

*MOLDOVAN HELSINKI COMMITTEE
FOR HUMAN RIGHTS*

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DRAFT (PUBLIC)

**Report on Respect of Human Rights in
the Republic of Moldova
(including Transdnistria region)**

January 2001-January 2002

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About Moldovan Helsinki Committee for Human Rights

Moldovan Helsinki Committee for human rights is an independent, non-for-profit human rights organizations founded by a group of human rights activists in Tiraspol, Transdnistria region of the Republic of Moldova in 1992 in the wake of dissolution of the Soviet Union.

Moldovan Helsinki Committee monitors the respect for human rights obligations undertaken by the Republic of Moldova before OSCE, United Nations, Council of Europe. It advocates for respect, protection and promotion of human rights values through providing independent expertise of human rights legal and practices compliance, public interest advocating and litigation, raising awareness of specific groups and general public of the serious human rights concerns guided by understanding of universal superior values of individual freedoms, social justice, equality and nondiscrimination. Moldovan Helsinki Committee is a full member of the International Helsinki Federation for Human Rights (Vienna).

Moldovan Helsinki Committee comprehensive subject based and overall reports on the respect of human rights in the Republic of Moldova are known as good and professionally prepared information, solicited and relied by many specialized entities, including those of the Council of Europe, as for instance, the Council of Europe High Commissioner for Human Rights (<http://www.commissioner.coe.int/documents/translsanshighlights.doc>), European Committee on Prevention of Torture (<http://www.cpt.coe.int/fr/rapports/inf2000-20fr.htm>), PACE Monitoring Committee on the observance of obligations by the Republic of Moldova.

Additional and detailed information can be accessed at <http://chdom.ngo.moldnet.md> or obtained mailing to chdom@moldnet.md.

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Objectives and Summary

This report covers the human rights concerns of the period of January 2001-January 2002. **The report does not intent to repeat the findings and the assessment of the situation pertinent to prior periods of time, since there are available for review on-line**

<http://chdom.ngo.moldnet.md> – the web-page of the Moldovan Helsinki Committee for Human Rights. Other relevant reflections could be found elsewhere in the Committee's reports.

The report is based on the activities and knowledge of the Moldovan Helsinki Committee. The Report relies on the information provided by the Moldovan Helsinki Committee comprehensive reports, researched, investigated, monitored and advocated cases and situations with only few exceptions provided with respective references. Selective foundations on the information produced by other bodies, that received a contribution from the Moldovan Helsinki Committee, are dully mentioned. Information contained in this report reflects solely the position of the Moldovan Helsinki Committee for Human Rights.

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Major reports produced by Moldovan Helsinki Committee for Human Rights and referred to herein:

- REPORT ON RESPECT OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA (INCLUDING TRANSDNISTRIA REGION) January 2000-January 2001;
- Report on Corsacov case;
- Report on "Administrative sanctions", October 2001;
- Report of monitoring the Paduret case in Police Station from 26-27 September 2001;
- Report on Detention of Vagrants, Persons with no identification documents in the Republic of Moldova, June 2001, 25 pages, in Romanian and English;
- Report of Paduret A. case under art 3 of the European Convention;
- Raport al şedinţei judiciare din 8 iunie 2001 la Cazul Dascăl Andrei;
- Domain Report on case admissibility presented to Council session from 5.11.2001;
- Domain Report on case admissibility presented to Council session from 5.10.2001;
- MEMORIU Violarea dreptului cetăţeanului de a nu fi lipsit de cetăţenie în mod arbitrar prin modificările care au intervenit în art.23 din Legea cetăţeniei Republicii Moldova, December 2001, Romanian, 5 pages;
- Shadow Report on the Implementation of the Framework Convention on National Minorities by the Republic of Moldova, (original version July 200, updated June 2001), 55 pages in English;
- Major Urgent Concerns with regard to respect of Rights of National Minorities in the Republic of Moldova (including Transdnistria region), October 2001, English;
- SCHINOASA ROMA BETWEEN MISERABLE EXISTENCE AND NEGLIGENCE FOR EXISTENCE, 22 PAGES I ROMANIAN, JULY 2001 AND URSARI ROMA COMMUNITY SITUATION, AUGUST 2001, 15 PAGES IN ROMANIAN;
- REPORT ON THE COMPLIANCE OF THE REPUBLIC OF MOLDOVA WITH THE COUNCIL OF EUROPE OBLIGATIONS ON FREEDOM OF EXPRESSION AND INFORMATION, July 2001, English;
- Report on Human Rights respect in Moldova in 2000, February 2001, 50 pages, English, Romanian;
- RAPORT ON SUBMISSION ON THE SELECTION OF EUROPEAN COURT OF HUMAN RIGHTS JUDGE FROM MOLDOVA, May 2001, English and Romanian;
- Excerpts from Report of debates of the Third Part of the 2001 Ordinary Session, Monday 25 June 2001 at http://stars.coe.fr/index_e.htm;

- Draft Shadow Report on Implementation of Convention on Elimination of all Forms of Racial Discrimination, 2001 (En), by Moldovan Helsinki Committee;
- The Real Human Rights Minority Value of Moldovan Law on Protection of National Minorities. (draft); by Moldovan Helsinki Committee;
 - Schinoasa Roma between Miserable Existence and Negligence for Existence, August, 2001 (Ro) by Moldovan Helsinki Committee;
 - Raport ‘LIBERTATEA DE ASOCIERE RELIGIOASA IN REPUBLICA MOLDOVA’, Interpretarea legislativa restrictiva si abuziva a prevederilor Legii despre Culte impiedica exercitarea eficienta a dreptului le asociere religioasa in Romanian, 5 pages;
 - REPORT “OBSERVATIONS ON THE CENTER FOR HUMAN RIGHTS – OMBUDSMAN OFFICE IN MOLDOVA”, OCTOBER 2001, 13 PAGES IN ENGLISH;
 - Report “VIOLAREA DREPTULUI LA VIATA SI A DREPTULUI DE A NU FI SUPUS TRATAMENTELOR DEGRADANTE SI UMILITOARE CAUZATE DE CONDITIILE DE DETENTIE IN SISTEMUL PENITENCIAR AL REPUBLICII MOLDOVA”, OCTOBER 2001, 5 PAGES IN ROMANIAN;
 - Report on Homophobic and hate speech in the Republic of Moldova, November 2001, 9 pages, in Romanian;
 - Publication “Human Rights at the turn to “new” millennium of the Republic of Moldova”, 300 pages, in English, February 2001. Romanian version will be published in late 2001 composed of all reports produced by the Moldovan Helsinki Committee at the moment. The volume is expected to be of 500 pages;

Information contained in this report could be freely used with the due reference provided.

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I. Background

The anticipatory Parliamentary elections produced on February 25, 2001 with only three parties in succeeding to pass 6% barrier: the Communist party (50% and 71 Parliamentary votes), “Alianta Braghis”- the political group of the prime-minister Braghis (13,45% and 20 Parliamentary votes) and Popular Christian Democratic Party (8,18% and 11 Parliamentary votes). On 26.02.2001 The Parliamentary elections in Moldova International Election Observation Mission in Chisinau concluded that they complied with international standards¹. The results of elections made possible that the Communist Party formed up their won Government, elected Vladimir Voronin as a new President and sought to make several constitutional amendments (introduction Russian as the second official language). New Government, with Vasile Tarlev-former director of “Bucuria” sweets state production company as a prime minister had been installed in March 2001.

On June 27, 2001 during summer session of the Parliamentary Assembly of the Council of Europe, Voronin Voronin had made an extensive statement with regard to the situation of Moldova and Moldova’s human rights obligation before the Council of Europe²:

“Mr Vladimir VORONIN (*President of the Republic of Moldova*) (Translation).- ...
The Republic of Moldova needs Europe, and Europe, I hope, needs the Republic of Moldova, for there are no big and small nations in Europe. Let me paraphrase the words of our classic writer, Mihai Eminescu, who said, “Europe is a diamond, and its facets, represented by European nations, give the diamond special brightness”. I fully agree with that statement.

The six years that have passed since the Republic of Moldova joined the Council of Europe have been marked by intense co-operation with this European forum. *By honoring most of the commitments entered into by the Republic of Moldova upon its accession to the Council of Europe, we have achieved considerable success in the democratization of our society.*³ We have ratified a number of European conventions, including the European Convention on Human Rights and its additional protocols, the *European Charter on Local Self-Government* and the Framework Convention for the Protection of National Minorities. All these have led to a fundamental change in the legislative framework, which in many respects now complies with European standards. *Moldova is firmly determined to meet fully all its commitments undertaken as a member of the Council of Europe, while at the same time adjusting its legislation and government policies to European standards.*

On the domestic level, implementation of the principles and norms of the Council of Europe is intended to advance the Republic of Moldova on its way towards integration in the European Union...

... During that decade, the election of political authorities, in a multi-party system, took place in Moldova. We can declare with all firmness that in the Republic of Moldova, *political authorities at all levels were elected democratically*. The parliamentary elections held this year were no exception: they were held democratically and correctly, as was acknowledged by numerous local and international observers. As a result of the elections, a stable parliamentary majority was created. The new leadership of the Republic of Moldova is determined to pursue the goal of the construction of a state ruled by law, based on the respect of general human values. I confirm that as head of state and as leader of the governing party.

¹ See more information at ODIHR Website at www.osce.org/odihr and [http://stars.coe.fr/act/compress/cp01/hs1a\(01\).htm](http://stars.coe.fr/act/compress/cp01/hs1a(01).htm) at the Council of Europe Parliamentary Assembly site.

² The full text can be accessed at http://stars.coe.fr/index_e.htm, PACE, Wednesday 27 June 2001 at 10 a.m.

³ Emphasis provided by the author of report throughout the Statement without further notification.

... The new political authorities of Moldova are confronted by three serious problems, and without settling them the building of statehood in Moldova according to European standards and values is impossible: the Transnistrian problem, poverty and corruption.

The armed conflict in Transnistria was not inter-ethnic, but political. Although several years have passed since the end of the conflict, its consequences continue to be felt. We repeatedly expressed our readiness to grant the Transnistrian region a special legal status, which would guarantee it maximum possible autonomy, conditional on preservation of the territorial integrity and sovereignty of the Republic of Moldova. We consider that full compliance with the decisions of the 1999 OSCE Istanbul Summit regarding the withdrawal of foreign ammunition and armed forces can bring about a long-lasting settlement of the Transnistrian conflict.

In addition, the negotiation process, which is taking place with the participation of the OSCE mission and representatives of the Russian Federation and Ukraine as mediators, is moving slowly. In the Transnistrian region controlled by the separatist authorities, fundamental human rights and freedoms are violated and the population of the region is excluded from the protection system offered by the European Convention on Human Rights. That is a serious cause for concern for European democracies and for the Council of Europe as the promoter of those common human values. Without the support of Europe, it will be difficult to promote and implement European values in that region of our country.

...(questions)...

On 1 July 2000, Moldova had become a parliamentary republic. He was working hard to develop processes there. There was a need for changes to be made in the constitution for Moldova to fulfill its commitments.

Mr VORONIN said that, to assist with the direction Moldova was taking in Europe, it had displayed six years of co-operation with the Council of Europe. *Laws connected with civil procedures in Moldova had been ratified that year.* All other commitments were to be fulfilled. Moldova realized what was involved and aimed to achieve the objectives. *On the matter of local authorities, certain issues had been considered last week in Moldova.* There was presently a review of the laws. Care was needed in order to fight corruption and to organize properly the administration of financial resources in Moldova.

Mr VORONIN, in responding to Mrs Durrieu's question, noted that the Transnistrian authorities did not recognize the government of Moldova. However, he joked that he would be willing to stand as President of Transnistria. He did not believe that the Transnistrian problem could be solved in six months, but he would do everything possible to solve the problem.

He welcomed Mr Ilaşcu's question. Moldova did not wish to control Transnistria. His government was working very hard to solve the problem. He did realise how important it was to free the hostages, whom Mr Ilaşcu had mentioned.

...

Mr VORONIN explained that the nominations for the election of the judges had been late owing to the national elections. *There were also some organizational problems. There were twenty-six candidates and all of their details had been published in the national press and discussed openly.* It was the government who proposed the candidates not the party. He was happy with all of the candidates and waited for the Council of Europe's decision.

...

Mr VORONIN said that perhaps he knew better than the questioner the circumstances of Mr Ilaşcu. As for his question, *the church was separate from the state and the government was obliged neither to encourage nor to obstruct the solution to the problem.* He believed it would be solved in due course.

Mr VORONIN said that the former regime had adopted statutes on the use of languages in the Moldovan territory, which stipulated that Russian was a language of communication for its citizens. Unfortunately, that had not been respected. The situation was being monitored and if the trend were to change, the questioner would be informed...”

Starting from summer 2001, Moldovan Parliament had been closely working on the new amendments to the Law on Local Public administration and amendments on law on territorial administration in view of, as Mr Iovv Chair of the parliamentary committee that drafted the reform in question expressly mentioned, the need to re-establish a *vertical hierarchy* in the public administration of Moldova^{4, 5}. Moldovan parliament amended the law on local public administration so as to reduce the financial powers of local and regional authorities. The transfer to the prefect of any decision-making powers with regard to the expenditure of these authorities has, *de jure* and *de facto*, already deprived the local and regional authorities of any degree of autonomy. The draft legislation, received in December 2001 the Moldovan government positive opinion, designed to abolish the 10 regions and replace them by 31 districts that would be placed under the control of central government had been voted in late 2001 by Moldovan Parliament, with support from the Communist party and “Alianta Braghis” faction⁶. President Voronin returned the draft suggesting that the Parliament consider adding one more 32nd district in January 2002 that was re-voted by Communists and “Alianta Braghis”. The local and regional elected representatives concerned have not been officially consulted. The reform intends that all mayors will be removed from office and new mayors elected by the municipal assemblies presenting a system similar to the one of the previous regime; opportunity to increase control over the mayors (who would no longer be directly elected by the population) and thus reduce the political, administrative and financial autonomy of the local authorities concerned; this could lead to grave violations of the European Charter of Local Self-Government which the Republic of Moldova recently signed and ratified.

Since May 2001, Moldovan Government had been extensively discussing the need for “improvement in functioning of the judicial system” of Moldova. Ion Morei, Minister of Justice⁷ had shown up to be the major promoter of the needed reform that can be summarized as follows as declared: simplifying the judicial system as a whole by reducing the number of court levels from 4 to 3⁸; modifying the appeal procedure from 3 steps to 2 steps^{9, 10}. The discussions and argumentations are heavily aided with the inefficiency of the established system in 1995 the

⁴ See Information report on the latest developments on the situation of local and regional democracy in Moldova, Congress of Local and Regional Authorities of Europe, Strasbourg, 13 December 2001 **CG/Bur (8) 95**, Rapporteurs: Mr Claude Casagrande (L, France) and Mr Yavuz Mildon (R, Turkey)

⁵ *ibid* “The establishment of these regions was highly recommended by the Congress in Recommendation 84 (2000) and the international community working in Chisinau in general.”

⁶ *Ibid* “At the request of the CLRAE rapporteurs, Mr Iovv, Chair of the parliamentary committee in question, promised to officially consult the CLRAE on all draft legislation concerning the territorial organization of Moldova and/or its system of local and regional self-government.”

⁷ Ion Morei had served in public service as a public prosecutor and lately as a parliamentary on behalf of the “Alianta Braghis” political faction.

⁸ At present there are courts of first instance, tribunals (6 in total, Court of Appeal (1 in total) and Supreme Court of Justice (1 in total). Depending on the nature of case (basically the gravity or complexity or respondent authority-local, central etc) the case is initially judged either by court of first instance or by tribunal and in some cases by Court of Appeal if the Central authority is involved (Government or Ministry).

⁹ At present Civil and Penal Procedure Codes provide for the following appeal procedures after the case had been examined in first instance: appeal on the matters of law and circumstances and recourse (appeal on the matters of law). In practice after initial examination the parties can lodge the appeal and subsequently recourse, thus totaling up to three steps of examination of the case in civil and criminal matters (administrative matters are examined in two steps).

¹⁰ See details of the Appeal procedure discussed in 2000 Report on Human Rights situation in Moldova by Moldovan Helsinki Committee for Human Rights

judicial system. In the opinion and position of the Association of Judges of Moldova the indented changes and one-sided manner of discussion in the public present fears for the uncontrolled developments. In the opinion of the human rights experts and legal experts the approach and focus should be rather focused on the finding the way to improve the functioning present system by laying down in more details and clarity the appeal procedure, handling and management of the cases, supporting correspondingly the judicial system. The concrete and specific written proposals had not been made public or open for all professional discussions to the moment of writing.

2002 Ordinary session (21-25 January 2002) of the Parliamentary Assembly of the Council of Europe paid on several occasions closer attention to the situation in Moldova. Mr VALIONIS, Minister of Foreign Affairs of Lithuania, Chairman of the Committee of Ministers¹¹ stated that "...We were particularly concerned with progress regarding the fulfilment of Moldova's commitments towards the Council of Europe. There is, of course, the problem of Transnistria, but a number of other questions remain to be resolved. Added to that there had been questions concerning the case of your colleague, Mr Cubreacov. Having said this, as the honourable parliamentarian is aware, it is not for the Committee of Ministers to decide on whether to end the monitoring procedure concerning Moldova. This would be a decision for the Assembly following a recommendation by its Monitoring Committee..." and in relation with the question "...How he views the declaration made by one member of the Government of the Republic of Moldova that an opposition political party – a member of the European Christian Democratic family – is to be prohibited because it organised a peaceful demonstration in Kishinev, at which the demonstrators opposed the introduction of compulsory Russian language lessons in Moldova." Mr VALIONIS stated "...I am not aware of the prohibition referred to by the honourable member. No reference was made to it during my visit...I shall immediately seek information on this matter and inform Mr Prisăcaru as soon as possible."

Similarly *Statement by Mr Walter Schwimmer, Secretary General of the Council of Europe*¹² "...I must at this stage repeat my concern about the internal situations in both Moldova and Georgia. ... The Congress of Local and Regional Authorities of Europe has registered its concern about the development of local democracy in Moldova, which I hope will be heeded by the authorities. There is, however, another reason for concern. Today, I was informed that the Moldovan Government has applied the law in respect of political parties in a way that results in the temporary suspension for one month of the Christian Democrat Popular Party. I understand that the decision was taken on the ground of a violation by this party relating to public gatherings. I have not been informed in full detail of what took place. I received the information only this morning. I do not know whether the public gathering in question caused a major threat to public order. I would say that there seems to have been a disproportionate reaction by the Moldovan Government, which does not correspond to the Council of Europe principle of freedom of expression. I expect further information and reaction from the Moldovan authorities..."

Complemented the statement of the Mr SEVERIN, President of the Parliamentary Assembly of the OSCE)¹³ "...We have acknowledged with great concern the deterioration of political dialogue in Moldova, as well as the ever-increasing number of measures taken by that country's leadership which might decouple it from European values, structures and institutions. Democracy does not mean the right of the majority to rule according to their tastes, but the

¹¹ http://stars.coe.fr/index_e.htm, 2002 Ordinary Session (First part) REPORT Second sitting, Tuesday 22 January 2002 at 10 a.m.

¹² http://stars.coe.fr/index_e.htm, 2002 Ordinary session, REVISED REPORT

¹³ http://stars.coe.fr/index_e.htm, 2002 Ordinary session, Wednesday 23 January 2002 at 10 a.m. Third sitting Tuesday 22 January 2002 at 3 p.m.

obligation to pursue political dialogue that could integrate the opinions and aspirations of the minority with the majority's programmes..."

II. Honoring International Human Rights Obligations entered by Moldova

Below presented an overview of the international human rights obligations entered by the Republic of Moldova that in the view of the Moldovan Helsinki Committee remains still un-honored and unfulfilled.

Council of Europe¹⁴

- New Criminal Code and Code of Criminal Procedure in conformity with Council of Europe standards will be adopted within a year of accession¹⁵

The draft Code of Criminal Procedure was made public in late summer 1999 and is still pending readings in Parliament¹⁶. The draft Criminal Code is being under consideration of the Parliament in second reading. Both drafts are expected to be adopted by the Parliament in the course of the beginning of year 2002. Moldovan Helsinki Committee expertise expresses serious concerns with regard to the conformity of Criminal Code with Council of Europe standards as will be discussed in detail in the report.

- Role and functions of the Prosecutor's Office to be changed, transforming this institution into a body which is in accordance with the rule of law and Council of Europe standards¹⁷

Although several drafts tabled in Parliament are designed to achieve this aim, the Prosecutor's office in Moldova remains largely un-reformed and based on the Communist "prokuratura"-structure. In court, this means that the equality of arms between the prosecution and the defense is not always effectively guaranteed. Outside court proceedings, it means that the prosecutor's office has powers which in most Council of Europe member states have been transferred to administrative courts: e.g. access to justice in the places of detention, pre-trial detention orders in various administrative procedures, etc.

¹⁴ Prepared on the basis of <http://stars.coe.fr/ta/ta95/fopi188.htm>, AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.

¹⁵ Citation "un nouveau Code pénal et un nouveau Code de procédure pénale conformes aux normes du Conseil de l'Europe seront adoptés dans un délai d'un an après l'adhésion;" from AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.
<http://stars.coe.fr/ta/ta95/fopi188.htm>

¹⁶ See 1998, 1999, 2000, 2001 International Helsinki Federation for Human Rights (IHF) Annual Report, Moldovan chapter.

¹⁷ Citation "le rôle et les fonctions du Parquet seront modifiés, de telle sorte que cette institution deviendra un organe conforme aux exigences de l'Etat de droit et aux normes du Conseil de l'Europe;" from AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.
<http://stars.coe.fr/ta/ta95/fopi188.htm>

*- Study, with a view to ratification, and to apply the central principles of other Council of Europe conventions - notably those on extradition*¹⁸

In the course of 2001 Moldova had ratified the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. Upon ratification Moldova had entered a number of reservations with regard to the social guarantees to the people under Convention mandate. To the moment, there is no relevant law of Moldova to interpret substantive and procedural norms. A specialized department to handle the relevant problems had been established reporting directly to the Government.

