annulled debts consisted 4337,6 mln MDL.⁵⁶

A logical question arises here: why and for whom did the GSTI amnesty over 2 billion MDL. The answer is simple: either the Parliament was misled about the realities of the use of tax amnesty through the information notes produced by the executive, or, which is more probable, the tax amnesty was enforced for debts, which had not been reflected in competent authorities' databases (in line with law no. 111) on 01.01.2007, rather than for the real situation of 01.01.2007, even though the real situation was assessed subsequently to this date.

We can note that even though the Law is generally favorable for economic agents with debts before the state, those who should implement it create obstacles by misinterpreting the law in the interests of the state. Moreover, the said law does not provide any guarantees of its enforcement to economic agents from the left bank of the Nistru River, who are not yet in any relationship with the state budget.

CONCLUSIONS:

- the tax amnesty cannot be enforced in favor of economic agents from the left bank of the Nistru River;
- the debts annulled through the tax amnesty were double to those originally planned, and the *MRT* was not included in the report.

52 www.parlament.md/lawprocess/laws/april2007/111-XVI-27.04.2007/

53 www.mec.md/Files/0/expres%202007-6.pdf

54 www.fisc.md/INDEX_main.aspx?source=doc/ro/noutati/CONFER.ascx

55 The state budget is only a part of the national public budget

56 www.fisc.md/INDEX_main.aspx?source=doc/ro/noutati/RAPORT.ascx

■ CONCLUSION

The territory placed on the left bank of the Nistru River and controlled by the secessionist authorities has a population of approx. 550000 inhabitants. All those people need protection and rights that are secured. Moldova is *de jure* responsible for this territory and is to further take efficient steps toward securing the enforcement and protection of local inhabitants' rights.

A large share of the cases brought up in this study imply a violation of the rights guaranteed under the European Convention. Consequently, should those whose rights have been violated file in applications with the ECHR, the Republic of Moldova then risks to be held guilty for the violation of such rights. In order to avoid such convictions, constitutional authorities should guarantee the respect for the rights guaranteed under the Convention throughout its entire territory.

Thus, in line with ECHR's decision in the case of *Ilascu and others vs. Moldova and the Russian Federation*, Moldova's guilt was recognized only as starting from 2001. The Court noted that until 2001 Moldova made all necessary efforts in view of securing the respect for applicants' rights in the case in question. Taking this into account, we can note that Moldova shall have to take actions in several directions in order to secure the observance of human rights in the region of Transnistria.

First, constitutional authorities should check the normative acts so that the latter do not provide for discriminatory treatment toward the inhabitants from the left bank of the Nistru River or, even worse, do not exclude the region from its area of protection.

Second, constitutional authorities should react promptly to each citizen's notification of supposed violation of a right guaranteed under the Constitution of the Republic of Moldova and the European Convention. At the same time they should ensure an objective and multilateral analysis of each notified case in order to identify the factors and conditions that caused its appearance. Further, such analysis should be followed by a range of activities aimed at abolishing, overcoming and neutralizing the said factors and conditions in order to prevent the appearance of new victims.

Third, Moldova should take all necessary political, economic, legal or other steps to take over control over the left bank of the Nistru River. Constitutional authorities should therefore make real efforts for recognising the illegality of acts leading to human rights violation, for identifying the individuals who committed such abuses and, when such abuses bear all the constitutive signs of an offence, identify the individuals responsible for committing such offences and take all necessary action for holding them responsible thereof.

These steps are the only way that constitutional authorities can come close to settling the Transnistrian conflict and reinstating control over the territory, which shall inevitably result in secured fundamental rights and freedoms for all people living in the region of Transnistria.

■ LIST OF ABBREVIATIONS

- PACE** – Parliamentary Assembly of the Council of Europe
- CC** – Constitutional Court
- ECHR** – European Court of Human Rights
- EEC** – European Economic Community
- CJEC** – Court of Justice of the European Communities
- NHSI** – National House of Social Insurance
- CoAI of RM** – Code on administrative infractions of the Republic of Moldova
- CoAI of MRT** – Code on administrative infractions of the MRT
- CIS** – Community of Independent States
- CC of RM** – Customs Code of the Republic of Moldova
- CC of MRT** – Customs Code of the MRT
- GD** – Government Decision
- GSTI** – General State Tax Inspectorate
- Territorial STI** – Territorial State Tax Inspectorate
- KGB** – in Russian: Komitet Gosudarstvenoi Bezopasnosti (Committee for State Security)
- MHA** – Ministry of Home Affairs
- MID** – Ministry of Information Development
- MMF** – Moldovan Metal Factory
- MO** – Monitorul Oficial
- MRT** – Moldovan Republic of Transnistria
- MSSR** – Moldovan Soviet Socialist Republic
- CS** – Customs Service
- EU** – European Union
- USSR** – Union of Soviet Socialist Republics