*- Confirm complete freedom of worship for all citizens without discrimination, and to ensure a peaceful solution to the dispute between the Moldovan Orthodox Church and the Bessarabian Orthodox Church*¹⁹

The decision of the European Court of Human Rights recognized violation of art. 9 and art. 13 of the European Convention with regard to the Metropolitan Church of Basarabia on behalf of the Republic of Moldova. Moldovan Government had been continuously refusing the registration and recognition of the Spiritual Council of Muslims and True Orthodox Church of Moldova.

*- Interpretation of restrictions of rights and liberties contained in art. 54, 55 of the Constitution of Moldova in compliance with the European Convention on Human Rights*²⁰

Upon adherence to the Council of Europe, Moldova had entered the obligation not to apply the provisions of articles 54²¹ and 55²² of the Constitution so that the interpretation and application will bear heavier restrictions than incurred from the European Convention on Human Rights. However, only in the course of 2001-2002, at least in two instances the Moldovan authorities have interpreted provisions of mentioned article contrary to the European Convention: in the case of closure of the paper "Komersant Moldovi" (see chapter on expression) and suspension of the Christian Democrat Political party (see chapter on freedom of assembly).

¹⁸ Citation "étudier, en vue de leur ratification, et appliquer les principes centraux des autres conventions du Conseil de l'Europe - notamment concernant l'extradition, l'entraide judiciaire, le transfèrement des personnes condamnées, et le blanchiment, la recherche, la saisie et la confiscation des produits du crime; " from *AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.*

<http://stars.coe.fr/ta/ta95/fopi188.htm>

¹⁹ Citation "confirmer une complète liberté de religion pour tous les citoyens sans discrimination, et assurer une solution pacifique au conflit opposant l'Eglise orthodoxe moldove et l'Eglise orthodoxe de Bessarabie;" from *AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.*

<http://stars.coe.fr/ta/ta95/fopi188.htm>

²⁰ Citation "les articles 54 et 55 de la Constitution moldove ne seront pas appliqués d'une manière qui restreindrait les droits fondamentaux de la personne, en contradiction avec les normes internationales;" from <http://stars.coe.fr/ta/ta95/fopi188.htm>, *AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.*

²¹ The actual wording of art. 54 is 'Limitation of exercising of some rights and liberties. (1) Exercise of some rights and liberties can be restricted only by law and only if imposed, upon the case, for: protection of national security, order, public health or morals, rights and liberties of others, undertaking the criminal investigation, prevention of consequences of natural disasters. (2) limitations will be proportional with the situation that have determined it and cannot impact the existence of the right or liberty.'

²² The actual wording of art. 55 is 'Exercising in system of rights and liberties. (1) Every citizen has obligations before the state and society, these are derived directly from rights and liberties guaranteed. (2) Respect for legitimate rights and interests, for dignity of other citizens is obligatory.'

In the course of 2000 constitutional modifications followed art. 54 '*Restriction on exercise of some rights and liberties. (1) In the Republic of Moldova, there will not be adopted laws that will suppress or depreciate human and citizen's rights and liberties. (2) The exercise of rights and liberties cannot be supposed other restrictions that are provided by law, compatible with universal international norms and necessary in the interest of the national security, territorial integrity, public security, in scope of prevention of mass disorder and of crimes, in scope of redress of economic welfare, protection of rights and liberties and dignity of other persons, in scope of imbedding of confidential information and guarantees of impartiality and authority of the judiciary. (3) In the conditions of the war or in case of other exceptional circumstances, that present danger for nation's life, if the circumstances so dictate, the exercise of some rights and liberties can be supposed some restrictions, with indication of terms of its action. (4) Para (3) is not applicable to rights declared in art. 20-24²³ of the Constitution. (5) restrictions should be proportional to the situation that it determined and cannot impact the existence of the rights or liberties.*' Art. 55 reads: '*Exercise of rights and liberties. Every person exercise constitutional rights and liberties with reasonable belief without violating rights and liberties of others*'

- *Reservation made in view of art. 5 of the European Convention as to the application of detention and military sanctions through arrest by superiors*

The formulation of the reservation has no time limit and thus presents the attitude of the Moldovan legislator towards the Council of Europe states common understanding on the regulation and functioning of the military service²⁴.

- *Laws and practice in the sphere of local self-government will be reformed in accordance with the European Charter of Local Self-government²⁵*

Spectacular changes had been produced in the sphere of local self-government of Moldova in the course of year 2001. The communist political majority adjourned by "Alianta Braghis" political faction made modifications to the "Law on new organization of the administrative territories in the Republic of Moldova" installing 31 small districts in direct violation with the obligations undertaken under the European Charter of Local Self-Government.

- *Reservation upon ratification of the European Convention on Human Rights with regard to the acts and omissions resulted from Transdnistrian conflict until it is settled completely*

European Court of Human Rights in admissibility decision on case of Ilascu and other ruled that the reservation entered by Moldova with regard to Transdnistria

United Nations

Moldovan authorities had submitted initial reports on the implementation of the following UN human rights treaties: UN Convention on Elimination of all Forms of Discrimination Against

²³ Art. 20 (Access to justice), Art. 21 (Presumption of innocence), Art. 22 (No retroactivity of the law), Art. 23 (Right to know rights and obligations), Art. 24 (Right to life and physical and psychical integrity).

²⁴ See 2000 Human Rights report of the Moldovan Helsinki Committee, chapter on Human Rights and Military Service.

²⁵ Citation "les lois et la pratique du pays dans le domaine de l'autonomie locale seront réformées conformément à la Charte européenne de l'autonomie locale" from <http://stars.coe.fr/ta/ta95/fopi188.htm>, AVIS No 188 (1995). 1. relatif à la demande d'adhésion de la Moldova au Conseil de l'Europe La Moldova a posé sa candidature au Conseil de l'Europe le 20 avril 1993. Le Comité des Ministres a demandé à l'Assemblée parlementaire d'émettre un avis, conformément à la Résolution statutaire (51) 30 A.

Women, UN Covenant on Civil and Political Rights, UN Covenant on Economic Social and Cultural Rights, UN Convention on Elimination of All Forms of Racial Discrimination, UN Convention Against Torture, UN Convention on the Rights of the Child. As to the moment of writing the only report submitted is under the Convention on Elimination of all Forms of Discrimination against Women.

OSCE

- International obligations by Russian Federation and accountability of the Transdnistrian authorities;

According to OSCE Istanbul agreement Russian Federation troops deployed in Transdnistria region of the Republic of Moldova should be withdrawn by the end of 2002.

III. Conclusions and Recommendations

The year 2001 had marked a significant comparative regress on the subject of respect for human rights taken into consideration the previous years. The problematic areas extended to such fields as local and regional self-governing, independence of judiciary, brutal inhibition of freedom of expression, escalation of abusive powers of the investigative authorities into the privacy of individuals and their security and liberty, particular brutality and torture during pre-trial investigation. The problematic areas identified in 2000 as those of forced labor of socially disadvantaged groups, under quality of the administration of justice, un-proportionate and uncontrolled use of the administrative detention; government reprisal of religious minorities had persisted actively. The following are the particular recommendations developed on the findings for the human rights developments of the year 2001.

With regard to the honoring of obligations undertaken before the Council of Europe: The Council of Europe Monitoring Committee is invited to consider seeking further clarification within the areas covered under monitoring procedure in connection with:

- local and regional self-government, judicial system (independence of the judiciary, access to justice in places of detention and in the course of pre-trial detention in view of effective redress of violations), prison conditions, freedom of worship and of conscience, freedom of expression, freedom of association, discrimination of Roma minorities and Moldovan minorities in Transnistria;
- enhancing the monitoring procedure to further include areas as political parties (suspension of activity), police attitudes, respect for private live with regard methods used by investigative authorities, freedom of movement and assembly, forced labor, security and liberty of person.

With regard to the Center for Human Rights: The below outlined recommendations deemed for improvement of the work of the Center for Human Rights in order to comply in the most efficient way with the obligation to serve the people of Moldova:

- Parliament of Moldova, parliamentary commission on human rights should take action on defining and clarification of the mission of the Center for Human Rights by either narrowing down the institutional sphere of activity (public administration) and/or take the most urgent thematic approach, subject of revision as appropriate.
- Commission on human rights should actively oversee the activity of the Center to identify the specific objectives of the Center for the respective periods of time and on needs assessment basis.
- UNDP should work on providing the necessary support for developing Center capacity on identification of the major relevant problems and develop Center capacity in tailoring strategies and action plans for providing solutions.
- Human Rights Center should not engage in the educational activity as a priority area and rather engage in the educational activities exclusively in extent to the need improvements established in view of their promotion, educational activities should target specifically the stockholders of the problems, educational activities should have narrowly defined result oriented and practical objectives.
- Human Rights center should predominantly focus its attention and resources on petitioning the Constitutional Court bearing in mind the underrepresented and marginalized strata of society.

- Moldovan parliament should appoint persons with clear and strong human rights image shared and enjoyed in Moldovan society free from biased perceptions or being strongly and negatively affected on different grounds and reasons.
- The Center should continuously and persistently build upon raising personnel competence and knowledge in the field of human rights.
- The Center should develop capacity on taking active and authoritative position on the subjects and situations of human rights interest or sensitivity.
- The Center analysis of the cases and situations should be considered and examined in the light of the existing developed international bodies of jurisprudence and case law.
- The Center should be actively engaged in legal work of analysis of compatibility of the existing legislation with human rights law pertinent to the cases and situations.

With regard to Roma rural communities:

Moldovan Helsinki Committee consider extremely important that local and central authorities through positive measures include the following measures that will improve the situation of the people living in rural communities of Roma

- Take measures that will provide Roma representative counselor in local administration and political bodies, most notable and particularly, but not limited to, in the cases of Schinoasa and Ursari discussed in the report;
- Eliminate discriminatory practices with regard to allocation of public financiers on education and culture for rural communities of Roma;
- Assure minimal human conditions of existence including but certainly not limiting to, running and drinking water, electricity, telephone communication, access means to the community, medical care;
- Construct road up to the villages of Schinoasa and Ursari;
- Assure access to schooling system and create minimal conditions;

With regard to the draft Codes examining in the second reading by the Parliament:

- Moldovan Parliament should repeal all the provisions of the draft laws of Penal Code, Contravention Code and Civil Code highlighted in the Report affecting freedom of speech, assembly;
- the draft Penal Code should be substantially revised so that the tendency for heavy detention penalties and criminalization is balanced to the needs and societal value balance is found of the penalty and the detention of the person.
- Drafts laws should be scrutinized by the wider public and the experts of the Council of Europe;

With regard to security and liberty of person:

- carefully review the legal provisions and practices with regard to use of the various administrative procedures affecting the security and liberty of person in order to repeal the existing practices;

With regard to Conditions of Detention in Penitentiary System:

- Pursue policies for significant lowering number of persons in detention, including vision of the penalties, alternative non-private sanctions, etc;
- raising at least several times the expenditures for alimentation in accordance with laws of Moldova and international standards²⁶;
- allocate needed budgetary finance to the real needs of the medical service and for the places of detention integrally^{27, 28};
- improve hygiene conditions including running and hot water, electricity;
- provide adequate food, necessary infrastructure for cleaning and supporting the medical services to oppose the raising number of TB infected people in detention²⁹;

With regard to local and regional self-governance:

- It is urgently recommended to seize the process of centralization of the local and regional powers and local public administration with regard to the transmitting of the budget planning and disposal powers to the central representative;
- Freeze the process of elaboration of the “new” law on administrative organization to reinstate the vertical hierarchy and consult the relevant Council of Europe expertise on the matters;

With regard to independence of judiciary:

- Transfer further functions for economic and financial self-administration of the judiciary to the Superior Council of Magistrates;
- Provide necessary and proportionate budgetary allocations for the functioning of the judiciary;
- Revise the laws on the judiciary organization and statute of the judge to limit the excessive executive influence on the administration of the justice and the appointment of judges procedure;

With regard to legislative initiatives for combating the terrorism and tax procedural legislation:

- carefully review the Law on combating of terrorism for specifically specifying the limits of its application, time framework, public inspection thru independent media and public interests watchdogs reporting be assured;
- substantially revise the procedural tax law to assure the compliance with the Council of Europe standards on security and liberty of persons, fair trial guarantees, privacy;

²⁶ Ibid, para 116

²⁷ Raport adresat Republicii Moldova cu privire la vizita efectuată de Comitetul european pentru prevenirea torturii și a pedepselor sau tratărilor inumane sau degradante (CPT) din 11 - 21 octombrie 1998, para 105.

²⁸ Ibid, para 105

²⁹ Raport adresat Republicii Moldova cu privire la vizita efectuată de Comitetul european pentru prevenirea torturii și a pedepselor sau tratărilor inumane sau degradante (CPT) din 11 - 21 octombrie 1998, Rezumatul recomandărilor, Comentariilor și Întrebărilor adresate de CPT, para 67.

With regard to the torture and police abuses in pre-trial detention and effective investigation of them:

Moldovan authorities, most notable, central authorities and politicians should strongly emphasize the inadmissibility of the practices of the use of force as a mean for carrying out the criminal and administrative investigation:

- establish a task force, with participation of the Center for Human Rights, parliamentary human rights commission, independent think tanks, Ministry of Interior, prosecutor office to identifying the needed steps to combat the widespread practices of beatings and extortion of the evidence in the pre-trial detention;
- public prosecutor and parliamentary advocates should work hand-in-hand to in effective investigation of the allegations of torture and developing specific recommendations on the effective investigation of torture and establishing the punishment for perpetrators;

IV. Human Rights Developments over 2001

Major Human Rights Concerns and Threats

Antiterrorist and tax legislation. Recently adopted anti-terrorist and tax enforcement legislation potentially intruding heavily in the privacy and security of individual rights of the person present considerable concern of the human rights community.

Backwards reforms of local public decentralization. Amendments to Law on public local administration with regard to the accumulation and disposal of the local finances under heavy control of the central government and draft amendments with regard to the reversal to the 31 small territorial districts replacing the 10 large entities.

Draft laws/codes. Considerable threat represents the quality and compliance of the several draft Codes with the Council of Europe standards: draft Penal Code (with regard to overall heavy penalties approach and excessive criminalization), draft Civil Code (with regard to some provisions affecting freedom of expression), draft Contravention Code (with regard excessive criminalization, lack of procedural quarantines, etc), draft Civil Procedure Code (with regard to the efficiency and legal framework for quality of administration of justice and appeal procedure).

Law reform commission of the parliament. Considerations of the Concept of the law reform of the parliamentarian commission, started in 1995 (with some significant improvements), now threatening to actually reverse the achievement in the field of independence of the judiciary and further implementation of the reform with regard to the role of prosecutor. The composition of the Commission had been changed so that only the chair of the Supreme Court of Justice out of 11 members coming from the judiciary, the rest representing different ministers and the legislative.

Judiciary Financial and Administration. Continues lack of the priority with regard to economic, financial and self-administration of the judiciary of Moldova, enforcement of the effective redress and access to justice system.

Major Human Rights Achievements and Opportunities

Elaboration of Human Rights Strategy-Commission. Moldovan Parliament had set up a commission headed by Vadim Misin, the vice-chair of the Parliament to elaborate the strategy of human rights work in the Republic of Moldova with the support of the UNDP program in the course of 2002.

Ratification of European Social Charter. Republic of Moldova had recently ratified the European Social Charter with regard to the minimal set of right guaranteeing the social and economic rights and giving the right for collective recourse system to the respective complaint body.

Ratification of UN Refugee Convention and establishing a specialized body Department of Refugees.

V. Subject Areas of Liberties and Freedoms

1. Freedom of Expression, Mass-media and Access to Information³⁰

- Draft Penal Code Provisions Affecting Freedom of Expression

As of December 2001, Moldovan Parliament is considering in the second reading the draft Penal Code. The present draft Penal Code contains provisions for even greater restrictions of freedom of expression than the present one. The draft Penal Code penalizes expression of propaganda of incitement to war³¹, expression of state secret³², defamation (calumny)³³, insult³⁴, confection or dissemination of works that make propaganda of violence and cruelty³⁵, produce or dissemination of pornographic objects³⁶, calumnious advertising³⁷, insult (offense) of a judge³⁸,

³⁰ For more details and further readings on the subject see REPORT ON THE COMPLIANCE OF THE REPUBLIC OF MOLDOVA WITH THE COUNCIL OF EUROPE OBLIGATIONS ON FREEDOM OF EXPRESSION AND INFORMATION, July 2001, English;

³¹ See Art. 135 "Propaganda of war" of Draft Penal Code. "1) Propaganda of war, dissemination tendencies or invented information, of nature that serves the incitement to war, or any other manifestation in favor of launching of a war, made in written, by voice, radio, television, cinema or by other means, - is penalized with a fine up to 500 minimal salaries or detention for up to 3 years, in both cases with ban to occupy a certain activity for a period of up to 5 years. ..."

³² See Art. 118 "State Secret" of Draft Penal Code. "State secret constitutes the information protected by state in the fields of military, economy, technical and scientific, external politics, intelligence, contra-intelligence and operative investigation which dissemination, opening, loss, unlawful give away or destruction may submerge the state security."

³³ See Art. 167 "Calumny" of Draft Penal Code. "1) Calumny, the good known dissemination of false information that defame another person: a) by printed means; b) multiplied by other means; c) by a person previously condemned for the same doing—is penalized with a fine of up to 200 minimal salaries or with unpaid labor in favor of community for up to 100 hours or a detention for up to 3 years.

2) Calumny: a) followed by grave consequences; b) alongside with accuse of deed of an extreme grave crime;-- is penalized with detention for up to 5 years. "

³⁴ See Art. 168 "Insult" of Draft Penal Code "1) Insult, intentional lowering of honor or dignity of a person by actions, verbally or in written, -- is penalized with a fine for up to 100 minimal salaries or with unpaid labor in favor of community for up to 100 hours. 2) Insult: a) in a published work; b) multiplied by other means; c) by a person prior condemned for insult—is penalized with a fine up to 200 minimal salaries or unpaid work in the benefit of community for up to 200 hours. ..."

³⁵ See Art. 235 "confection or dissemination of works that make propaganda of violence and cruelty" of Draft Penal Code "Confection, dissemination demonstration or depositing with the aim to disseminate or demonstrate of movies or videos or other works that propaganda the violence and cruelty – is penalized with a fine for up to 300 minimal salaries or unpaid labor in the benefit of community from 180 to 240 hours or with detention for 2 years.

³⁶ See Art. 234 "Produce or dissemination of pornographic objects" of draft Penal Code. "Produce or dissemination of pornographic objects, printed publications, pictures or other objects with pornographic character as well as commerce with them or depositing them with the aim of selling or dissemination, -- is penalized with a fine for from 200 to 500 minimal salaries or with unpaid labor in the benefit of community from 180 to 240 hours, or detention for up to 2 years"

³⁷ See Art. 291 "Calumnious advertising" of draft Penal Code. "Using in calumnious information intended to products, works or services, as well as to producers (authors , sellers), made in the interest of profit, if produced a considerable downs to the interests protected by law of juridical or physical persons, is penalized with a fine from 200 to 500 minimal salaries or detention up to 2 years. "

³⁸ See Art. 345 "Offense of a judge" of draft Penal Code, "Offense of a judge or parties of the process that contributes to the administration of justice or other gross violation of a public order in the court, - is penalized with a fine from 200 to 500 minimal salaries or with unpaid labor in the benefit of community from 180 to 240 hours, or detention for up to 6 months."

calumny of a judge, prosecutor, investigator³⁹, civil disobedience⁴⁰, profanation of state symbols⁴¹, insulting a military servant.⁴²

- Draft Contravention Code Affecting Freedom of Expression

To December 2001, Moldovan Parliament had been examining in the second reading the draft Contravention Code. The draft contains a number of provisions that might affect the freedom of expression containing the penalty in form of detention: calumny⁴³; insult⁴⁴; confection or dissemination of works that promote the cult of violence⁴⁵; confection or producing pornographic objects⁴⁶; violation with intend of use of state symbols⁴⁷; illegal actions with regard

³⁹ See Art. 346 "Calumny of judge, prosecutor, investigator, penal investigation person, sentence executor" of draft Penal Code, "(1) Calumny of a judge, or another person that contributes to administration of justice in relation with examination of case or materials in court, -- is penalized with a fine for from 200 to 500 minimal salaries or arrest for up to 6 months or detention for up to 2 years; (2) same actions, made towards a prosecutor, investigator, a person that administrates penal investigation, sentence executor in relation to administration of justice or execution of a sentence, of a judicial decision or other judicial act, -- is penalized with a fine up to 300 minimal salaries or arrest from 3 to 6 months, or detention up to 2 years. (3) Actions provided in (1), (2) of the article, combined with accusation of a grave or exceptional crime, is penalized with a fine for up to 300 to 600 minimal salaries or detention up to 4 years."

⁴⁰ See Art.381 "Civil disobedience" of draft Penal Code, "(1) Persons that impede in active manner the implementation of requirements of the Constitution of Moldova and other laws of Moldova by open civil disobedience and provoke others for same actions, -- is penalized with a fine for 400 minimal salaries or unpaid labor in the benefit of community from 200 to 240 hours or detention up to 3 years. (2) Same actions, followed by an appeal for civil disobedience in mass of the requirements of the Constitution and other laws of Moldova, as well as organization of them, -- is penalized with a fine from 300 to 600 minimal salaries or detention from 3 to 7 years, (3) Actions stated in (1) or (2), made by the leaders of state administration, enterprises, institutions and organizations disregarding the type of property that bring prejudices to the interests of state or public, -- are penalized with detention up to 3 years with privation to occupy some positions or exercise some activities for a period more than 5 years."

⁴¹ See Art.382 "Profanation of state symbols" of draft Penal Code, "(1) Profanation of state symbols (flag, hymn, sign) of the Republic of Moldova or another state or violation of the way of using of them, -- is penalized with a fine up to 500 minimal salaries or with detention up to 3 years. (2) The same actions, made: a) in a repeated way; b) by a prior agreement by a group of persons, -- is penalized with a fine from 200 to 700 minimal salaries or detention from 2 to 6 years, (3) Actions mentioned in (1) or (2) made by persons occupying functions of responsibility for using of state and national symbols, -- is penalized with a fine from 500 to 800 minimal salaries or detention from 4 to 7 years in both cases with privation of right to occupy certain functions or exercise certain actions for a period up to 5 years"

⁴² See Art.415 "Insulting a military servant" of draft Penal Code, "(1) Insult of a superior by an inferior, and the inferior by superior in relation with exercising of obligations of military service, -- is penalized by sending the guilty to a disciplinary military troops up to 2 years or detention up to 3 years (2) Same action made: a) in the time of war; b) in the time of fighting, -- is penalized with detention up to 5 years."

⁴³ See art. 75 of draft Contravention Code "Calumny". Calumny, or dissemination with good intent of hereabouts that defame a person, is to be fined by a fine from 15 to 25 minimal salaries or contravention detention for up to 30 days.

⁴⁴ See art. 76 of draft Contravention Code "Insult", (1) Insult, lowering with intent of honor and dignity of a person by action, in verbal or in written, is to be fined by a fine from 10 to 20 minimal salaries r contravention detention for up to 30 days. (2) Insult made thru a publication or copied circulated information is subject of fine from 15 to 25 minimal salaries or contravention detention from 10 to 60 days.

⁴⁵ See art. 93 of draft Contravention Code "Confection or dissemination of works that propagate violence cult and cult of cruelty" Confection, dissemination, demonstration or storage with intent to disseminate or demonstrate films or other works that propagate cult of violence or cruelty, is to be fined from 10 to 20 minimal salaries with confiscation of materials used or to be used for doing a contravention, as well as materials and good acquired by contravention; juridical persons are fined from 200 to 300 minimal salaries with confiscation of materials and goods used or to be used for doing the contravention, as well goods acquired by contravention"

⁴⁶ See art. 94 of draft Contravention Code, "Confection or producing of pornographic objects and propaganda of services and carrying out spectacular measures with sexual character" Confection, dissemination or publication of pornographic materials, published works, drawings or other objects with pornographic character, commercialization or storage with intent to sell or disseminate, as well as offering and circulating of services and carrying out of

to state decorations⁴⁸; petty hooliganism⁴⁹; organization of illegal strike⁵⁰; blocking with intention of enterprises, institutions, organizations, transportation roads⁵¹; violation of ways established for organization and carrying out of meetings⁵².

Vague and abusive procedural provisions of the draft Contravention Code support the substantive provisions and grounds for penalties. For all mentioned sanctions police enforces the law playing a role of the establishing of facts authority. For all mentioned substantive provisions, the establishing authorities, can take so-called assurance measures, including detention of the person for up to 3 hours or for up to 24 hours⁵³ that starts from the moment the person is brought to the police headquarters or to another public place⁵⁴. Police can apply also a detention for a longer period of time thru mandate procedure with regard to the contravention⁵⁵. Police writes the protocol of the establishing of facts applying the measure provided in the law in cases when detention is not provided, the sanction is subject to judicial appeal in the court within period of

spectacular measures with sexual character, is subject of fine from 10 to 20 minimal salaries with confiscation of goods used or to be used for doing of contravention, as well as well goods acquired by contravention; juridical persons are fined from 200 to 300 minimal salaries with confiscation of materials and goods used or to be used for doing the contravention, as well goods acquired by contravention”

⁴⁷ See art. 337 of draft Contravention Code, “Violation with intent of way to use of state symbols”, (1) Violation with intent of way to use of state symbols (hymn, sign, flag) of the Republic of Moldova or any other state, is fined from 5 to 10 minimal salaries. (2) Actions provided in (1) made as a result of a priory agreement by a group of persons, as well as by persons responsible for use of state symbols, is fined from 10 to 20 minimal salaries or contravention detention for up to 30 days.

⁴⁸ See art. 338 of draft Contravention Code.

⁴⁹ See art. 373 of draft Contravention Code, “Petty hooliganism”, (1) Petty hooliganism, unashamed curses in public places, insulting accosting of citizens and other similar actions that violate moral norms that disturb public order and silence of citizens, is subject of fine from 10 to 20 minimal salaries or contravention detention for up to 10 to 20 days. (2) Petty hooliganism or hooliganism carried out by teenagers of age between 14 to 16 years, is subject to fine of parents or persons legally responsible from 5 to 15 minimal salaries.

⁵⁰ See art. 377 of draft Contravention Code, “Illegal strike”, Organizing of illegal strike not respecting the conditions provided in the law, is subject of fine from 15 to 25 minimal salaries.

⁵¹ See art. 390 of draft Contravention Code, “Blocking of enterprises, institutions, other organizations, roads”, (1) Blocking of roads and buildings that belong to the enterprises, institutions or organizations by installing posts or in any other way that provoke or could have provoked disturbance of normal functioning of railway transportation, air transportation, water transportation, auto transportation, enterprises, institutions, organizations, is subject of fine from 10 to 20 minimal salaries. (2) Same actions made by a group of persons as a result of prearranged plan, is subject of fine from 15 to 25 minimal salaries or contravention detention from 10 to 20 days.

⁵² See art. 378 of draft Contravention Code

⁵³ See art. 501 of draft Contravention Code “Terms of detention”, (1) Detention cannot exceed the term of 3 hours, with exception of cases provided by para. (2) and (3) of the Code. ... (3) suspected person that is likely to apply the sanction of contravention detention can be detained until the examination of the case on contravention but no more than 24 hours. (4) Terms of contravention detention is calculated from the moment the suspect is brought for writing the protocol...

⁵⁴ See art. 497 of draft Contravention Code, “Measures to Assure the application of contravention procedure”, (1) In the scope of redressing of contravention, identification of contravention when the protocol of contravention cannot be written at the place, for the scope of operative examination of the case and execution of the decisions on the matter, the establishing authority has the right, within the limits of its competence, to apply the following assurance measures pf contravention procedure: 1) bringing the suspect to the place where the contravention protocol will be written; 2) detention of person; 3) bringing the person according to the mandate; 4) corporal control and control of means of transportation, control of people in the means of transportation; 5) seizure of documents and objects, ... 7) detention of means of transportation and people inside; (2) with regard to the juridical person establishing authority can apply: 1) control of the buildings and territories and goods located inside, means of transportations and other objects inside; 2) seizure of documents and other goods belonging to the person; 3) application of sequestration of goods, means of transportations and other goods belonging to the person. And art. 499 of draft Contravention Code (1) Detention composed of limitation for a short period of time of physical liberty of person. It can be applied, in exceptional cases, for the assurance of the procedure and execution of the decision in contravention cases...

⁵⁵ See art. 503 of draft Contravention Code “Apprehending by mandate”, (1) Apprehending by mandate is composed of forcible bringing of person to the organ that issued the mandate in cases of person’s obligation to be present upon summon or organ that is the establishing fact authority (police). (2) Apprehending by mandate is made by the organ of police by presenting of mandate issued by court or **by chief of police**. (3) ...

10 days, with decision of police taking force immediately⁵⁶. If the person disagrees or the sanction contains detention, the court examines the case⁵⁷. Police and the person subject of measures as the draft Code provides and adversarial procedure share the burden of proof of the facts, established by police and sanction applied contained in the protocol of established of facts⁵⁸. Positive obligation to provide legal aid is guaranteed by the state only in cases suspected explicitly requests that, suspected is a minor, or has a handicap of any kind, or the interests of different suspected are conflicting⁵⁹.

- Draft Civil Code Provisions Affecting Freedom of Expression

Towards December 2001, Moldovan Parliament had been considering in the second reading the draft Civil Code. The draft contains a number of provisions that might affect the freedom of expression and freedom of information: prohibition of dissemination of information that violates non-patrimonial personal rights⁶⁰, protection of honor and dignity⁶¹, right to secrecy of family life⁶², right to image⁶³, general limitation clause for non-patrimonial rights⁶⁴, new rules for regulation of freedom of information⁶⁵.

⁵⁶ Art. 519 of the draft Contravention Code "Paying the fine at place", 1) In case of contravention for which the article of special part of the Code provides only fine, the person has the right to pay the fine at the place receiving the receipt, of amount of at least half of the fine unless he/she: 1) suspected contests the qualification of contravention; 2) suspected agrees to pay fine at the place, 3) there is no other damages caused

⁵⁷ See rt. 520 of the draft Contravention Code, "Sending the contravention case to court", If the substantive sanction provides other actions then fine or warning, as well as whe suspected contests the deeds or there exist damages, the case is being sent immediately to the court for examination being duly signed by the chief of the police or establishing authority.

⁵⁸ See art. 486 "Evidence", (1) Evidence is any real information, on the basis of which, by the way established in present Code, establishing authority or court, establishes the presence or lack of contravention fact, liability of suspected and other circumstances that have importance for just solution of the case. This is established thru protocol of the contravention, protocol of application of assurance measures of contravention procedure, thru explications of the suspected, victims, witnesses, thru examination of delict corps, thru expertise and written materials. (2) ...

⁵⁹ See art. 482. Obligatory participation of a lawyer. (1) Participation of lawyer in contravention procedure is obligatory in case when: 1) this is asked by suspected, 2) suspected faces difficulties to self-defense, being mute, or other handicap of any kind impeding him/her to effectively exercise the defense; 3) suspected at the moment of contravention is a minor; 4) interests of suspect persons are different; 5) in the case participates a lawyer on behalf of victim or civil party. (2) Obligatory participation of lawyer in contravention procedure is assured pro bono by the authority that carries out the procedure.

⁶⁰ See Art. 32 of draft Civil Code "if personal non-patrimonial right can be violated by means of materials prepared for publication in journals, papers, radio, tv, cinema programs, at the request of the interested person, court is in right to forbid the dissemination or publication of this materials. And if the information is already disseminated, at the request of interested person, the court is in right to decide to seize and destroy the whole journals, papers, books, program, etc"

⁶¹ See art 14. of draft Civil Code: "1. any person has the right for respect of honor and dignity. 2. any person has the right to ask for denial/refutation of affirmations that slander person's honor and dignity, unless the person who disseminated the information proves that the information corresponds to the reality. 3..."

⁶² See art. 44 of draft Civil Code: "No one is in right to interfere with family life without the respective consent of the person, and to disseminate data about private personal life and family life, that have become known in relation with the exercise of person's function or from other sources."

⁶³ See art.55 of draft Civil Code: "1. No one is in right to make photo, create, publish and disseminate or by other means spread the person's affecting information (photo, movie, audio-visual recording, drawing, or other artistic opera, etc) without the consent of the person. 2. The person's consent is presumed for making photo, audio-video recordings if they are done at meetings, gatherings, conferences, etc and in other places of concentration of people in mass. 3. At the gatherings, meetings, conferences, etc making photos of the participating persons, can be done by persons who have respective authorization of the organizations. 4. Obtaining person's photo without person's consent, can be effectuated according to legislation. 5. The photo can be disseminated against person's will if this information protects person's interest or the interests of other persons. 6 The person's consent for publication or dissemination of photo is presumed if he/she received payment for it"

In the light of discussions that follow, the new provisions are not considered a satisfactory development in view of better protection of freedom of expression and right to information⁶⁶.

- Limited Access to the Parliamentary Discussions Records

In April 2001, the permanent Bureau of the Parliament of the Republic of Moldova adopted an unpublished decision nr 7-XV on the way of keeping the records of parliamentary hearings and a Regulation describing the way the records could be accessed and used. Regulation on accessing the parliamentary hearings records provides a limited and closed list of people⁶⁷ and cannot be accessed by people outside of the Parliament⁶⁸. The access to records is decided by the consent of chief of Parliamentary apparatus and the records of closed sessions of the Parliament by president of the Parliament, vice presidents or by general director of the apparatus of the Parliament⁶⁹. Finally, the information about parliamentary sessions to the representatives of different public authorities is given only with the permission of the heads of the commissions⁷⁰.

⁶⁴ See art. 30(3) of draft Civil Code "...3. Physical person is in right to dispose himself/herself, if not violating the rights and liberties of others, public order or good morals"

⁶⁵ See art. 51 of the draft Civil Code: "1. A person has the right, in conformity with the law, to obtain, utilize, and disseminate information. 2. The right to information should not cause prejudices to the measures of legal protection of persons or state security. 3. Researching of information that constitute state secret or commercial secret, as well as selecting, keeping, using and disseminating of information about private life of a person against his/her will is not allowed. 4. Information presented by a person, while exercising his/her function as well as information from official sources is considered true. 5. A person that utilizes and disseminating information is obliged to be convinced about the truth ness of information and is fully responsible for the risks and effects resulted from the non-execution of this obligation."

⁶⁶ Excerpt from Moldovan Helsinki Committee analysis of the draft Civil Code provisions:

- draft art. 42 (1) does not give the definition of "honor", "dignity" that uses in the law. The great confusion in Moldovan court practice imposes the imperative for clear definition of these terms and needs for different reglemntation.
- draft art. 42 (2) uses the notion "affirmation" that includes both facts and opinions that is in this context imposes unreasonable restriction.
- draft art. 42 (2) imposes burden of proof of truth on the journalist:
 - a. It is out of logic to request from the journalist to demonstrate that his/her opinions corresponds to reality and is true;
 - b. Before the journalist is hold liable the versus party should demonstrate the actual loss or damage caused;
- draft art. 42 fails to provide journalists legitimate defense:
 - a. There is a greater public interest in knowing than to protect "reputation".
 - b. There is no malicious intention in journalist action.
 - c. Journalist cited with accuracy the public sources and due references.
 - d. Journalist made reasonable investigations and made use of normal practices of documenting practices in the field and in the country..

- Draft art 42 does not give the definition of "public person" or the person that by virtue of the subject becomes a public person, and therefore requiring a different legal arrangements or at least corrections for interpretation.

⁶⁷ See art. 1 of the Regulation: "Parliamentary hearings records can be given upon solicitation to: a) parliamentarians, b) consultants of the permanent commissions, c). Public servants of the Parliament, d) members of the Government, president of the Constitutional court, and president of Accounting Chamber".

⁶⁸ See art. 4 of the Regulation: "Hearings records are not given to persons outside of the Parliament, with exception of cases provided by law."

⁶⁹ See art. 2 of the Regulation: "Parliamentary hearings records are given only by the permission of the heads of the Parliament apparatus, the records of closed hearings by permission of the president of the Parliament, vice-presidents or general director of the apparatus" and art. 6 "in case when parliamentarians solicit the records of the parliamentary hearings to present as an evidence in court or to give it large circulation, the permission is given by president or vice-presidents of the Parliament."

⁷⁰ See art. 5 of the regulation: "Ministers, departments, other public institutions that solicit information about parliamentary sessions, hearings records are given with the permission of heads of permanent parliamentary commissions, head of the parliamentary apparatus, and records of closed hearings only with permission of president and vice-presidents of the Parliament."

The decision does not provide any substantive provisions for disclosing or forbidding access to records.

- Limitations on Grounds of "... territorial integrity and incitement to territorial separation..."

On 30.11.2001 Economic Court of Moldova had ordered the closure of the national-wide paper "Komersant Moldovi" for the articles published in several editions by the paper under the generic title "Transnistria" "...attempt at the integrity of the state contravening provisions of art. 32⁷¹ of the Constitution of Moldova and art. 4⁷² of Law on Press. By publications the paper openly supports the anti-constitutional regime of so-called <dniester moldovan republic> contributes to promotion of separatists ideas of entity leaders, contributes to misrepresentation of the essence of legal actions taken by authorities of Moldova with regard to the solution of the conflict...". The court cited art. 10(2) of the European Convention on Human Rights. The following expressions were outlined: 1) Publisher comment "...In the conditions of unstopping political and diplomatic and economic blockage of Dniester Moldovan Republic on behalf of the Republic of Moldova, consider the meeting of presidents of Dniester Moldovan Republic and Republic of Moldova impossible..."; 2) In the article signed by Grigirii Maracuta, head of Supreme Soviet of dniester moldovan republic "Juridical inequality of Dniester Moldovan Republic and Republic of Moldova, as a recognized state, allows the later to come to the negotiations from the position of dictate, that is the main reason of delaying of the final solution of the problem..."; 3) Citation of the information by Ministry of Foreign Affairs of Russian Federation "...Ministry of Foreign Affairs of Russian Federation considered that withdrawal of Russian army from Transdnitria can prejudice the situation in the region...", etc. The decision had been appealed to the Supreme Court of Justice.

The closure of the paper had been done with the violation of the established relevant Moldovan practice with regard to the procedural law of examining of the complaints with press involved. The Economic Court ruled on the closure of the "Komersant Moldovi" paper in accordance with the art. 278 (11)⁷³, 278 (24) of the Code of Civil Procedure. Off the numerous civil cases disputed in court involving the press and written publications, the case of "Komersant Moldovi" is the first case ever in almost 10 year of Moldova judicial practice when it had been examined by Economical Court. All the other cases were examined by ordinary courts of first instance involving matters of reputation, honor, etc.

⁷¹ Art. 32 of the Constitution of Moldova, "Freedom of opinion and expression" reads "(1) Every citizen has the right for liberty of thought, opinion, and liberty of expression in public by word, image, or other possible mean. (2) Liberty of expression cannot damage the honor, dignity or rights of other people for opinion. (3) Contestation and defamation of state, people, incitement for war of aggression, national racial or religious hatred, incitement for discrimination, incitement for territorial separation, public violence, as well as other manifestations that attempt at constitutional order are forbidden and prosecuted"

⁷² Art. 4 of Law on Press, "Freedom of expression and limitation for publication" reads "Publications and agents of press, according to their appreciations, any materials or information, publishes taking into consideration that exercise of the right carries obligations and responsibilities, is subject of formalities, conditions and restrictions, and sanctions provided by law that constitute necessary measures in a democratic society for national security, territorial integrity and public security, public order and prevention of crime, health care, protection of morals, protection of reputation and rights of others for impeding the disclosure of some confidential information, or for guaranteeing the authority and impartiality of justice".

⁷³ See art. 278(11) Competence of the Economic Court of Moldova, "Economic Court will judge: 1. requests of economic agents with regard to the considering of some normative acts and other acts of public administration and of other organs, which are considered in violation with the law to be declared void; 2. requests introduced in protection of the interests of the state; 3. other cases provided by law in its competence"

- Excessive control of registration of broadcasting operators

The difficult and long procedure to obtain authorization, in which the Ministry of Communication and Informatics (MCI) implied twice, allows direct content-based interference of the Government. Articles 15(2, 5)⁷⁴, 16(1)⁷⁵ and 19(1)⁷⁶ establish a three step procedure. The procedure undermines the autonomy and independence of the Council on Audiovisual Matters (CCA) first, with the condition to have a prior technical admission from the MCI to apply for a license of emission from the CCA, and afterwards to apply for technical license from the MCI for granting authorization to broadcast from the CCA. Furthermore, the MCI admits number of frequencies available to be open for competition. All of these regulations actually, as experience and conversations with private audio-visual mass-media institutions show, make the interference of the Government quite substantially sound. This procedure contravenes, moreover, an international principle that stipulates that only one independent public authority with public and private audio-visual related, with clearly drawn up jurisdiction, is exempted from the infringements of the Government.

Article 37 (1)⁷⁷ coupled with art. 43⁷⁸ allege the substitution of society self-censorship with the state one, institutionalized through the CCA and the MCI (read the Government). The mandatory norms imposed to private audio-visual institutions on publicity may be legitimately interpreted as considerable commercial speech limitation. The commercial speech, and there is no doubt about it, should bear the same scrutiny on limitation as symbolic one. The article provision lacks it and even furthermore, limits the volume of commercial speech. The legitimacy of such a limitation may be questioned for simply the reason that commercial speech, as it is well known, promotes private trading. The final sintagma of art 37(1) leaves the CCA with impermissible broad jurisdiction “to establish...other norms related to the application of the present law”. It may undoubtedly be amounted to abusive interpretation.

Art. 41⁷⁹ in the first paragraph invests the CCA to control the content-based obligations assumed, if issued the license of emission. The license of emission refers only to content of the programs as found in art. 15(1)⁸⁰. The second paragraph invests the MCI as well as the CCA with control over the information aired by an audio-visual institution. Here again is a clear imixtion on behalf of the Government with the CCA’s jurisdiction and direct interference with mass media.

2. Freedom of Association and Peaceful Assembly

⁷⁴ Art. 15(2) say, “License of emission is issued by CCA through competition of audio-visual institutions bearers of technical admission (issued by MCI). Technical admission is issued within 30 days since the solicitation lodged...(5) Access of social-political, cultural, religious and other organizations to audio-visual programs is made in conformity with the present article, and in conditions established in the license of emission”.

⁷⁵ Art. 16(1) say, “Number of licenses of emission, for which the competition is announced, is made by CCA with prior admission by MCI.”

⁷⁶ Art. 19(1) say, “Authorization to broadcast is granted by CCA on the basis of license of emission (issued by CCA with prior technical admission by MCI) and technical license (issued by MCI).”

⁷⁷ Art 37(1) say “CCA establishes for all audio-visual institutions mandatory norms as to: publicity (that cannot exceed 25% of total airtime), sponsoring, the contestations to be solved out, as well as the other norms related to the application of the present law”

⁷⁸ Art. 43 say, “In case when a bearer of license and of authorization does not respect the obligations resulted from them and does not conform the public alert, CCA or MCI are entitled to apply sanctions provided in legislation.”

⁷⁹ Art. 41 say, “(1) CCA controls the respect of obligations resulted from the license of emission. (2) In case of violation of these obligations, CCA or MCI warns, in public, respective audio-visual institution or initiates the motion of seizure of the institution in court.”

⁸⁰ Art. 15(1) say, “License of emission composes all categories of information to be aired in public.”

- Political Association

On 22 January 2002, Ion Morei, Minister of Justice had issued the order for suspension of the activity of the People's Cristian Democratic Party (PPCD) the third largest and main parliamentary opposition party. The order states that the party will be suspended activity for one month for "violation of provisions of legislation of the Republic of Moldova" resulting into a juridical sanction for incomppliance with legislation on public meetings and organization of them with "violation of the legislation"⁸¹. Also, the Ministry relied on the violations of other laws and among them Law on Political parties. The decision can be contested in Supreme Court of Justice in 5 days. The Law on political parties do not provide for the reasons for suspension or dissolution of the party with exception of the ban to create and activity parties that "militate against political pluralism, rule of law state, propose forcible or anti-constitutional overthrow of the order, undermine suzerainty and territorial integrity, propagate war, racial interethnic and religious hatred and incite unrest authoritarian leadership, attempt at human rights, carry out other activities that violate Constitution and are incompatible with generally recognized international norms"

Starting from 09.01.2002 the mentioned Party had organized a public demonstration of around 2000-3000 people protesting the introduction of the Russian language as obligatory subject in Moldovan/Romanian schools from 2nd grade. The Mayoralty of Chisinau and Chisinau police, supported by Minister of Justice, in the letter dated 03.01.2002, sustaining the violation of the Law on Public Assembly and Meetings relying on the provisions of art. 5,⁸² 6, 7, 8, 9, 10, 11,⁸³ 12(2)⁸⁴, 13, 19 to justify illegality of the meetings⁸⁵.

- Political association in Transdnistria region

On 12 May, 2001 Tiraspol court decided to discontinue the activity of a political movement "Partia Narodovlastia" of Transdnistria region. The reason was that this political movement has supported the Communist party of Moldova in the time of Moldovan elections.

- Religious association

The infringements of Moldovan Government in exercising the right to freedom of religious association

⁸¹ Art. 29 of the Law on political parties states that the Minister of Justice "Ministry of Justice will suspend the activity of the party in case it violated the Constitution or this law or did not satisfy the requirements laid down in the warning. In this case, Minister will inform in written the leadership of the party indicating the provisions of law and establishing the terms for accomplishments. In the period of electoral campaigns the activity of the parties can be suspended only by the Supreme Court of Justice "

⁸² Art. 5 say "Declaration of meetings. Meetings can take place only after being declared by the organizers at City Hall."

⁸³ Art. 11 says "Beforehand declaration. 1. Organizer of the meeting submits to City Hall, at least 15 days in advance of the date of meeting, a declaration of intention"

⁸⁴ Art. 12(2) says "City Hall, examines the beforehand declaration submitted in its extraordinary or ordinary session, ...and takes the decision of authorization"

⁸⁵ For detailed discussions on the problems raised by the Law on public assembly and meetings see 2000 Human Rights Report by the Moldovan Helsinki Committee for Human Rights.

Spiritual Council of Muslims case. The State Religious Service (central authority reporting directly to the Government of Moldova) had refused repeatedly to register the Spiritual Council of Muslims. On September 18, 2000, Gh. Armasu the head of the State Religious Service refused registration of the Spiritual Council of Muslims on the grounds that “97% of population of Moldova are Christians”, “foreign citizens and persons without citizenship temporarily residing in Moldova are guaranteed religious freedom without granting their association a juridical person”. After Muslims Council leadership was reorganized to include only citizens of Moldova, the State Religious Service refused registration on the grounds that “majority of persons belonging to the council are foreign citizens” that allows according to art. 22(1)⁸⁶ the Government of Moldova to refuse registration. On 12 February 2001 Court of Appeal⁸⁷ ruled only on one of three claims stating that the Government of Moldova to “respond to the petition lodged by the Spiritual Council of Muslims”. The ruling stated no terms for response or the essence of the ruling. The Spiritual Council of Muslims claimed that the Government gives the response in essence to the petition on registration within time limits provided, “recognize”⁸⁸ the statute of the Spiritual Council of Muslims and repair the moral prejudices resulted from the refusal. The Spiritual Council of Muslims lodged an appeal with the Supreme Court of Justice on 30 May 2001 decided to send the case for re-examination in the to Court of appeal. The Supreme Court of Justice did not explain the reasons for re-examination nor did it dwell on the other requests⁸⁹. On 08 October 2001 Court of Appeal in a repeated examination of the case dismissed the case and did not examine stating that the decision of the Government of Moldova (a political body) cannot be contested in the court of law⁹⁰. The Council appealed again the decision to Supreme Court of Justice. Several sessions were scheduled however for different reasons suspended. Moldovan Helsinki Committee had submitted memorials on both occasions to Court of Appeal and Supreme Court of Justice, explaining the European Court jurisprudence on the case⁹¹.

True Orthodox Church case. On February 19, 1999 “State Service for Creed Problems” within the Government of the Republic of Moldova has rejected the registration request submitted by the creed “True Orthodox Church from Moldova”, which declares itself to be a religious community similar with the religious creed “Russian Orthodox Church from Abroad”. The above mentioned Service states in its expertise signed by Gh. Armasu, that the creed had not presented its creed principles, which, under article 15 of the Law of the Republic of Moldova on cults, were to be enclosed to the Statute of the Cult. Another ground to refuse the registration of the cult is based on article 24 of the Law on cults stipulating that any parish can be registered as a legal entity only according to the Provisional Regulation on the Registration of Cult Components (Government Decision #758 from October 13, 1994). The Expertise of Refusal mentions that, under this Regulation, “religious organisations are founded by the respective cult centres and sections”. But, considering the fact that the “Russian True Orthodox Church from Abroad” is not registered on the territory of the Republic of Moldova, it can’t be registered as a component of the Orthodox Church, as, for instance, the True Orthodox Church from Moldova. This means that the cults which at present are not registered on the territory of the Republic of Moldova don’t stand a chance (if the state doesn’t desire otherwise) to be registered in the future. Court of

⁸⁶ Art. 22 (1) says “The heads of the religious creeds of national and subordinated level elected according to the statute as well as the entire personnel of religious services should be the citizens of Moldova...”

⁸⁷ See case Spiritual Council of Muslims v. Ministry of Justice (1), Court of appeal, judge Nelea Budai.

⁸⁸ As required by the Moldovan law on Religions

⁸⁹ See case Spiritual Council of Muslims v. Government of Moldova (1), Supreme Court of Justice, 30 May, 2001, judges Dumitru Visternicean, Nicolae Clima, Vera Macinskaia

⁹⁰ See case Spiritual Council of Muslims v. Government of Moldova (2), presiding judge Tudor Lazar, Court of Appeal, 08 October 2001.

⁹¹ See Memorial submitted by the Moldovan Helsinki Committee to Court of Appeal, judge Tudor Lazar.

Appeal and the Supreme Court of Justice upheld the Government decision on different grounds⁹².

On 29 November 2000 the Government of Moldova, upon the second request from the True Orthodox Church, refused to register the church on the basis that the Orthodox Church had already been registered in Moldova. The Church representatives petitioned the Court of appeal, which ruled in favor of the petitioners, obliging the Government to register the True Orthodox Church and pay the damages of 1 200 EURO (15 000 lei)⁹³. The Government appealed the decision in Supreme Court of Justice that scheduled to hear the case in November 2001. Several sessions were scheduled, the last one in December, however suspended for indefinite time for nor reasons given by the Supreme Court of Justice. Moldovan Helsinki Committee submitted memorials to both Supreme Court of Justice and Court of Appeal to explain the jurisprudence of the European Court of Human Rights.

- Association in public interest organization

Ministry of Justice of the Republic of Moldova refused register Bureau of Legal Advice on Individual Rights a public interest human rights organization. In its decision dated Ministry states that the organization proposed to “monitor and participate as observers of the process of administration of justice” which contradicts to Moldovan procedural law and (“three founders are not enough to secure the division of executive, controlling and other functions”-although the law says that at least three persons can do it; and the organization⁹⁴ to ensure the separation of roles. On 22.05.2000 Court of Appeal refuses again registration of the organization on different grounds stating that the founders has chosen a wrong constituency form and that “this form do not allow them to action in protection of rights of others as proposed in the statutory documents”⁹⁵ and that “this contravenes the essence of a non-governmental organization... These scopes cannot be effectuated by in this organizational form”⁹⁶. On July 19, 2000 the Supreme Court of Justice annulled the later decision, sending the case for re-examination to Court of Appeal on the grounds that the Court of Appeal “did not verify if the refusal of Ministry of Justice violate the right to association granted by art.11(2) of European Convention”⁹⁷. The Supreme Court found the considerations of the court of Appeal wrong. On 29 October 2000, Court of Appeal re-examining the case, issuing the decision obliging the Ministry of Justice to register the organization, stating there are “no grounds for refusal to register”⁹⁸. However, the Court refused to grant compensation of pecuniary and non-pecuniary damages incurred. Both the founders (asking for compensation of damages) and Ministry of Justice (against decision to register on procedural grounds asking re-examination) appealed. On March 14, 2001 Supreme Court of Justice sustained the decision of Court of Appeal without modification, obliging the Government of Moldova to register the organizations. Until the present moment the Government had not yet registered the organization to comply with the Supreme Court of Justice decisions

⁹² The Supreme Court of Justice decision motivated that the founders of the religious organization has chosen a wrong organizational form of the organization.

⁹³ See case of True Orthodox Church of Moldova v. Government of Moldova (2), Court of appeal, judge I. Corolevschi.

⁹⁴ Note art. 14(2) of the law on non-governmental organizations states “Non-governmental associations can be constituted upon the initiative of at least 3 citizens and/or of one or more juridical persons-non-governmental organizations”

⁹⁵ See art. 2(1) “Non-governmental organizations are constituted to undertake activities aiming at protection and implementation of civil, economic, social, cultural and other rights,...”

⁹⁶ See Decision of the Court of Appeal, 22.05.2000, judge Ion Corolevschi, in Bureau of Legal Advice on Individual Rights v. Ministry of Justice of Republic of Moldova.

⁹⁷ See Decision of the supreme Court of Justice, 19 July, 2000, judges Anastasia pascari, Vasile tataru, Dumitru Visterniceanu, in Bureau of Legal Advice on Individual Rights v. Ministry of Justice of Republic of Moldova.

⁹⁸ See Decision of the Court of Appeal, 29.10.2000, judge Tudor Lazar, in Bureau of Legal Advice on Individual Rights v. Ministry of Justice of Republic of Moldova.

stating it lacks necessary information of the organization by-laws, nor did the Ministry of Justice paid the costs of the representation.

- Threat for Dissolution of non-profit organizations

Moldovan Ministry of Justice repeatedly threatened throughout the 2001 two non-profit associations: CARP and Association for Family Planning. In late 2001 Ministry of Justice initiated the court procedure for closing these two associations on the grounds of alleged violation of the statutes of the mentioned organizations with regard to unspecified in the by-laws religious practices and complaints on behalf of the citizens. The associations offices were remedially invaded by police and other special investigative authorities to threaten off the followers.

- Draft Criminal Law on Peaceful Assembly

The present draft Penal Code contains provisions that penalize vagrancy and vagabondage for up to 3 years⁹⁹.

3. Fair Trial Guarantees

In the year 2001 the judicial system has not shown any steps forward to some improvements which have to be done. The judicial reform started in 1995 and has recorded significant positive improvements in securing the institutional independence of the judiciary, impartiality and fairness of the trials and implementation of due process quarantines, however, a number of major problematic areas still remain as for instance the economic independence of the judiciary but also a number of issues related to the quality of the administration of justice in the Republic of Moldova reflected herein.

- Access to the court files

Some judges do not allow the participants in process to have access to their case files. The Civil Procedural Code states in the Article 31 that all participants in a civil case have the right to access to the court file, to make copies from the documents of that file. In a case judges in a district court the judge refused the applicants¹⁰⁰ to study the files of their cases. In case of Hvalina and in case of Zaiat the Botanica sector Court of Chicinay judge refused the access of petitioners to the court files.

- Access to justice

At 02.10.01 an applicant made a complain to the district court Ciocana in case of cashing the percentage of inflation. When the applicant asked the office court why his case is not examined by the court since October, the chief of the court said the court will think if thus case could be

⁹⁹ Article 342 of draft penal Code: Vagrancy or vagabondage. (1) The act of person, that having the capacity for labor, appeals with asking for money from the public for material help, - is penalized with fine of up to 500 minimal salaries or with detention up to 3 years. (2) Person that do not have a permanent domicile and means for leaving and which despite the capacity to labor do not exercise in normal way an occupation or profession, or do not provide none of other labor for self-sustaining, - is penalized with detention for up to 3 years. (3) Same person who previously was condemned according to para (1) or (2), is penalized with detention from 3 to 5 years.

¹⁰⁰ Applicant Hvalina in the district court of Botanica, applicant Zaiat.

examined by the court. Up now the case was not distributed to a judge and is not a decision if the case is admissible or not.

Another aspect the fair trial guarantee is the right to participate effectively and in person to court hearings, and to have the right to defend in person the right which has been alleged to be violated. Especially in administrative and civil case the court has not respect the right to a person to a fair trial, and especially right to be invited to the court where the person can defend himself and to give the explanation on the ground of the facts invoked a party or by the state as been violated. The Committee registered some administrative cases (*Paris case*, *Raiu case*, *Calincov case*, *Maistruc case*) where the defendants have not been invited by the court to participate in the court hearings where the person (s)-defendants) had to play an active role, to defend himself. As the result of these facts, in these cases the person missed the time to appeal, therefore some drastic penalties followed, either an arrest, or to pay a fine. The worst thing is that if a person is not paying in a time limit the fine, the court transform the fine in arrest. To be noted herein that 18 Moldovan lei (60 cents) is equal to 10 days of arrest. In many cases the court is very willing to transform the fine in the arrest (*Paris case*, *Maistruc case*). The claimants stated that at the time when they have been taken from their home by the police officers they have not been informed about their right and the purpose of this request to follow them to the police station. Only at the police station they had been informed that they have been arrested of non compliance with a law order of a court. The right to appeal this arrest, the right to be assisted by a lawyers, right to inform family about this arrest are not communicated by the police officers, and as a result of these the people are detained without knowing the real motives of the arrests and their right to be informed promptly of the reasons of the arrest, right to appeal unlawful detention, right to be assisted by a lawyer.

- Access to court hearings

A representative of the Moldovan Helsinki Committee was denied access to courtroom to monitor a case of public interest without motivation. On 21.06.2000, the Chisinau Court of Centru district – a court first instance scheduled hearings of Mihaeiscu case, the later being accused for illegal participation in an unauthorized student strike. The presiding judge D. Suschevici denied repeatedly access of the representative of Moldovan Helsinki Committee to observe the trial proceedings giving effectively no motivation. The parties raised no objection for the trial to be observed. The president of Centru court of Chisinau – a court first instance refused the Moldovan Helsinki Committee complaint and the Chisinau Tribunal in its 17.08.2000 decision found that “courts lack jurisdiction to trial” of the alleged violation of access to court hearings in this case. The Court of Appeal annulled the Tribunal decision and sent the case of alleged violation of access to court hearings to be examined by Centru section of Chisinau Court of first instance disconsidering other allegations of the Moldovan Helsinki Committee. On 16 October 2001 Buiucani sector of Chisinau Court of first instance decided that there were no violation of right to information with regard to access to court hearings on the grounds that petitioners did not prove the violation and the circumstances invoked¹⁰¹. The petitioners appealed the decision at the Chisinau Tribunal.

- Length of pre-trial proceedings

The length of the pre-trial detention is mode also out of the time the investigation files are completed and they are sent to court. Within period, the person sometimes wait around a year the court examination starts. The average length of this kind of detention ranges from couple of

¹⁰¹ See case Moldovan Helsinki Committee for Human Rights v. judge D. Suschevici, Buiucani sector of Chisinau Centru court, 16 October 2001, judge V. Colesnic.

months to years. Six judges, asked on the particular cases (some share more cases) were co-operative but did not basically consider two years in pre-trial detention a long period or they never thought about it in such terms. The most common perception was that such young criminals belong there and it does not really matter where they are interned. Some opined that they will in any case receive the maximum sentence and after their release are likely to be detained again. One judge was literally surprised that two years had passed since the arrest. Most drew attention to their heavy workload (more cases) and argued that the number of judges had not increased sufficiently since Soviet times. One objective reason forwarded was that it is very difficult to complete a case as many procedural steps drag on (*e.g.* witnesses do not appear when convened). The other common obstacle is delivering judgments as this can take up to several months. Only once the judgment is final (thus after appeal), the inmate can be transferred to a prison. At the same time there is no law establishing a time limit by which a case must be concluded. Examining the situation within the existing legal framework there appear to be two main barriers to an expedited process. The first relates to the frequent absence of *every* victim at the court hearings. According to judges the legal requirement to invite every single victim often precludes taking a decision. Victims do not appear for different reasons (many simply because it is financially prohibitive to travel to Chisinau when the court does not reimburse costs). The second problem is that many persons are either not found or they do not believe that they would ever be compensated so they lack the reason to come. When the judge decides a case without all the victims, the Tribunal (appeal court) usually quashes the decision and returns the case. The second issue concerns an attempt to reduce corruption through the abolishment of Article 42 of the Penal Code (amendment of June 2001). The change reduced the discretionary power of judges to hand-down shorter sentences on certain grounds (*e.g.* family, health or other situation).

- Execution of judicial decisions

A big number of judicial definitive decisions aren't executed on different reasons in Moldavia. To the knowledge of Moldavian Helsinki Committee there are about 60 % of unexecuted civil decisions. The non-implementation of judgments is often a result of the inactivity or corruption of judicial executors and of responsible structures, but in essence it is the effect of lack of good national mechanism of implementation of judicial decision, specially in civil decisions.

Unfortunately, there are a lot of non-implemented judgments, as for obliging the Mayor office to return the estate to the persons who were subjected to political repression. In the case of Popov v. Mayor office, judged in 1997, the national instances obliged this authority to return to Mr. Popov the property of his parents – the house and the house land, which were confiscated in 1941. The decision hasn't been enforcing since 1997, because the Mayor office didn't assure to the state lodgers of that house another dwellings.

There are also a lot of non-executed national decisions as for obliging the same Mayor office to offer a dwelling to the judges and to the public prosecutors, who have this right on the ground of national legislation, and which is a part of elements that create the statute of their independence. In the case of Botnari v. Mayor office, on the ground of national Law as concerns the public prosecutors, Mr. Botnari has been waiting for a dwelling since 1997, from the moment he became a public prosecutor. After 3 years, on 25 May 2000, he defended his right and won his case before the national instances, that obliged Mayor office to assure a floor space for him and his family. For non-implementation of that judgment, on the 9 February, 2001 this authority was amended by the national Court, but the situation of execution has not been changed.

The local authorities always explain the non-execution of national judgments with the absence in the national budget of any financial resources for building new dwellings. Concomitantly, Mayor

office never had done any proposals or requests for this kind of financial allocations during the period of elaboration of national budget.

Another victims of non-execution of judgments are the persons who deposited their money in a state Bank of Economy before the change of currency in Moldova. The introduction, in 1993, of national currency –leu, instead of rubla, in relation 1 leu/1000 ruble, made to them a huge financial damage. Consequently the state decided to give a compensation to a special category of them. In accordance with the Parliament's decision from 24 July 1994 all pensioners, that reached at 2 January 1992 the age of 60 years, were entitled, for the first 1000 ruble that were deposited by them in Bank of Economy, on every account, to a compensation in relation 1 rubla/1 leu. Though this compensation was destined for a small part of all of Bank of Economy clients, however it was paid in proportion of only 26,5%.

Helsinki Committee of Moldova made advocacy in Moisei's case v. Banc of Economy. Mrs. Moisei is an old woman that put, before 1993 in Bank of Economy - 10 000 ruble. The national instance obliged the Ministry of Finance, who is responsible for the compensation payment, to pay her the compensation and damages suffered by her because of inflation. This public authority doesn't execute the decisions, motivating again with the absence of budget resources for that. In the same time the judicial executors refuse to sequester the bank account of the Ministry of Finance. As a result, Helsinki Committee of Moldova, wrote an intimation to the national Court. The national instance explained the violation of right to a fair trial with information about the absence of money from national budget and intimations that were sent by the court to a few authorities: Ministry of Justice, the Parliament. The court says that these intimations have not made any results in the situation of non-execution of civil decisions. The national Court recommended finally to petitioners to defend their right before the European Court of Human Rights, recognizing directly its ignorance and its incompetence. Accordingly to the information received by Helsinki Committee of Moldova from Ministry of Justice there are about 300 non-executed decisions passed in such cases. This national authority suggested to the victims, that are old and ill, to wait until the Government will allocate the necessary finance.

4. Independence of Judiciary

- Economic Independence and Functional Independence of Judiciary

Economic Independence of Judiciary. In Moldova, Ministry of Justice is the executive authority responsible for the financial functioning of the Judiciary and judicial system. Only Supreme Court of Justice has a separate budget and administrates the budget through the chair of the Court. The rest of the 84 courts of Moldova: Court of Appeal, Tribunals and courts with regard to salaries of judges and other personnel, maintenance of buildings, etc are done through the Ministry of Justice. The financial allocation for the functioning of the judiciary is well under the sufficient needs, including the salaries of judges that in average are about minimal consuming food basket of 100 EURO. Comparatively to the other budget lines the judiciary has less priority. The allocation for the judicial system in 2002 will in real value, taken in consideration the buying value of national currency and inflation, decreases compared with 2001 with 10%. In 2001 the budget for judiciary system (Supreme Court of Justice, other courts and Economical Court) was about 1 698 376 USD (21 229 700 Moldovan lei, calculated 1 USD=12,5 Moldovan lei) and in 2002 – 1 557 029 USD (21 798 400 Moldovan, calculated 1 USD=14 Moldovan lei) lei. As compared to only Governmental Association for Curative Senatorial and Recuperation of the State Chancery with the budget for 2002 of 914 308 USD (11 886 000

Moldovan lei), the budget for the whole judicial system is only about twice as much of the mentioned association¹⁰².

Appointment of Judges. The law on judicial system of Moldova and the Law on the statute of the judge had been modified so that the presidents of the courts and vice-presidents of the courts (chiefs of penal and civil sections-altogether three main persons of a court) are appointed now by the President of Moldova upon the proposal of the Supreme Council of Magistrates. Formerly only the chief of court was appointed through mentioned procedure¹⁰³. The mentioned law in art. 33 (2) and art. 34 (f) invested the chiefs and vice-chiefs of the courts with “other attributions in accordance with law”. As of 19.07.2001, law on the statute of the judge in art. 8(2) banned the “judge to collaborate with publications ... tv and radio programs to express his/her opinion on the current problems of internal politics”. Also, new version of art.11(4) states “that refusal and repeated refusal by the President of Moldova or by the Parliament to appoint the proposed judge by the Superior Council of Magistrates can serve reasons for elliberation from his/her function”. This provisions clearly runs against Constitutional provisions for protected status of the judge and immovability principle of art. 2 of the Law on the status of judge. New provisions of the art. 12 (6) state that the “judge will not be admitted to take the judge oath if not satisfied the requirements of art.8”, which among other banes the “judge to collaborate with publications ... tv and radio programs to express his/her opinion on the current problems of internal politics”. The recent appointments to the Chisinau Tribunal and Court of Appeal provoked serious concerns among the relevant community, when as alleged, Superior Council of magistrates submitted several names for the chief of Court of Appeal and Chisinau Tribunal to the President of Moldova, instead of one, and the President selected the “most favorable one”.

- Selecting Candidates for the European Court of Human Rights¹⁰⁴

“The results of the first ballot in the election of judges to the European Court of Human Rights on behalf of Moldova. The votes cast were as follows: in the case of Moldova, eighty-seven votes were cast. The absolute majority is forty-four. There were nineteen spoilt ballots - quite a lot - and thirty-three blank votes. Mr Ion Corolevschi got eleven votes. Mr Stanislav Pavlovschi received sixty-seven votes and is elected, and Ms Silvia Pogolsa received nine votes.”^{105 106}

The mandate of Tudor Pantiru, the present judge at the European Court of Human Rights from Moldova expires in October 2001. The Governmental Commission for selection of candidates for the post of the judge at the European Court of Human Rights has been set up by

¹⁰² See the Law on the budget for 2002, Official Gazette nr. 152-154, 13 December 2001 and law on the budget for 2001, Official Gazette nr. 160-162/1199 of 23 December 2000.

¹⁰³ See art. 16 (3) of the Law on judiciary system of 28.09.2001 “Chiefs and vice chiefs of the courts are appointed by the President of Moldova upon the proposal of Superior Council of magistrates for 4 years.”

¹⁰⁴ Based on Report: SUBMISSION ON THE SELECTION OF EUROPEAN COURT OF HUMAN RIGHTS JUDGE FROM MOLDOVA, May 2001 by Moldovan Helsinki Committee for Human Rights.

¹⁰⁵ Cited from http://stars.coe.fr/index_e.htm, 3. *Election of members of the European Court of Human Rights*. Twenty-first sitting, Wednesday 27 June 2001 at 3 p.m. the words of Lord Russell-Johnston, President of the Assembly, took the Chair at 3 p.m.

¹⁰⁶ Ibid, Mr McNAMARA (United Kingdom).- “I welcome you, President Voronin. You will be aware that the Assembly is currently voting on the list of candidates presented by Moldova for appointment as a judge at the European Court of Human Rights. You will also be aware of the controversy that surrounded the drawing up of that list, the complaints that were made about it in your country, the withdrawal of the original list and the fact that the President of the Court was so concerned that he wrote to the Committee of Ministers saying that he felt that the existing judge was being intimidated by the Moldovan Government.”

How can we be certain that you will introduce procedures that ensure that the drawing up of any future list of candidates can be seen to be fair and open? What undertaking can you give us that there will be no attempt to interfere with the independence of a judge, either here in Strasbourg or within your own country?

Governmental Decision on 22.11.2000. Commission composition was of 2 parliamentarians¹⁰⁷, 3 representatives of the executive¹⁰⁸, 1 Prosecutor¹⁰⁹, 3 representatives of other legal profession¹¹⁰ and 3 judges¹¹¹. On 07.03.2001 Governmental Decision on the basis of the selection made by the Governmental Commission¹¹² has proposed three candidates: Tudor Pantiru-currently the judge at the European Court of Human Rights, Ion Paduraru-a lawyer and former Minister of Justice, Mihai Poalelungi-judge at Court of Appeals. The Ambassador of the Republic of Moldova at the Council of Europe has withdrawn the list of candidates several days before the scheduled interviews with the candidates.

The Moldovan Helsinki Committee viewed that the proposed list of candidates from Moldova preclude the Parliamentary Assembly of Council of Europe from making a reasonable choice since the proposed candidates do not meet the criteria put forward in the art.21 of the **European Convention on Human Rights** and the **Recommendation 1429 (1999)**¹¹³ **National procedures for nominating candidates for election to the European Court of Human Rights**¹¹⁴. Most notable the proposed candidates do not qualify for the criteria of having "*...experience in the field of human rights, either as practitioners or as activists in non-governmental organizations working in this area...*"¹¹⁴ and "*...possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence...*"¹¹⁵ In the opinion of the Moldovan Helsinki Committee the proposed list of candidates is not adequate one. The selection of candidates has been done through the inadequate flawed procedure. The selection was substantially politically biased and ill motivated. These resulted in the ill-founded selection of candidates.

Overall, therefore the Parliamentary Assembly of the Council of Europe could not draw the right choice out of the three-presented candidates since the Assembly is not given the chance to do that¹¹⁶. The list does not give the qualified competitive candidates nor does it contain individually qualified candidates for the position of the judge at the European Court of Human Rights from Moldova. Therefore, Committee on Legal Affairs and Human Rights, the relevant ad hoc Committee on the selection of judges had been invited to declare the list inadmissible and return the list of the proposed candidates so that the Moldovan Government propose a new list of candidates qualifying to the post of the judge at the European Court of Human Rights.

¹⁰⁷ Vasile Rusu, vice-chair of the Juridical Commission, Communist Party and Victor Andrusceac, vice-chair of Commission of Foreign Affairs, Communist party

¹⁰⁸ Ion Morei, Minister of Justice, "Alianta Braghis", Ala Popescu, vice-director of State Chancellor, Alexandru Ohotnicov, vice-director of Legal Acts service of the President of Moldova.

¹⁰⁹ Nicolae Tabuncic, vice-director General Prosecutor Office

¹¹⁰ Vladimir Mocreac, professor of Law, member of the Superior Council of Magistrates; Alexei Pottinga-director of the governmental Center for Human Rights; Gheorghe Amihalachioaie-president of Union of Lawyers of Moldova;

¹¹¹ Vasile Pascari-vice-president of the Supreme Court of Justice; Nicolae Timofte- president of the Court of Appeals; Constantin Lozovanu - judge at the Constitutional Court of Moldova

¹¹² The composition of the Commission has changed since the first selection: Valeria Sterbet-Minister of Justice, Gheorghe Susarenco - judge at Constitutional Court of Moldova, were substituted by new Minister of Justice - Ion Morei, another judge of the Constitutional Court-Constantin Lozovanu, new vice-chair of the Judicial Committee - Vasile Russu (at the time of writing of the submission appointed as the General Prosecutor of Moldova). The changes produced after the parliamentary elections resulted into victory of the Communist Party, who won 71 sits out of 101 and the new Government was approved.

¹¹³ <http://stars.coe.fr/ta/ta99/erec1429.htm>

¹¹⁴ Art. 6 (ii) of Recommendation 1429 (1999)

¹¹⁵ Art. 21 of the European Convention on Human Rights

¹¹⁶ See "... the powers of the Assembly in the election procedures, but rather to implement, as best we can, the provision in the European Convention on Human Rights which grants the Assembly the right to elect the judges of the Court on the basis of making a choice of one from three candidates submitted by the respective member States." Report Committee on Legal Affairs and Human Rights Rapporteur: Lord Kirkhill, United Kingdom, Socialist Group **Election of judges to the European Court of Human Rights** Doc. 8460 <http://stars.coe.fr/doc/doc99/edoc8460.htm>

Facts. On 09.05.2001 the Jurnalul National - a daily Romanian language large circulation paper - published an advertisement inviting the interested persons to apply for the position of the judge of the European Court of Human Rights¹¹⁷. The advertisement announced criteria: "high moral reputation and professional conditions required to exercise the judiciary functions or be jurists with a recognized competence; posses sound experience in field of human rights, be as practician, be as a advocate of a non-governmental organization who works in this domain; know at least one of the official languages of the Council of Europe-French or English, that allow him/her to work."¹¹⁸ The deadline was 15.05.2001 with the documents to be presented at the Ministry of Justice. On 23.05.2001, Moldovan mass-media announced that 26 candidates submitted their CV of which 16 in personal capacity and 10 nominated by different institutions. On the same day Vitalie Pirlog, department chief at the Justice Ministry, admitted that the three candidates are Mr Ion Corolevski, judge at the Court of Appeals; Mr Stanislav Pavlovski, deputy head of the investigation section within the Prosecutor-General's Office; and Ms Silvia Pogolsa, director at the Training Center for Judicial Officials. According to Parlog, the three candidatures have to be approved by the Moldovan Government, than the judge for Moldova will be chosen in Strasbourg.¹¹⁹ T. Pantiru-the present judge at the European Court also was among the 26 candidates, but Foreign Minister Nicolae Cernomaz categorically opposed his candidature^{120 121}.

National Selection Procedure. The Procedure for selection of candidates clearly failed to comply with the substantive and procedural provisions of the European Convention and the Council of Europe Recommendations. The Government of Moldova cannot claim full discretionary power to select in the way it likes and apply the criteria settled in the manner incompatible with the European Convention¹²². The precooked selection of the Government imposed to the Governmental Commission explicitly amounts to the allegation of the arbitrary political decision¹²³.

Governmental Commission. After the Parliamentary elections the nominal composition of the Commission has changed since the changes were produced in the Government and the Parliament. The Governmental decision made reference to the Recommendation 1429 (1999) of the PACE¹²⁴ as these provisions should serve as guidance and for the criteria for selection of

¹¹⁷ The advertisement was published on page 14, where the paper has 16 pages in total. To the knowledge of the Moldovan Helsinki Committee, Jurnalul National was the only paper that published the advertisement. None of the Official or Governmental papers did.

¹¹⁸ The citation is the literate translation from Romanian by the author of the submission.

¹¹⁹ Bassa-press news

¹²⁰ Note that Nicolae Cernomaz, the Minister of Foreign Affairs is not a member of the Governmental Commission.

¹²¹ Bassa-press news

¹²² See "... The procedure for selecting candidates varies according to the government. However, as Lord Kirkhill observed in his report (Doc 7439), the expression "High Contracting Party" in Article 22 leaves an opening for the theory that the selection of the three candidates to be proposed to the Assembly may not be a matter which is entirely reserved to governments (see Lord Kirkhill's report on the procedure for examining candidatures, Chapter III, B, paragraph 7)." **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505**, <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹²³ See "... C. Recommendations on the selection procedure..." the lack of transparency in the procedure for selecting candidates led the press to question the arrangements for this procedure. Lists were often the result of an arbitrary political decision. Partisan considerations lay behind the elimination of numerous candidates in the national selection procedures" Report Committee on Legal Affairs and Human Rights Rapporteur: Lord Kirkhill, United Kingdom, Socialist Group **Election of judges to the European Court of Human Rights Doc. 8460** <http://stars.coe.fr/doc/doc99/edoc8460.htm>

¹²⁴ Parliamentary Assembly of the Council of Europe.

judges as well. The Commission did not adopt the Working Procedural Rules for selection¹²⁵. As the national selection procedure is a part of the selection and nomination of the judge at the European Court of Human Rights the lack of the procedural rules¹²⁶, its abuse interpretation and unclear status of the decision amounts clearly to the inadequate regulation of the selection of list of candidates and therefore cannot be compatible with the notion of the "model" court in Europe¹²⁷. The mere reference to the Convention criteria is absolutely inefficient unless the Moldovan Government in practice apply them that unfortunately have not been the case¹²⁸.

Examination and selection of candidates. The Commission received and shortlisted 26 candidates. The selection was done during one session that lasted for a couple of hours. The candidates were listed in the alphabetical order. The members of the Commission were present in the room where the selection was to be made. The short listed candidates would be called in for the interviewing. The chair of the Commission - Minister of Justice started the discussion of the applicants from the beginning of the list. The first several applicants were shortly discussed when at certain moment the chair went down to the list suggesting discussion of other. Some of the members of the Commission and applicants contested the move, when the chair replied that the candidates are already clear, suggesting the three names of Ion Corolevschi, Stanislav Pavlovschi and Silvia Pogolsa. At least 5 members of the Commission have disagreed with the manner the "selection" turned to be made. Several members of the Commission have made written statements on the Minutes of Meeting, expressing their disagreement with the manner/procedure and the selected candidates. Despite that not all-shortlisted candidates showed up, not all of the present short listed candidates were even interviewed and discussed. The overall impression of the meeting was that the names of candidates were made up before the meeting and the Commission session was planned. Its conduct confirmed the formality of the selection. Vitalie Pirlog, the Ministry of Justice representative confirmed the selection and added that Commission selection has to be approved by the Government of Moldova and only after that, the list of candidates will be sent out to the Council of Europe.

Candidates. To the best of Committee's knowledge the selected candidates do not meet the criteria of persons with sound human rights expertise and knowledge, from both practical and theoretical point of view¹²⁹. The selected candidates lack clear practical demonstrations of the

¹²⁵ "5. ii. in the majority of cases there are no rules governing the selection of candidates", see Recommendation 1429 (1999)¹ National procedures for nominating candidates for election to the European Court of Human Rights, <http://stars.coe.fr/ta/ta99/erec1429.htm>

¹²⁶ See "...6. In order to remedy these shortcomings and assist the governments of the member states in their procedures for selecting candidates for the next elections, the Assembly recommends that the Committee of Ministers invite the governments of the member states to apply the following criteria when drawing up lists of candidates for the office of judge in the European Court of Human Rights: " **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505**, <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹²⁷ See "...5. The Assembly considers it essential that the European Court of Human Rights be considered as a "model" court in Europe and that the provisions of the Convention, whether of a substantial or of a procedural nature, are scrupulously applied. **Resolution 1232 (2000)**¹ <http://stars.coe.fr/ta/ta00/ERES1232.HTM>..."

¹²⁸ See "...6. In order to remedy these shortcomings and assist the governments of the member states in their procedures for selecting candidates for the next elections, the Assembly recommends that the Committee of Ministers invite the governments of the member states to apply the following criteria when drawing up lists of candidates for the office of judge in the European Court of Human Rights ..." **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505**, <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹²⁹ See "... iv. **Candidates' experience in the field of human rights** ... candidates to give an account of their experience and professional activities and to list any publications. It became clear that relatively few of the candidates had experience in the field of human rights, and that this consisted of activist-type duties for non-governmental organisations working in this field, or of functions exercised within committees of experts dealing with human rights questions at the United Nations or the Council of Europe." **National procedures for nominating**

commitment to the values and interpretative understanding of the provisions of the European Convention on Human Rights¹³⁰. The selected candidates have not shown necessary theoretical background or done comprehensive research or study of at least a selected issue relevant to the European Convention on Human Rights, although the Convention has been ratified by the Republic of Moldova in September 1997 and its spirit and provisions provide cornerstone principles in the domain of the candidates activity¹³¹.

Candidate Mr Ion Corolevski. The candidate was a judge at Court of Appeal of Moldova. The candidate is a civil and administrative judge. The Court of Appeal hears the cases as a court of first instance if the plaintiff brings the lawsuit against a central state authority and other kind of cases in order of appeal (viewing and examining the matter of law and matter of circumstances) and in order of recourse (viewing and examining the matter of law exclusively). To our knowledge, the candidate has not been involved¹³² in human rights issues giving expertise, providing critical assessments, participating in the discussions on various issues of human rights.¹³³ The candidate has not been known in the human rights community (where the term is interpreted as human rights independent experts, human rights advocates and lawyers, etc) as well as the human rights reference or human rights resource person in Moldova. The candidate, in the best of our knowledge, has not published or produced a publication, article, discussion paper on any issue relevant to the European Convention on Human Rights. In the recent three-four years the candidate's only article published was on the issue of child adoption in the context of Moldovan laws dated back 1997 in a specialized bulletin for lawyers¹³⁴. The candidate, however, came to the attention of human rights community and ngos with regard to two cases, over which he presided, examined in the first instance¹³⁵.

The case of refusal of registration by the Government of Moldova of a small orthodox community (1999) and a case of refusal of registration by the Ministry of Justice of a human rights public interest organization (2000). Since both cases give a certain characteristic of the candidate human rights commitment and expertise we reserve some space to present them. Worthwhile mentioning is that although the plaintiffs in both cases relied on the provisions of the European Convention norms and also brought the European Court of Human Rights jurisprudence interpretation in the attention of the Court, the Court did not give any consideration or appreciation of them and limited its reasoning exclusively to the provisions of

candidates for election to the European Court of Human Rights Doc. 8505
<http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹³⁰ See "... a requirement that candidates possess experience in the field of human rights to be able to apply for the office of judge at the European Court of Human Rights; " **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505** <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹³¹ See "... Moral character could also be judged in the light of the candidate's professional and academic reputation, or even by the trust built up on a personal level over several years." **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505** <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹³² A good number of other judges including judges of Court of Appeal, Chisinau Tribunal, Supreme Court of Justice are very well known for the active position and contribution to the human rights cause, as for instance, taking part in the Governmental commission to analyze the compatibility of the Moldovan legislation with the European Convention on Human Rights, being human rights and resource persons at variety of seminars for different categories of people, contributing with human rights oriented and targeted articles and publication, co-operating with human rights ngos on different events and actions in promoting human rights causes, being at last a person recognized as a reference and well known person in human rights community.

¹³³ Ibid

¹³⁴ "Avocatul Poporului" a monthly bulletin of the Association of Lawyers.

¹³⁵ See 2000 Report on Human Rights Respect in the Republic of Moldova by the Moldovan Helsinki Committee. <http://chdom.ngo.moldnet.md> (or requested at chdom@mldnet.md) or International Helsinki Federation for Human Rights based in Vienna at <http://www.ihf-hr.org/reports/ar01/Country%20issues/Countries/Moldova.pdf> or requested at office@ihf-hr.org;

the Moldovan law¹³⁶. That makes us to believe of the clear lack of the attachment of the candidate to the human rights values of the Council of Europe¹³⁷.

Candidate Mr Stanislav Pavlovschi. The candidate is the deputy director of investigative department of the General Prosecutor Office. The candidate has been involved as a part of the working group on drafting of the concept and draft Penal Procedure Code. The draft is pending second reading in the Parliament. The candidate has not been known in the human rights community or legal community as a human rights expert, human rights resource or reference person, etc. The draft Penal Procedure Code, as a collectively elaborated document, is considered by many legal and human rights specialists as very much improved and in compliance with the Council of Europe standards. No human rights publications, articles, etc of the candidate are known.

Candidate Ms Silvia Pogolsa. The candidate is the executive director of the Judicial Training Center and also serves as a professor of law at one of the private University in Chisinau. The Judicial Training Center is a program of the Association of Judges and the Ministry of Justice with support of ABA/CEELI, UNDP and SOROS Foundation to provide training for Moldovan judges. The candidate is the administrative director of the Center. The candidate has not been known in the human rights community to be an expert, resource or reference person nor was she known to be involved in practical work for promotion of human rights. No human rights publications, articles, etc of the candidates are known. The candidate is seen as a respectable person with high moral integrity and good administrative qualities.

5. Torture, Inhuman and Degrading Treatment

- Alleged Torture and security and liberty of person cases

Number of complaints, which reclaim the ill treatment in prisons and in pre-trial institutions, are increasing. These cases are monitored separately by the Committee because of their particularly aspects of alleged violations of human rights. Moldovan Helsinki Committee connect allegation of torture with cases investigation by policemen. The applied way of conducted an investigation is caching the suspect who will lead to proves. Persons are brought in police stations not only by policemen but also by civil persons or Police Academy students, which further bring to violation of legislation in force: persons retained are not informed on their rights. Penal investigators interview the suspects in the absence of lawyer, in the quality of witness, under the fear of penal sanctions for untruthful depositions. These depositions represent self-incrimination, which is used by investigators as prove in further procedures, because afterwards the person is recognized as a suspect and interrogated again on the same facts as previous as witness. Right of the suspect to remain silent is violated.¹³⁸

Another way to obtain confessions from the suspects is application of torture methods: electro-shock, hanging, 'swallow', etc. It happens because persons brought in police stations often are not registered as being brought on that day in that hour. According to the legislation in force any

¹³⁶ Note that art. 4 and art. 8 of Moldovan Constitution requires application of international human rights treaty in case of contradiction of the Moldovan law with the Constitution or the provisions of international law.

¹³⁷ See "... the candidate should give clear evidence of his or her attachment to the values and principles on which the Council of Europe is based. As Lord Kirkhill emphasises in his report (Doc 7439), the sub-committee had little means of checking the information provided by the governments or by the candidates themselves with regard to the criterion established by the amended Article 21(1) of the Convention (see Lord Kirkhill's report on the election of judges, Chapter III, paragraph 15)." **National procedures for nominating candidates for election to the European Court of Human Rights Doc. 8505** <http://stars.coe.fr/doc/doc99/edoc8505.htm>

¹³⁸ See Report of monitoring the Paduret case Police Station from 26-27 September 2001

person can be detained for no more than 3 hours in which is establishing his identity. This time is sufficient for a police investigator to use psychological methods and force to find out needed information. If the used force left signs on the detained person's body, will be difficult to prove that the person was subjected to torture because he/she wasn't registered in police station's registry or protocol of detention. Even if there is a medical expertise on the injuries.¹³⁹

Persons detained in police custody aren't subjected to a medical examination in the day of detention, which would provide in a legal form description of the physical status of the person before detention. Neither is done on the release day. The certificate of medical examination is taking by persons only after he/she was tortured in police custody. Also it's not always done successful. Persons are released in the weekends, when the Center of Legal Medicine is not working. After one-two days medical examination conducts to uncertain conclusions on circumstances of torture application, methods used and consequences. Such uncertain conclusions of legal expertise represent the lack in further investigation of the allegations of torture.¹⁴⁰

Below are described recent cases, which are investigated by legal advisors of the Moldovan Helsinki Committee and the report, made on case:

- A.D.,¹⁴¹ retained in a public place and charged in an administrative offence, was interrogated and beaten in a police car by four policemen. There was no protocol of administrative detention for 12 hours completed. Subjected to cruel treatment and with different kinds of injuries, he was punished with administrative detention for 5 days in order to prevent a complete medical examination and a complaint to public prosecutor.

- D.A.,¹⁴² retained on the street by four policemen was interrogated and tortured in building under construction, then transported to police station and locked in the isolator. To prevent any complaint from the victim, under the charges on robbery he was arrested and detained in prison 60 days. The term of the arrest mandate expires when the court's hearing started, but he remained in detention. No medical examination was done and none of the sent complaints to public prosecutor were examined.

- A.P.¹⁴³, brought to police station by Police Academy students from home with no legal ground. Was subjected to alternative method of interrogation: question- blow. No protocol of detention for 6 hours was completed or registered in the police stations registry. In this there is an ocular witness: a girl open the door of the office when victim was beaten by those students a long with other ex-police officer. Public prosecutor saw injuries on the person's body and ordered the legal expertise in the same day when he was subjected to torture.

Another problem, on the other hand, is connected with the general prison conditions and insufficient hygienic supplies, general overcrowding etc. The lack of information, no possibility to read any newspapers and to keep in contact with outside world is also psychologically depressing. Complaints are studied to ascertain compliance with national legislation as well as with applicable international rules and principles.

- Efficacy of Investigation of Torture Cases their Redress

¹³⁹ See Report on circumstances of A. Paduret case from 31.03.00

¹⁴⁰ See Report on Corsacov case presented to Council's sessions on 23.02.01

¹⁴¹ See Domain Report on Dutco A. case admissibility, presented to Committee's Council session from 5.11.2001

¹⁴² See Report on the court hearing from 8 June 2001 on Dascăl Andrei case

¹⁴³ See Report on circumstances of A. Paduret case from 31.03.00

In almost all cases where the people alleged violation of the right do not be subject to torture or inhuman or degrading treatments the prosecutor offices have not conduct an effective official investigation. Committee has registered an conducted an analysis of these case. Eighty five percent of all cases (*Talmaciov case, Ghiba Maxim case, Glavatchii Valdimir case*) an not investigated effectively and in the legal response to the persons who invoked a violation of torture or degradation treatment in a police station, the prosecutor office give in general a general answer without some analysis of medical documents, or showing what king of investigative actions have been done. In all cases the prosecutor office do not ask people to come to the office and to ask to give some more details or explanation. All analysis which is completed is based on a written complain and medical documents.

- Torture and Inhuman Treatment by Conditions of Detention¹⁴⁴

Overpopulation of places of detention. In 2001 the overall number of inmates raised with 26% comparing with the number of inmates in 2000. Conditions of detention of the majority of the detained in penitentiary system of Moldova are insupportable and constitute a serious risk for their health. The most of the time detainees locked in dirty, closed to air and light cells. Places of detention require priority attention of Moldovan authorities and namely substantial efforts to reduce the population of detainees, improvement of conditions of detention and medical care as well as alimentation to sustain at least the vital needs. Moldovan authorities face serious financial insufficiencies and still promote the policy of heavy fines and sanctions resulting in maintaining the overall number of detainees and even its raise. De facto the present conditions amount to violation of right to life, right not to be subjected to inhuman treatment and right to privacy for any of about 10 000 detainees. Large number of detainees of the penitentiary system generate the conditions of inhuman and degrading treatment. It should be noted that the official norm for minimal detention space according national standards - 2m² per person is per se a satisfactory norm. In reality in many places of detention the space per detainee is several times lower. *To the end of 2001, 10 850 are detained*, including 7 380 condemned, 3 299 persons in pre-trial detention and 193 in forced alcohol treatment and social rehabilitation. Of persons in pre-trial detention 452 in criminal investigation by prosecuting authorities, 1 632 awaiting the trial in first instance, 1 310 awaiting the final conviction by superior courts. 445 women waiting the trial, of which 206 in pre-trial and 239 convicted. 106 minors detained in Lipcani colony.

Medical treatment. Allocations for medical needs are under the imaginable level. If the level of allocations remain at the same amount of 2,3 EURO per detainee, in 5-6 years the rate of progress of variety of illnesses will be uncontrollable and irreversible. *Only 5,9% or 2,3 EURO annually is allocated for medical services of minimal required.* In average in last three years 3% of inmates die of different illnesses that is 10 times higher than in average per country for people not detained. The real conditions for medical services require 5,5 mln EURO when the budget provides only 0,5 mln EURO, which is about 6% of the needs. The given amount covers only the needs for detergent and soup. *9,8 % or 1 000 of condemned are ill of TBC.* In 2001 - 398 persons acquired TBC. The rate of contamination had grown compared with year 2000 when only 200 new cases were registered. The probability to acquire TBC in places of detention is 40 times higher than outside the detention. 52 persons died of TBC in 1999, 51 died in 2000, and 25 already died in 9 months of 2001, in total 128 for last three years. The average number of inmates in detention for this period is 8 000, thus died of TBC constitutes 1,6% of population in this period. If the present rate of contamination and deaths keep in incoming 6-7 TBC can kill already 15% of total number of inmates. *195 or 1,8% of condemned carry HIV/AIDS.*

¹⁴⁴ Based on Report: Violation of Rights to Life and Right not to be subjected to Inhuman and degrading Treatment Caused by Conditions of Detention of Penitentiary System of Republic of Moldova, (ROMANIAN) OCTOBER 2001 BY MOLDOVAN HELSINKI COMMITTEE FOR HUMAN RIGHTS

Detention conditions. *30% of needed is allocated for transportation of detainees. Of needed 120 000 EURO for transportation per year (1 500 000 lei) only 50 000 EURO (610 000 lei) were budgeted only 40 000 EURO (460 000 lei) allocated. In some penitentiaries light is given only several hours per day. Budget provides 60% of the real needs and de facto only half of the budgeted money are allocated. Heating is scarcely enough for the end of January 2002. Only 12 hours per day 24 penitentiaries are assured with running water. The financial allocations cover only 70% of needs. Penitentiary systems carry debt of about 4 20 000 EURO for failure to pay services provided (5 mln lei).*

Sanitary and hygiene conditions. Allocations for sanitary needs cover only 40%. Although norms require 200 gr. per month per person, detergents - 100 gr. per month. The penitentiary system has only 70% of needed beds, 50% of needed cover sheets, 40% of needed cover beds, 0% of needed clothes and shoes.

Allimentation. In present only 0,18 EURO (2, 05 Moldovan lei) per day is allocated per detainee or 2,5 times less than even as provided in Moldovan Law, constituted only 40% of the minimal vital needs. It is provided that minimal vital need per person should be 0, 60 EURO (6,57 lei multiply with 30 days - 197,1 lei (or about 20 EURO per month); per one year – 2 400 lei (200 EURO))¹⁴⁵ that even that being under the real needs. Detainees are not given any fish, animal oil, meat, milk based products, vegetables and fruits, etc.

- draft Penal Code approach for detention sanctions

The draft Penal Code concept maintained and in some cases even worsened the Soviet approach of the unreasonable criminalization and heavy detention sanctions for petty and insignificant crimes.

- Draft Criminal Law on Forced Anti-alcohol Medical Treatment

Draft Criminal Code provides the forced medical treatment of an alcohol addict or of a drug addict upon its own initiative or upon the initiative of the health care service or working collective¹⁴⁶. Draft Criminal Code provides also that health care services will have right to apply forced medical treatment when the alcohol addicts are sanctioned with free of detention measures. Also, after executing of the detention persons can be sent for forced medical treatment by the order of medical institutions. The duration of the forced treatment is defined by court and is seized by the decision of the court upon the proposal of the medical institution.

6. Ethnic, Linguistic and Sexual Minorities

¹⁴⁵ conform normelor stabilite prin Hotărîrea Guvernului nr.246 din 13.05.93

¹⁴⁶ Article 101 of draft Criminal Code Application of forced medical constrained measures of alcohol addicts and drug addicts: (1) In case of crime done by an alcohol addict or a drug addict, with the medical consent, the court at the request of labor collective or the health care service or upon its own initiative, together with the penalty for the crime can apply medical forced treatment. (2) Above mentioned persons being condemned by non-privative sanctions will be treated with medical forced treatment. (3) If above mentioned persons are condemned to detention in the time of execution of sanction, they will be subjected to forced medical treatment and after liberation, if necessary, will continue this treatment. (4) The seizure of the forced medical treatment is ordered by court upon proposal of the medical institution....

- *Ethnic and Linguistic Minority Rights*¹⁴⁷

Legal Aspects.

1. Simplistic understanding in legal system and in practice of the concept and the content of national minority and human rights of national minorities:

- *Definition of national minority* and applicability to certain situations, regions, groups de facto belonging to national minorities¹⁴⁸ (Roma minority in Moldova; Moldovan relative minority in Transdnister region; Bulgarian minority in Gagauz Autonomous Entity)
- Understanding of the concept and meaning of the value of respect, protection and promotion of rights of national minorities and most notable the positive measures needed¹⁴⁹;
- Awareness of need to approach differently public and private sphere situations pertinent to national minorities;
- Egalitarian approach with regard to various minority groups having the direct negative impact on some “weak” or “less represented” minority groups, most notable Roma minority but also Gagauz and Bulgarians against Russians¹⁵⁰.
- Inexistence of concept and certainly realization of minority participation, at different levels (local, regional, central-political-public, other perspectives) in decision-making process.

2. Inexistence in legal system and practice the concept of *discrimination* with regard to rights of persons and groups belonging to national minorities:

- Definition and understanding of *discrimination* based on ethnic, racial, language and other reason¹⁵¹;
- Understanding of the concept and meaning of the value of non-discrimination on various bases and most notable the positive measures needed;¹⁵²

3. General, declarative and non-instrumental legal framework pertinent to minority rights failing to deal with different, various, distinct and complex de facto situations¹⁵³ and failure to legally endorse the European practices and experience to protect the rights of national minorities.

4. Insufficient capacity of relevant public authorities, public servants to deal and approach the variety of the mentioned problems and concerns

Institutional Aspects.

- Department of Protection of National Minorities has just a consultative status to the Government of Moldova it lacks the power of regulation, interpretation and in practice framing

¹⁴⁷ Based on Report Major Urgent Concerns on Respect of Rights of National Minorities in the Republic of Moldova (including Transdnistria region), October 2001 by Moldovan Helsinki Committee for Human Rights

¹⁴⁸ See most explicitly the approach in State report on implementation of the Council of Europe Framework Convention on National Minorities in the Republic of Moldova.

¹⁴⁹ See the approach stating that “the protection of persons belonging to national minorities does not differ from the protection of human rights of persons” in both UN Race Convention and CoE Framework Convention State Reports.

¹⁵⁰ Failure to understand the need for different treatment of different situations and minorities to respect equality. Mentioned minority groups are forced assimilation and alienation with the interests of minority dominant minority position in Moldova.

¹⁵¹ See most explicitly the approach and statements in State report on the Implementation of UN Convention on Elimination of All Forms of Racial Discrimination in the Republic of Moldova.

¹⁵² See the approach stating that “the protection of persons belonging to national minorities does not differ from the protection of human rights of persons” in both UN Race Convention and CoE Framework Convention State Reports.

¹⁵³ The most eloquent example is the recently adopted Law on Protection of Persons belonging to National Minorities and their Associations, September 2001 failing to give clear appreciation of various national minority groups, various situations throughout the country, approach participation of minorities in decision-making process, private and public domains, etc. For details see upcoming Report of the Moldovan Helsinki Committee “The Real Human Rights Minority Value of Moldovan Law on Protection of National Minorities.”

the Governmental policy on national minorities. The representation of national minority groups at the Department of National Minorities in a so-called Consultative Council, composed of representatives of different minority groups in Moldova, de facto is dominated by Russian minority.

- In the existing Moldovan institutional setting none of the law enforcement or other human rights pertinent institution deals with the minority human rights situations nor has the sufficient priority or capacity to enforce and promote the minority human rights policies¹⁵⁴.

Specific Situations.

1. Situation of a good number of *Roma communities* in rural areas throughout the Republic of Moldova most urgently with regard to¹⁵⁵:
 - a. discriminatory practice and non-representation in the in local public administration decision-making process affecting the communities;
 - b. non-discriminatory access to public benefits;
 - c. access to assets and their generation;
 - d. access to educational system and right to education in Roma language;
2. Situation of *Moldovans in Transdnister region* of the Republic of Moldova most urgently with regard to¹⁵⁶:
 - a. Non-representation of interests of Moldovan relative minority (against Russians and Ukrainians) with regard to the political process of decision-making affecting the Transdnistrian region as a whole;
 - b. right to education (public and private pre-school, primary and high education) in mother tongue and compulsory education in Cyrillic of Moldovan children;
 - c. communication with public authorities in the language of relative minority, attempts of “ethnic cleansing”;
 - d. freedom of expression in public and in private, including through media;
3. Non-representation of interests of *Gagauz minority (Gagauz Autonomous Entity)* in the *Parliament of Moldova* with regard to the political process of decision-making affecting the Republic of Moldova as a whole¹⁵⁷.
4. Non-representation of interests of *Bulgarian minority (Taraclia county)* with regard to the political process of decision-making affecting the South region of Moldova.

¹⁵⁴ - At present day the Governmental Human Rights Center (Parliamentary Advocates)-Moldovan homology of Ombudsman authority- the most relevant authority after the department on Protection of National Minorities has shown little if any interest in the issue. The relevant minority rights and human rights approach capacity of this authority is questioned by Moldovan human rights advocacy groups.

- Moldovan courts have had little if any precedents.

- Lack of genuine minority rights advocacy groups having the capacity at representing professionally the interests (lobbying for policies, taking public interest cases, etc) of discriminatory situations and cases. Moldovan Helsinki Committee remains by far one of few advocacy groups. Roma rights groups are weak and address only educational and cultural issues. Russian and Ukrainian associations are present but linked heavily with political strata and deal with cultural and educational aspects.

¹⁵⁵ For information see reports of the Moldovan Helsinki Committee for Human Rights:

¹⁵⁶ For information see Shadow Report on the Implementation by the Republic of Moldova of Framework Convention on National Minorities, prepared by Moldovan Helsinki Committee and Resource Center of Moldovan Human Rights NGOs

¹⁵⁷ Not to mention the ban to set up Political parties based on ethnic belongings.

5. Various forms of discrimination based on ethnicity, language in private sphere, most notable with regard to engagement in private sphere. Especially this goes true for the persons belonging to Roma but also ethnic Moldovans.

- Hate homophobic speech¹⁵⁸

Moldovan local press predominately exercise strong homophobic and intolerant attitude while reflecting the subject of homosexual orientation of gays and lesbians. The information clearly lacks the balanced and positive intention to contribute to the public debate and discussion of phenomenon. Some top Moldovan politicians of Christian orientation (see example below) incite public thru homophobic and degrading expressions. Some national wide papers as “Flux”, “Timpul”, “Saptamina”, “Communist” consecutively promote and publish homophobic information from Christian perspective. Police continue to harass persons of homosexual orientation by blackmail and divulgation of their orientation to public.

Moldovan Helsinki Committee classifies such publications and statements as homophobic and intolerant. In the particular case of Mr Cubreacov statement the opinion does not create anything other than degraded perceptions, which reduce the complexity of human beings, their relations, social life to the level of pared-down categories, and cannot create solutions to the complex above-mentioned problems. This is why the form of expression of Mr. Cubreacov believes (if it is consistent) represents clearly a negative, intolerant, homophobic message, unacceptable for a European politician... Such opinions are clearly incompatible to the European culture and civilization. European way of expression of thoughts and believes requires corresponding forms of transmitting a positive message, which contributes to existing debates on the subject and gives arguments and solutions on both sides.

On July 4, 2001 Mr. Vlad Cubreacov, Moldovan parliamentarian, vice president of Moldovan Christian Democrat People's Party and a member of Parliamentary Assembly of the Council of Europe European People's Party group in an interview to “Jurnalul National” a national-wide Romanian language daily paper declared “...To be a homosexual does not only mean you are no longer mother or father, it means you are no longer a human being. Homosexuals are slaves of their own infatuations, directed by instincts. Homosexuality doesn't have an equivalent in animal world, and this is the most clear proof, that its origin is in the heads and souls of people, fallen in the face of God and the society in general...”¹⁵⁹

In October 2001 the head of Moldovan Christian Democrat People's Party Mr. Iurie Rosca has officially answered to local gay and lesbian organization GenderDoc-M concerning the hate speech, delivered by vice-president of the party Mr. Vlad Cubreacov. “...Tolerance, as a fundamental democratic value, assumes just that we must humble with certain things that are less usual, and not to admire them. Mr. Cubreacov, according to the European Convention, enjoys the right to have his own opinions, as well as the right to express them to other people. Just as the authors of the question consider homosexuality something good, Mr. Cubreacov has the right to think whatever he wants about this phenomenon and to disseminate his opinion as long as he

¹⁵⁸ Based on Report Intolerant Hate Speech in behalf of Persons with Homosexual Orientation in the Republic of Moldova (ROMANIAN), NOVEMBER 2001, BY MOLDOVAN HELSINKI COMMITTEE FOR HUMAN RIGHTS AND SUPPLEMENTARY INFORMATION RECEIVED FROM GENDERDOC-M, GAY AND LESBIAN ADVOCACY GROUP OF MOLDOVA.

¹⁵⁹ See “Jurnalul National” July 4, 2001, page 2, article “Homosexuals so far provokes the repulsion in the society” and interview with Mr. Vlad Cubreacov. ¹⁵⁹ Translation of the expression into English RECEIVED FROM GENDERDOC-M, GAY AND LESBIAN ADVOCACY GROUP OF MOLDOVA.

doesn't call for violence. The hypocritical attitude of the author of this question does not surprise me, because human rights (or better to say, miming care about human rights) has long time ago transformed into a profitable business for some of our citizens. For me Bible is the fundamental book of humankind, and no one can convince me that something that is against nature is natural. Legalization of sodomy (buggery) is only a part of a multitude of phenomena, which drive mad (mentally ill) modern world, together with euphemistic abortions, legalized suicides (with craftiness called euthanasia). Couple, which stands in the basis of this world created by God, is a man and a woman. To treat such attitude as intolerant and discriminating means to commit a grave crime. If someone insists upon this mistake, then you must outlaw the Church, prohibit the Word of God, arrest and bring to justice the Pope from Rome...¹⁶⁰

- Roma minority in rural areas and beyond¹⁶¹

The Roma represent one of the largest minorities in country. Despite that the last official census made in soviet times 1989 shows that size of Roma population in Moldova constitute 11 600 which represent 0.3% of population indeed the number are much larger and can be estimated around 150 000 which is supported by Department for Interethnic Relations¹⁶². They be considered to live dispersed in whole country and can be found in such cities such as: Chisinau, Otaci, Soroca, Balti, Edinet, Drochia, Riscani, Orhei, Calarasi, Nisporeni, Comrat, Ciadir-Lunga, also in transdnestrian region Tiraspol. They still keep their semi-nomadic way of life. At the beginning of the 2001 year in February month before the parliamentary elections the former Prime Minister Mr. Dumitru Braghis adopted a Governmental Decision regarding sustainability of Roma activities. The provisions of the Decision also states that the respective Governmental bodies will elaborate in terms of 2 months the respective plans of actions. The main problems addressed to Roma remain to be poverty and access to public services such as jobless, housing, medical care and education with affects to their social and economic rights

The Roma continue also to face racial discrimination and to be the target of police abuses, such attitude is expressed by police officers in the north of Moldova, Edinet county, Otaci town. The migration of Roma in this town is in grown process after the event of May, 2001 where a policeman who was intoxicated with alcohol, being close to Market where were a lot of Roma, he start to manifest aggressively toward Roma people shouting racist slogans about their origin take out his duty arm and start to shoot pulled all the bullets in all ways discharge all load. The prosecutor office not makes any reactions to this case.

The situation is mostly drastically when the police officers uses their force against Roma children. For example the three policemen (were also intoxicated) of Guardian State in Orhei County, towns in central of Moldova have beaten up 15 years old a Roma boy with a duty firearm in the head, causing serious injuries according to first forensic examination. The prosecutor office from Orhei applied for a new forensic examination given with a result that sustained injures were much less "grave" than stated in the first forensic. Such cases shiver any understandings of expectations.

¹⁶⁰ Translation of the expression into English RECEIVED FROM GENEDERDOC-M, GAY AND LESBIAN ADVOCACY GROUP OF MOLDOVA.

¹⁶¹ Based on Reports: SCHINOASA ROMA BETWEEN MISERABLE EXISTENCE AND NEGLIGENCE FOR EXISTENCE, 2001 (ROMANIAN), 20 P. AND ON THE STREAT'S SIDE OF PUBLIC LIFE: REPORT ON URSARI ROMA COMMUNITY SITUATION, 2001 (Romanian), 20p. BY THE MOLDOVAN HELSINKI COMMITTEE FOR HUMAN RIGHTS

¹⁶² Various data estimate Roma population from 2-3% (40 000) to 7-8% (100 000) of total about 4 000000 of Moldova.

Roma in Moldova are also frequently subjected to unlawful police raids, assaulting adults and children, were beating, and intimidating by police and pressured not to file complaints, for example in case of M. Z., a Romani woman together with her 4 years old son walking on the street when suddenly a police car stopped near her (not showing their Identity Card or Service Card) where two police officers get off and start to beating her, slapping in the head (causing a bump on left side of her head), snatching her hands and hair tearing the handbag saying humiliated words toward her origin.

The xenophobic attitude toward roma was expressively manifested when a non-roma man use his revenge against romani children in school. A case from Soroca, a town in the north-east of Moldova, was beaten Preida Vasile a romani boy by Surdu Anatolii inside of Gymnasium No.1 from Soroca, where Preida Vasilii is student in IX „A” form. The intolerant teachers not try to prevent the conflict or even to intervene in (was stated in a interview with Ms. Ana Pirlea, a teacher from the Gimnasium Nr.1 from Soroca, gave me on 2 October 2001).

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Roma is found living scattered all over the country but also in compact mostly rural communities in all parts of Moldova. The situation of Roma in compactly populated rural communities of Moldova is one of the most alarming pressing minority rights concern. Roma compactly populated rural communities are spread throughout the country and it is deemed that about half of the Roma population of Moldova is concentrated in this form of living. The estimate number of these communities is around 20, with population varying from several hundreds to thousands. In many instances communities are a component and physically indivisible part of the settling, but frequently they form up a separate settling being including administratively as satellites in a predominately non-Roma entity. The real situation of these Roma settling is unknown as unknown remains the degree of the representation of the Roma interests in public policies. These communities are disregarded and neglected, community interests are not represented in public decision process, they lack self-administration to a slight possible degree exercised by a distinct cultural group¹⁶³, ¹⁶⁴. Other serious concerns provoked by central policies of the Government¹⁶⁵.

Material Situation.

Visited communities material situation is extremely poor to the generally accepted living standards and in comparison with the neighbor rural communities of Moldovans, Ukranians, Gagauz, Bulgarians, Russians throughout the country where is relevant. Paved or hard covered roads are inexistent thus access is precluded while heavy rains or snows, especially in autumn, spring and winter. For instance Schinoasa community situated couple of km off the main road so the people of community have to carry ill people in hands up to the main road should they need an urgent medical intervention. Houses are scarce and extremely weak apparently likely to fall

¹⁶³ See for details Moldovan Helsinki Committee for Human Rights report: SCHINOASA ROMA BETWEEN MISERABLE EXISTENCE AND NEGLIGENCE FOR EXISTENCE, 2001 (ROMANIAN), 20 P.

¹⁶⁴ See for details Moldovan Helsinki Committee for Human Rights report: ON THE STREET'S SIDE OF PUBLIC LIFE: REPORT ON URSARI ROMA COMMUNITY SITUATION, 2001 (Romanian), 20p.

¹⁶⁵ See for details Moldovan Helsinki Committee for Human Rights Shadow Report on the Implementation by the Republic of Moldova of the European Framework Convention on National Minorities, (English), 50 pages, available also at the Committee web-site <http://chdom.ngo.moldnet.md> in the collection Millennium Report (“Human Rights at The Turn of New Millennium in the republic of Moldova: 1996-2000”).

apart. Houses of three rooms are common wide, still people live in only one room during cold times and men stay outside during summer over the night. No running water or wells and access to drinking water is a general consideration for the communities. In Schinoasa for a population of about 300 persons there were only 4 wells of which only two used for drinking purposes, but even there the water was visibly bad. In Ursari, people complained of two wells drinking water as if left over the night, some condensate would be clearly visible. In majority of cases no electricity had been available for different reasons of lack of resources to pay or electricity system destroyed. In Schinoasa, the community was disconnected totally more five years. In Ursari, as it situated on the main road, only some of the people would have the electricity close to the next Moldovan village and around the school. For heating left over of wood or animal residues are used. Authorities strictly persecuting for cutting the wood in nearby where available. In Schinoasa one man was sentenced to 6 months for cutting one dry tree to keep the worm of his house with three children. People basically use just to basic alimentation product cornflower, potatoes and some vegetables grown up during the summer. Humanitarian aid, when reached the villages, is a very important source for survival. Meat or fish is practically absent from diet. Children wear nothing during the worm times or just clothes donated through humanitarian aid during cold times. Second hand and humanitarian aid clothes is the prime source for them. In majority of cases, as is the case of Schinoasa and Ursari, no shops of any kind (food, clothes, medicine, etc) exist.

Access to Education System.

Information comes only through people coming and going out of community. Nobody subscribes to papers or listen to radio, etc for lacking money to pay. No telephone connection exists in majority of communities, as is the example of Ursari and Schinoasa. In all communities officially there are state supported primary schools in Romanian language hosting from 20 to 50 children of various years studying together in one or two rooms. In most cases the allocation from local budgets for schools is incomparably less then to schools and schooling for non Roma communities. For instance in case of Schinoasa, local mayoralty gave, comparing to the number for children from the communities 200 times less, in absolute value amounting to 0,01 EURO per child in Schinoasa and 25 EURO per child in neighbor non Roma community. In Ursari, situation is comparatively similar, however Schinoasa Roma is the worst. Children in most cases have no books and other schools requisites. In Schinoasa, during our visit, one child was crying after the paper notes we used to write and take the notes. Education is done only in Romanian/Moldovan. Kindergartens lack in all communities. Libraries contain couple of hundred books, majority of Cyrillic alphabet and only some 10-20% in Latin alphabet. Teachers come in the community school from other communities or nearby villages as rarely there would be a local person able to be a teacher or qualify for that. Children stay most of their childhood in the community not knowing where they live, the country, etc. We met many many adolescents who could not read.

Access to Assets and Means to Generation of Living Income.

The land is the major asset generation and survival source in the rural communities. Roma communities had been traditionally given the status of localities without perspective that substantially economically and socially disadvantage the people of communities in Soviet times and that practice had been kept on after the independence. Roma communities' people had been outside the process of privatization of land due to the policy adopted on privatization. The participation for privatization of land in for example Schinoasa is averagely 40-50 times lesser than in nearby non-Roma community, so that the dimension of fertile land was shifted to non-Roma communities. Local authorities qualified only 5% of persons living in Schinoasa for privatization and 95% in neighbor non-Roma community. In majority of cases central social assistance program is the only source for existence, however only several families qualify. No

job employment opportunities exist in the community or in nearby villages as Roma is considered up only for season works day-to-day engagement.

Participation in representation in public life.

Roma representatives are not present in all local public governing bodies. All communities administratively situated in a local administrative unit where they form minority less of 25% of population. None of the representatives exist I local councils due to the structure of the local election system. Schinoasa Roma community, being a part of larger administrative entity of Tibirica, composed on Tibirica community, Meleseni community and Schinoasa community, Schinoasa constituted 9% of population and none of 9 counselors came from Schinoasa community. In Ursari the situation is similar and none of the counselors come from Ursari community while the about 10% of population of administrative unit are Roma from Ursari.

Assimilation and Right to Enjoy Distinctive Culture.

N many communities Roma use Romani language in every day life, however in several communities we saw Roma assimilated to the population they live with. In Ursari Roma spoke Romani and clearly identified themselves with Romani identity and culture, in Schinoasa Roma would identify themselves as Romani but did not speak the Romani language. No education or study of Romani exists throughout the rural communities in Moldova. Local authorities allocate ZERO to the budget line culture for the community of Schinoasa or Ursari.

- Non-Russian linguistic population in Transdnistria region

- Non-Russian private schools in Transdnistrian region

7. Local Public Decentralization

Since the February Communist overwhelm Parliamentary victory local public self-governing had been under strong shadows and concerns. The result waited no time to come. The Communist majority voted for removal of financial independence of the local self-governing and is considering a major reform of introducing a two level system of political representation: central authorities and fragmented and dependent on the central authorities small local entities. The new draft law on administrative and territorial organization provides that the local mayor will be elected by the majority of the council, upon the proposal of at least 1/3 of the council. In cases of violation of the law the mayors will be revoked by 2/3 of the council members and if two attempts will give no result the superior council (regional) will be involved to decide the fate of the mayor.

- Law on local public decentralization

Starting from summer 2001, Moldovan Parliament had been closely working on the new amendments to the Law on Local Public administration and amendments on law on territorial administration in view of, as Mr Iovv Chair of the parliamentary committee that drafted the reform in question expressly mentioned, the need to re-establish a *vertical hierarchy* in the

public administration of Moldova^{166, 167}. The draft legislation, receiving in December 2001 the Moldovan government positive opinion, designed to abolish the 10 regions and replace them by 30 districts that would be placed under the control of central government had been voted in late 2001 by Moldovan Parliament, with support from the Communist party and “Alianta Braghis” faction¹⁶⁸. President Voronin returned the draft suggesting that the Parliament consider adding one more 31st district in January 2002. The local and regional elected representatives concerned have not been officially consulted. The full draft had not been published or widely discussed including the professional associations and local authorities, strong negative reaction is received from local political powers. Moldovan government characterizes the needs of reform thru the more efficient and less costly administrative costs of the local governing, promising a significant reduce in administration and numerous requests from the people.

- Financial Independence of Local Self-governing

Moldovan parliament amended the law on local public finance administration and Law on local public administration so as to reduce the financial powers of local and regional authorities shifting the responsibility to the Government appointed representative. The transfer to the prefect of any decision-making powers with regard to the expenditure of these authorities has, *de jure* and *de facto*, already deprived the local and regional authorities of any degree of autonomy. Namely, amendments of 22.06.2001 to art. 94 (1 b, c) invested the Government representative (prefect) to exercise the function of disposer of the credits¹⁶⁹ and responsible for elaborating of local council budget, subject to be approved by it¹⁷⁰ in the law on local public administration and to art. 10 (2), 19 (2 b, c, d), 26 (1), 15 (1), 15 (4), 15 (5), 30 (1), 35 (2) shifting the responsibility from the district counselor to Government representative to make payments of the budgetary sources with special destination, elaboration of the budgets of the administrative units¹⁷¹, proposing the local budgets, contracting credits for capital investments¹⁷², disposal of the budgets¹⁷³, responsibility for executing of the budget¹⁷⁴ in the law on local public finances.

¹⁶⁶ See Information report on the latest developments on the situation of local and regional democracy in Moldova, Congress of Local and Regional Authorities of Europe, Strasbourg, 13 December 2001

CG/Bur (8) 95, Rapporteurs: Mr Claude Casagrande (L, France) and Mr Yavuz Mildon (R, Turkey)

¹⁶⁷ *ibid* “The establishment of these regions was highly recommended by the Congress in Recommendation 84 (2000) and the international community working in Chisinau in general.”

¹⁶⁸ *Ibid* “At the request of the CLRAE rapporteurs, Mr Iovv, Chair of the parliamentary committee in question, promised to officially consult the CLRAE on all draft legislation concerning the territorial organization of Moldova and/or its system of local and regional self-government.”

¹⁶⁹ See art. 94 (1b) “Prefect, as a representative of the Government, exercise the following principle attributions:...b) exercise the function of principle disposer of the credits”

¹⁷⁰ See art. 94 (1c) “Prefect, as a representative of the Government, exercise the following principle attributions:...c) elaborates the draft of the budget of the district and draft of the ending account of the executing of the budget and presents it to district council for approval”

¹⁷¹ See art. 19 (2) (b)

¹⁷² See art. 15 contracting credits for capital investment (1) District prefect, in accordance with the district council, executive authority of the local public administration...have right to contract credits for long term of capital investment or refinancing of the capital investment debt” (2) District prefect, in accordance with the district council, executive authority of the local public administration ... have the right to issue securities...(4) Documents that are made upon contracting the long-term credit will include clauses by which district prefect and district council, executive authority of local public administration...are obliged to reimburse the credited amount and pay the interest only from budget incomes, without the government to have further obligations...(5)

¹⁷³ See art. 30(1) “Mayors of the villages, cities, prefects, governors of autonomous territories are the principal disposals of the credits and administrative territorial unit budgets”

¹⁷⁴ See art. 35(2) “Responsibility for executing of district budget and the central budget of the autonomous territorial unit has the prefect (representative of the central government) and executive authorities local public administration of the unit”

8. Elections and Referenda

- Possible local elections in Moldova

The reform intends that all mayors will be removed from office and new mayors elected by the municipal assemblies presenting a system similar to the one of the previous regime; opportunity to increase control over the mayors (who would no longer be directly elected by the population) and thus reduce the political, administrative and financial autonomy of the local authorities concerned; this could lead to grave violations of the European Charter of Local Self-Government which the Republic of Moldova recently signed and ratified.

- “Presidential” elections in Transdnistria

The December 2001 so-called presidential elections in Transdnistria were dis-considered by the international organizations and authorities. OSCE, foreign governments did not send observers for the “elections”. The widely known persecution of the political opponents and inadmissible of the local press to report, reflect and comment and represent the opinions and views different of the ruling clan coupled with before hand confiscation of the election materials by local security forces and expulsion of the inconvenient persons, including political opponents had been, extortion from small, medium and other all possible business of so-called contributions for support of Smirnov re-election repeated as a normal practice. Not to mention “the clan” convenient modification of the “constitution” to accommodate the third term for consecutive presidency of Smirnov had not surprised anybody.

The falsification of the results of the elections, however so did not receive focus on the aspect of the de facto participation of the voters and local regime manipulation with figures and “dead spirits”. Part from well known practices that the authorities lack any legitimate representation of the local population and less than 25% participate in the process it is become clearly that the authorities had been persistently using the supra-estimation of the de facto population of the population of the region to have the higher discretionary power to influence the results. These are some considerations:

9. Liberty and Security of Person

- Various Procedures for Person Detention in Moldova

Criminal procedure: detention perspective in Moldova based on Criminal Procedure Law

	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Authority deciding on detention	Police	Police	Judge	Unclear/judge	Judge
Place of detention	Police custody	Police custody	Pre-trial detention, SIZO	Pre-trial detention, SIZO	Pre-trial detention, SIZO
Type of detention	De facto detention	De jure detention	Under Arrest	Awaiting trial	Detention until final court decision
Time/period of detention	From several	72 hours	30 days, can be prolonged for	No limit (sometimes up to	No limit (sometimes take

	hours to number of days		6(12) months	several years)	time of years)
Detention facility authority	Ministry of Internal Affairs	Ministry of Internal Affairs	Ministry of Justice	Ministry of Justice	Ministry of Justice
Investigation/ac cusing authority	Police	Police	Police and Prosecutor	No	Prosecutor
Supervising authority, complaint authority	Prosecutor	Prosecutor	Prosecutor	Prosecutor	Judge

Ordinary administrative detention, based on the Law on Administrative Sanctions

	Stage 1	Stage 2	Stage 3
Authority deciding on detention	Police	Police	Judge
Place of detention	Police custody	Police custody	Police custody
Type of detention	De facto detention	De jure detention	Under Arrest
Time/period of detention	From several hours to number of days	24 hours	Up to 30 days
Detention facility authority	Ministry of Internal Affairs	Ministry of Internal Affairs	Ministry of Internal Affairs
Investigation/accusing authority	Police	Police	Police and Prosecutor
Supervising authority, complaint authority	Prosecutor	Prosecutor	Prosecutor

Administrative detention of alcoholics under Ministry of Health specialized hospitals, based on the Law on social rehabilitation of alcohol addicts

	Stage 1	Stage 2	Stage 3	Stage 4
Authority deciding on detention	Police	Police	Hospital commission composed of doctors	Hospital commission composed of doctors
Place of detention	Police custody	Police custody	Hospitals	Hospitals
Type of detention	De facto detention	De jure detention	Medical treatment for alcoholism	Violation of medical treatment regime
Time/period of detention	From several hours to number of days	24 hours	2 months	1 extra month as a sanction
Detention facility authority	Ministry of Internal Affairs	Ministry of Internal Affairs	Ministry of Health	Ministry of Health
Investigation/accusing authority	Police	Police/doctors of narcological cabinet	Supervising doctor	Supervising doctor and hospital commission
Supervising authority, complaint authority	Prosecutor	Prosecutor/doctors of hospitals/judge	Prosecutor	Prosecutor

Administrative detention of alcoholics under Ministry of Justice specialized hospitals, based on the Law on social rehabilitation of alcohol addicts

	Stage 1	Stage 2	Stage 3	Stage 4
Authority deciding on detention	Police	Police	judge	judge
Place of detention	Police custody	Police custody	Penitentiary for anti-alcohol treatment	Penitentiary for anti-alcohol treatment
Type of detention	De facto detention	De jure detention	Forced Medical treatment for alcoholism	Violation of forced medical treatment regime
Time/period of detention	From several	72 hours	Up to 2 years	Several months

	hours to number of days			prolongation
Detention facility authority	Ministry of Internal Affairs	Ministry of Internal Affairs	Ministry of Justice	Ministry of Justice
Investigation/accusing authority	Police	Police	Prison Commission (doctors and administration)	Prison Commission (doctors and administration)
Supervising authority, complaint authority	Prosecutor	Prosecutor	Prosecutor, judge	Prosecutor

Administrative detention of vagrants, based on the Law on Police

	Stage 1	Stage 2	Stage 3
Authority deciding on detention	Police	Police	Prosecutor
Place of detention	Police custody	Police custody	Vagrancy center
Type of detention	De facto detention	De jure detention	Arrest
Time/period of detention	From several hours to number of days	72 hours	Up to 30 days
Detention facility authority	Ministry of Internal Affairs	Ministry of Internal Affairs	Ministry of Internal Affairs
Investigation/accusing authority	Police	Police	Police
Supervising authority, complaint authority	Prosecutor	Prosecutor	Prosecutor

Administrative sanction in Army as a detention, based on the Law on Military Service

	Stage 1	Stage 2
Authority deciding on detention	Military superior	Military superior
Place of detention	Army isolator	Army isolator
Type of detention	De facto detention	De jure detention
Time/period of detention	From several hours to number of days	Up to two weeks
Detention facility authority	Ministry of Defense	Ministry of Defense
Investigation/accusing authority	Military superior	Military superior
Supervising authority, complaint authority	Prosecutor	Prosecutor

- Antiterrorist legislation

On 12. 10 2001 Moldovan Parliament adopted a Law on Combating of Terrorism. The law grants broad rights to a number of authorities, including the Government, local public administration, Prosecutor, Intelligence Services, Ministry of Interior, Ministry of Defense, Department of State Protection, Customs Department, Department of Informational Technology, Border Guards, Department for Exceptional Situation, Department of penitentiary extensive rights to carry out actions to combat terrorism and terrorists. Art. 7 of the law, among other activities, Intelligence Service can take actions *to combat actions that have political scopes*. The actions are coordinated by Prosecutor office. Art. 8 of the law, apart from obligations to elaborate and exercise the preventive measures; can exercise other attributions, as so require the needs to combat terrorism.

Art. 12 provide that the Government, thru a special established group, can declare a separate zone for special regime for the anti-terrorist operation. Within the zone of anti-terrorist operations, the persons carrying out the antiterrorist activities can control any identity of person, detain any person, enter any house, use any means of transportation. The activity of mass-media with regard to the operations and actions within the zone will be regulated by the chief of the

antiterrorist group. The end of the terrorist operations ends when the antiterrorist threat ends and is declared by the chief of the group.

- Enforcement of fiscal authorities of tax legislation

On 27 December 2001 Moldovan Parliament adopted Chapter V of the Fiscal Code, regulating the Fiscal Administration – the enforcement of fiscal legislation¹⁷⁵. The Law grants extensive and broad rights to the Fiscal enforcement authorities for detention of person, search of person, search person's domicile, seizure of documents and property unless person can demonstrate their legal possession, the actions have immediate effect and could be contested in court according the administrative procedure, however the burden of proof will be borne by the petitioner.

According to chapter V of Fiscal Code, the fiscal authorities have general and special rights. General rights, among others, include: fiscal controls; organization and carrying out of forced execution of fiscal obligations; open and examine any buildings, houses, commercial places; have access to any electronic system; control any documents; seize any documents with regard to fiscal obligations; suspend, in accordance with law, any bank accounts; etc. Special rights, among others, include: enter any public or private places if there are information about objects subject to fiscal regulations including the domicile of person in accordance with law; verify the identity of any physical person if there sufficient motives to suspect for fiscal irregularities; seize the goods of illegal activity; carry out the activities provided by the Law on operative investigations¹⁷⁶; apply force, detention of person, etc. In accordance with art. 143 detention of person, personal search and search of places and for documents can be done by fiscal authority for preventing of fiscal violations, if other measures for convincing of person are exhausted, for identification of person identity. Detention period cannot exceed 3 hours or in exceptional situations 72 hours, with calculation of time starting from the moment the person is brought to the office of fiscal authority, police authority or other authority including local public administration. The person is promptly informed about the reasons of detention in the presence of the lawyer given from officio or appointed by the person detained.

The fiscal authority takes the decision with regard to the alleged fiscal violation. In accordance with art. 267, the person can contest the decision of the fiscal authority bearing the burden of proof in the court of law. Article 273 provides that contestation of the decision of fiscal authority does not suspend the execution of the contested decision. Recently the Parliament modified art. 16 of the Law on Administrative court excluding the possibility to recover the moral (non-pecuniary) damages of the actions of the state¹⁷⁷.

- Concerns with regard to the Administrative Sanctions

In the result of the several complaints received from petitioners and documentary visits to the (SIZO) isolator from 6, Tighina street in Chisinau, were realized a report on Administrative sanctions and procedure.¹⁷⁸ Have been figure out two categories of cases on administrative arrest. First category is formed with cases of the persons, detained under administrative arrest, who couldn't pay judiciary penalties because of the financial impossibility. Police officers arrested them and kept for no more than 30 days in detention with no possibility for detainees to

¹⁷⁵ See Official Gazette, nr.1-3 (886-888), January 4, 2002, page 4-42

¹⁷⁶ See Report on Human Rights Situation in Moldova for 1999 and 2000 for extremely negative effects produced by the Law.

¹⁷⁷ See Official Gazette of 13.12.01 on modification of Law on Administrative Court.

¹⁷⁸ See Annex 5: Report "Sanctionarea Administrativa", October 2001

write an appeal or to have access to a lawyer. In many cases, persons didn't know about the existence of a decision on their behalf. They found out about it on the day of their detention in SIZO. Second category is formed of the persons detained after being beaten by police officers, in order to hide them from the lawyer and relatives, in hope that injuries and signs of the police brutality will pass off after some days of detention. Usually in this kind of cases, persons are brought in SIZO on the ground of the judicial decision by which they were found guilty in committing an administrative offence and sanctioned with administrative arrest for 5 or 10 days.

In all cases received by Moldovan Helsinki Committee, judicial sessions were proceeded in the absence of lawyer, which is considered not obligatory for the legality of the administrative decision. No right to appeal was assured either. The cases were analyzed on the light of the European Convention jurisprudence and were formulated recommendations for public authorities.

- Detention of vagrants and vagabonds¹⁷⁹

The overall impression of the situation of persons detained in the Vagrancy Center in Chisinau resembles an outrage of the persecuting authorities towards at least 800-900 persons per year. Serious violations of the International human rights standards are reported on each of the imaginable subject. The detention itself is not seen as a mean for the achievement of a clear reasonable objective: be it social rehabilitation or whatever else. The police use unclear and ambiguous definitions classifying persons detained in the Center with regard to "persons failed to or resisted to identification" but also in many cases with regard to "vagabonds", "vagrants", "beggars". Detained persons formally and in practice have no guarantees for their security and liberty. The conditions of detention and regime of detention favors abuse of power and unlimited disposal of the detained persons by the Center Police. The material conditions amount to the inhumane and degrading to the persons' dignity and acceptable living conditions.

The Moldovan law provided among other types of detention also the administrative detention of the vagrants, vagabonds and persons without propiska¹⁸⁰. The detention was imposed by the agencies dealing with administrative violations for a term up to 15 days on the basis of the Administrative Code. The Administrative detention served several purposes: preventing an administrative violation, allowing for the suspect's identification and the preparation of a report, and providing for presenting the suspect before the competent authority, procurator, for the decision of detention. In addition militia could detain vagrants or beggars for up to 30 days, in the condition of procurator's warrant, where suspects are detained at special premises under the authority of police, Ministry of Interior.

Some provisions of the Law on Police, in the chapter of attributions of the Police, describe that Police have the right to detain persons that practice vagabondage, vagrants (those who ask for money on the street)¹⁸¹. Another provision stipulates that Police can detain persons for a period

¹⁷⁹ Based on Report: DETENTION of Vagrants, PERSONS WITH NO identification documents IN THE REPUBLIC OF MOLDOVA, June 2001, Moldovan Helsinki Committee for Human Rights

¹⁸⁰ See Igor Petrukhin, Pre-trial Detention and Arrest in the Soviet Union, in Preventive Detention: A Comparative and International Law Perspective, eds by Stanislaw Frankowski and Dinan Shelton, pp.217-242, *Martinus Nijhoff Publishers*, 1992

¹⁸¹ See art. 13.7 of the Law on Police "Police has a right to detain persons that practice vagabondage and ask for money on the street, as well as persons condemned conditionally to detention attracting them obligatory to labor,..." (In the official language: "sa retina persoanele ce se ocupa cu vagabondagul si cu cersitul, precum si persoanele condamnate conventional la privatiune de libertate cu atragerea lor obligatorie la munca, persoanele eliberate conventional din locurile de recluziune cu atragerea lor obligatorie la munca, care au parasit samovolnic locul de lucru")

of 30 days on the basis of Prosecutor sanction who committed administrative contraventions or pose resistance to police to identify them¹⁸².

Police interprets in practice that persons who practice vagabondage are those who "are not settled definitely with the domicile or residence"; vagrants are those who "systematically asking for money on the street" and persons without identity documents are those "who cannot produce relevant document to confirm his/her identity at the time s/he asked or pose resistance to police to do it". Being asked to explain in each separate case discussed later in the Report, what were the relevant grounds, Police of the Center failed to make a clear cut difference and actually separate these several situations.

Relevant Law and interpretation in practice suggests that persons who pose resistance for identification are the "...persons suspected for committing of crimes or administrative contraventions that pose resistance of identification of their identity"- who cannot produce relevant document to confirm his/her identity at the time s/he asked or pose resistance to police to do it. Failure to produce the relevant permission for stay could be interpreted by Police as a noncompliance with the obligation provided by law. Similarly, the law requires that a citizen or non-citizen, upon the request of the competent authority, present identifying document and non-compliance is treated as a violation of the obligation¹⁸³. Violations of these provisions carry the responsibility of the person¹⁸⁴. Flowingly, the mentioned Law on Police contains the sanction of detention for a period of 30 days, upon the warrant from the Prosecutor.

Police treated the obligations to carry on and present the identity documents as a stand-alone obligation. This obligation was not related or connected to any of the measure of police regarding to these particularly persons. The details of the cases described police hunting out persons without identity documents having this only objective. Police in respect to the mentioned cases was not in the process of investigation, or initiation of a particularly actions, including the administrative offences. Moreover, in majority of cases, persons who failed to provide identity documents presented information to the police that would have helped their identification. Nothing has also followed after the persons period of detention expired and they were set free, until the next time they get in police hand without identification document.

"Vagabonds"¹⁸⁵, "Vagrants", "Beggars"¹⁸⁶. Relevant Law and interpretation in practice suggests that they are the "...persons that practice vagabondage..."¹⁸⁷ - are not settled definitely with the domicile or residence and vagrants (beggars) are the "...persons that practice ... ask(ing) for

¹⁸² See art. 11.3 of the Law on Police "Police can detain persons according to the sanction of the Prosecutor for the period of up to 30 days, persons suspected for committing of crimes or administrative contraventions that pose resistance of identification of their identity" (In the official language: se retina si sa tina sub stare de arrest, conform sanctiunii procurorului, pina la 30 de zile, personae suspectate de comiterea infractiunilor sau a contraventiilor administrative care se impotrivesc premeditat stabilirii identitatii;)

¹⁸³ See art. 8 of the Law on Identity Documents: "8 a) person is obliged to present to official competent organs, upon the request, identity card; 8 c) communicate without delay to competent organs about the loss or recuperation of the identity card" (In the official language: Legea privind actele de identitate din sistemul national de pasapoarte: art. 8 Obligatiunile titularului de acte. Titularul este obligat a) sa prezinte persoanelor oficiale din organelle competente, la cerere, actul de identitate; ...c) sa comunice fara intirziere organelor competente despre pierderea sau gasirea actului de identitate)

¹⁸⁴ See ibid art. 9 Responsibility for violation of the present Law: 1 d) non-respect for the rules of the identity documents...g) failure to show the identity documents upon the request of the competent organs, h) escaping from the control of identity documents at the time of border pass. (In the official language: art. 9 Raspunderea pentru incalcarea prezentei legi. 1. Se considera incalcare a prezentei legi: ...d) nerespectarea regulilor sistemului de pasapoarte; ...g) neprezentarea actelor de identitate la cererea persoanelor oficiale din organelle competente; h) eschivarea de la controlul actelor de identitate in timpul trecerii frontierei)

¹⁸⁵ In the official language: persoanele care nu au un loc stabil de resedinta, trai.

¹⁸⁶ In the official language: persoanele care se ocupa cu cersitul.

¹⁸⁷ See art. 11.5 of Law on Police, cited above

money on the street" - systematically asking for money on the street. Additionally a Regulation dated 1970 from Soviet time and being interpretatively applicable nowadays as well provide detention of "vagabonds" or "vagrants" or "beggars" for a term up to 30 days¹⁸⁸. In the report, the generic notion of vagrant will be used to refer to vagrant/vagabond/beggar as is used in the European Convention.

The Moldovan law requires several cumulative criteria to be classified as vagrant: asking for money on the street; a systematic character of the phenomenon; lack of definitely settled domicile. The three legal norm criteria in Moldovan law seem, in principle, to be in line with the general understanding of the notion of vagrant¹⁸⁹ shared by the European Court¹⁹⁰. The substantive difference though lies in the practical interpretative application and the meaning of the detention for the term of 30 days in the Vagrancy Center.

The last affirmation with regard to the social and public meaning of detention for the term of 30 days is of our interest. In our understanding the detention of "vagrants" for these period of time has no social and public justification since the sole practical interest limits to the deprivation of liberty of the person. In our understanding the deprivation of liberty has to have a social justification aimed at some actions to revert and help the person. It is clear that the measure applied carries only the sense of punishment of a behavior that Moldovan society, in that instance, see as inadmissible or contrary to the societal principles. In our consideration the set three criteria are not enough to justify person detention since there is not a link of the state of vagrancy with the damage caused to the society or public interest or the rehabilitation effect of the detention as it is. Therefore, the Moldovan law, at least, should require additional criteria that will bridge the set three criteria with the consequences affecting the public interest¹⁹¹.

The detention procedure of the persons brought to the Vagrancy Center has a unique procedure off the variety of administrative and criminal detention or arrest procedures in Moldova. The "relevant" persons are detained by Police and brought to the Vagrancy Center, where a special report, within 24 hours, is done and submitted to the Prosecutor, who on the basis of the Report, and Police plead, issues the warrant of arrest for the period of 30 days as an administrative sanction. There is not any procedural law governing this situation or prescribing whether the

¹⁸⁸ See Regulation of Ministry of Interior of Soviet Union dated 1970: I. General disposition "Specialized Centers provided for hosting of persons, detained for vagrancy or begging, for the period, necessary for identification of person, solving the question of placing to work, placing in elders house or establishing supervision or holding them responsible according to law for the term not exceeding 30 days" (translation from Russian).

¹⁸⁹ See "...According to Article 347 of the Belgian Criminal Code of 1867 "vagrants are persons who have no fixed abode, no means of subsistence and no regular trade or profession". These three conditions are cumulative: they must be fulfilled at the same time with regard to the same person...", in "Vagrancy" case against Belgium, 17 November, 1970.

¹⁹⁰ See "...68. The Convention does not contain a definition of the term "vagrant". The definition of Article 347 of the Belgian Criminal Code reads: "vagrants are persons who have no fixed abode, no means of subsistence and no regular trade or profession". Where these three conditions are fulfilled, they may lead the competent authorities to order that the persons concerned be placed at the disposal of the Government as vagrants. The definition quoted does not appear to be in any way irreconcilable with the usual meaning of the term "vagrant", and the Court considers that a person who is a vagrant under the terms of Article 347 in principle falls within the exception provided for in Article 5 (1) (e) (art. 5-1-e) of the Convention....", in "Vagrancy" case against Belgium, 17 November, 1970.

¹⁹¹ See US Court of Appeals in *Lopper v. New York City Police Department*, 1993 after Constitutional Interpretation 6th edition, Craig R. Ducat, p 962: "Two homeless people sought money from passersby on the sidewalks of New York City challenging the constitutionality of a state law that punishes anyone who <wanders about in a public place for the purpose of begging>. ...[B]egging constitutes communicative activity of some sort .. and it is conducted in a traditional public forum...the statutes is not content neutral because it prohibits all speech related to begging; it certainly not narrowly tailored to serve any significant governmental interest..., it does not leave open alternative channels of communication by which beggars can convey their message of indigence. The statute ...must be considered as providing a restriction greater than is essential to further the government interests...for it sweeps within its overbroad purview the expressive conduct and speech that the government should have no interest in stifling...if done in a peaceful manner."

detained person should stand before the Prosecutor and counter argument Police plea. The mentioned substantial provisions offer the alone standing pillars: detention-warrant-arrest, with no glue in between reasons-for-arrest-counterpleading-representation. The only light spelt offered by an outdated soviet time document, reiterated in words by the Center Police and whom they implicitly follow and we examine in this Report¹⁹².

Real Time of Person's Deprived Liberty. The official moment of detention starts as of the time the physically detained persons by Police delivered to the Center and a Report is done on that particular case. This is how Center police is interpreting it in practice. Theoretically, from the moment the person is brought to the Center counting starts of 24 hours, the Report should be given to the Prosecutor, who is in charge to decide about the issue of warrant. It has been difficult in practice to check if this time framework is always respected, however several examples, from the detained words, proved that at least in these cases the 24-hour period was not respected. A good number of persons were physically detained and spent in the Police car for several to 4 -6 hours, while Police was hunting for the more to "fill in the all places in the car", before they were brought to the Center and official time counter started.

Brought to Vagrancy Center, the detained are interrogated and searched and after the report is drafted and the persons are locked up waiting for the Prosecutor decision. The Prosecutor decision delivered in no prescribed time, but in practice it is usually given in one-two-three days¹⁹³. Therefore the overall detention time before the warrant is given amounts at least to two-three days.

Illustrative Table: time detention-authority-grounds

<i>Period</i>	<i>Nature of deprivation of liberty</i>	<i>Authority depriving of liberty</i>	<i>In custody time</i>	<i>Comments</i>
1	Police detention before brought to Center, in the Police car, elsewhere	Police	2-6 hours (average)	Not considered in Moldova as a detention
2	Detention in Center before the report is written	Police	Within 24 hours	Usually starts from the moment the report interrogation is started. Police categorically refused to show the Reports to the Committee for the inspection.
3	Detention in Center before Prosecutor warrant	Police	2-3 days (average)	Confusing since no time limit/provision for the prosecutor to issue the warrant.
4	Detention/arrest sanction after Prosecutor warrant	Prosecutor	30 days (most common)	No adversely, equal arms, and participation principles

¹⁹² See regulation on Vagrancy Center, Ministry of Interior of Soviet Union, 1970, Order Nr.140, in Russian

¹⁹³ One finds just some general, not clear if relevant, provisions in the Law on Prosecutor: Art. 22. Ordinance. 1. Prosecutor, depending on the character of violation of the law by a decision -maker or by a citizen, issues a ordinance of launching of criminal investigation, disciplinary procedure or administrative procedure. *Prosecutor issues other ordinances in cases provided by law.* (underlined by author). (In Romanian: Art. 22 Ordonanta. 1. Procurorul, in dependenta de caracterul incalcarii legii de catre factorul de decizie sau de catre cetatean, emite o ordonanta de intentare a unei actiuni penale, proceduri disciplinare sau administrative. *Procurorul emite ordonante si in alte cazuri prevazute de lege.*) (subliniat de autori). and Art. 23. Supervision tasks. ...holding persons responsible provided by the law pertinent to the legality of the procedure; detention of persons suspected for committing of offences, crimes provided in the law; arresting persons only on the basis of the decision of the court;... (In Romanian: Art. 23 Sarcinile supravegherii. ...- tragerii persoanelor vinovate la raspunderea prevezuta de lege si respectarii stricte a legalitatii in aceasta procedura; - retinerii cetatenilor suspectati de comiterea a unor infractiuni, in modul si in temeiurile stabilite de lege; - arestarii cetatenilor numai in baza hotaririi instantei judecatoresti...);

	issued			respected
5	Detention after the 30 days warrant expired	Police	From several hours to several days (unchecked)	Reported in several cases. In some cases after the 30 days detention time expired immediately follows the second detention, since the person is no way to remedy the cause the sanction applied.

The overall detention period can be at least three-four days more than the 30 days of warrant and 24 hours for Center detention for report compiling. The detention during periods 1, 2, 3 if exceed 24 hours, as it is usually the case, is absolutely unconstitutional for the time of being of the present Constitution of the Republic of Moldova as to the moment of writing of this report¹⁹⁴.

The Right to be Informed of the Reasons for the Detention and the Rights. As mentioned, there is not legal procedure written and therefore persons detained by the Police for vagrancy or failures to identify with the document, presumably as Police say, know the grounds of the detention. None of the interviewed persons confirmed that upon the detention they were informed of the rights. Majority of interviewed detained say they were tolled that they had been taken for lack to clarify their identities. When the warrant is issued, none of spoken to detained persons have confirmed that they saw on paper what was written in the warrant¹⁹⁵. As in this situation the warrant is considered the moment of person's confinement of arrest for the term of 30 days, the arrested should have available the decision and the argumentation of the decision of the essential legal and factual grounds but also the access to supporting documents underlie the Prosecutor decision of arrest. This is seen essential since, if person sees fit, s/he applies to challenge decision's lawfulness in accordance with paragraph 4¹⁹⁶. In the cases referred to in the report, none examples are found when the detained person after having received the Prosecutor's arrest decision sees the all files and the decision itself. Moreover, as already mentioned in the Report, the Committee and equally pro bono lawyer of the Committee on the selected cases was given no access to the Center registry and individual case files.

Access to a Legal Representation. The right to effective legal representation is disputable in the administrative procedure and in this situation particularly since there is not relevant procedure described. If it is an administrative procedure, as it is considered as administrative sanction imposed by the Prosecutor warrant, there is not positive obligation on behalf of the authorities to provide a lawyer or other legal representation to the detained. In practice, in none of the cases described in the report, the detained had been offered even a chance to call for a lawyer. In one case, when interviewed by the Moldovan Helsinki Committee, the person asked if we could call for his personal lawyer, since the Center's Police refused him to do that.

The Right to be Brought Promptly Before a Judicial Authority. There is not any procedural law that would describe the way the detained can contest the decision of warrant for detention. The Center police instruct the detained that to contest the Prosecutor decision one should lodge a complaint of revision of the decision of the prosecutor with the Supervising Prosecutor. When being asked if the detained are advised also to petition the relevant court, the Center's police declined absolutely this way. Practically, if a person requests to lodge a complaint against the decision of the prosecutor s/he is invited for a "discussion" with the Center director and also

¹⁹⁴ See art. of the Constitution of the Republic of Moldova:

¹⁹⁵ The European Court took a view that the right to be informed of the reasons for arrest applies not only to the detention referred to in para 1 under (c), but to any person arrested. See P.van Dijk, G.J.H van Hoof, Theory and Practice of the European Convention on Human Rights, Kluwer Law, 1998, p.367 and Judgment in case Fox, Campbell and Hartley of 30 august 1990., A.182, p.19.

¹⁹⁶ See case of Murray, 28 October 1994, A.300-A, p.31.

given a paper to write the complaint. The complaint is lodged with the Center's director who, as he affirms, sends them within 24 hours to the Supervising Prosecutor. In practice this Supervising Prosecutor is the same Prosecutor that issued the warrant. The respective prosecutor takes the decision on the complaint in the absence of the detained. If considered a "competent authority" - the Prosecutor - issues the arrest decision in at least, see illustrative table, 24 hours (detention before the report is done) +2-6 hours (detention in police car before brought to center)+1-3 days (prosecutor issuing warrant). If the period last, in real time not legal one, more than 72 hours that might be unacceptable, in the present circumstances, with the European Convention established case-law.

Persons in the Vagrancy Center are detained by the warrant issued by Prosecutor Office. Apparently, the Prosecutor cannot qualify for the "judge...or other officer authorized by law to exercise judicial power"¹⁹⁷ provided in the European Convention. The prosecutor in the Republic of Moldova lack necessary conditions: independence of the executive; prosecutor does not see himself/herself the individual brought before; the fact that the prosecutor is charged in majority of other procedures, criminal and administrative according to Moldova procedural law, with prosecution also has, in this situation, to decide on the lawfulness of the detention¹⁹⁸.

The Right to Judicial Review of the Lawfulness of the Detention. It might seem illogical to discuss the right to judicial review after the previous title, however reason will be apparent shortly¹⁹⁹. As already described the contesting the decision of the prosecutor warrant of arrest is, in practice and in Police guidance, available to only the Supervising prosecutor. The Committee had selected three complaints and in all cases the persons were set free due to the lack of all necessary elements for the qualification of the detention. The Prosecutor's decisions had taken 10 days. Thus in practice, we could not experience if the supervising prosecutor refuses, to exercise the judicial review. In anyway the detained is not given a chance to counterplead the police argument for detention or to bring the arguments while the decision is revised by Supervising prosecutor. The practical exercise was worthwhile to determine the established procedure and it had become clear that the arrested persons have no immediate right to judicial review of the decision of arrest for a term of 30 days. Unfortunately, the circumstances prevented, in case of refusal to set free the person, to try to address to court. However, the due unsatisfactory conclusions could be already drawn.

If a judicial authority, and not a prosecutor carry out presuming the revising decision, the notion of speedily must be assessed. The period of 10 days experienced in all selected cases in practice, if represent an established practice-which is the case of the prosecutor procedures according to Law on Prosecutor-or just stand alone cases, contradict the European Convention standards of "speedily". Furthermore the authority that revises the decision is lacking all, already mentioned necessary criteria, to qualify for the competent authority in the understanding of the European Convention. In particular, the revision procedure is not a "judicial procedure" as requested explicitly by the Convention²⁰⁰, since lacking the adversely character, legal representation or participation, equality of arms, etc.

¹⁹⁷ See para 5(3) of the European Convention

¹⁹⁸ See P.van Dijk, G.J.H van Hoof, Theory and Practice of the European Convention on Human Rights, Kluwer Law, 1998, p.372 and Judgment of 4 December 1979, A.34, pp.13-14.

¹⁹⁹ See art. 5(4) of the European Convention reads: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

²⁰⁰ See P.van Dijk, G.J.H van Hoof, Theory and Practice of the European Convention on Human Rights, Kluwer Law, 1998, p.386 and Judgment of 21 February 1990, A.170, p. 14 and Judgment of 24 October 1979, Winterwerp, A.33, p.26.

The Enforceable Right to Compensation for Unlawful Detention. The existence of the enforceable right to compensation provided in the European Convention²⁰¹ is questionable from the point of view of effectiveness in this particular case in Moldova. As no practical evidence is available, as no persons are known when detained in the Center would try to enforce the right or be compensated for the wrong detention. However a formal evaluation of the only relevant legal provision is useful in this respect. The Law on reparation of illegal or wrong acts related to person detention²⁰² provides that the right appears, in the relevant situation, only in if there is an acquittal decision of the court, the penal files are closed, court decision for voiding the administrative arrest²⁰³. As it is easy to see, none of the conditions matches our situation. In our situation, from the cases we have known, there is not a decision of the court to close the files, but the decision of the prosecutor or the situation is not a categorized as a penal crime/case. Therefore, one might oversee certain difficulties in enforcing the right to compensation if the national authorities interpret the provisions of the mentioned Moldovan too narrowly and restrictively.

Detention Regime. No Rules regulating the internal regime exist and available to the detained. The detained are not informed about the way they should behave. We were said that if the questions appear, the detainees can address them and they will receive the necessary explanations. The punishment had been applied through locking up of the "wrong-doer" to the sanitary room for several hours, including women; or beatings with ribbon ...

Access to Justice and Lodging Complaints

The Law on prosecutor provides that the prosecutor Office is responsible for supervising the respect and legality of persons detained, including the Vagrancy Center. Theoretically, however not formally in this particular form of detention, any person can lodge a complaint with regard to the treatment the person receives in the Center. Also, the application of sanctions should have made subject of the potential recourse. In practice, none of the cases known of a detained lodging a complaint against treatment received or punishment applied- be it incarceration for several hours to toilet (considered the worse according to the detained say) or beatings by police.

Privacy, Correspondence and Communication

The detained are prohibited to communicate through writing letters, etc with the outside, the way to communicate are visits from the relatives. Since the decision of the prosecutor, the center's authorities send all relevant local authorities where person reside or, is established, domicile, etc information about the fact of detention and the sanction received²⁰⁴.

Compulsory Labor. Detainees are required to perform some work that usually ranges from cleaning surroundings and the Center insides, including toilets, etc and engaged into the work outside the Center at the request of the other authorities. At the time of our visit, the team witnessed several people coming back from the labor from outside of the Center. When asked of the nature of work, as the center personnel were present, there were just some short mentions to building work from the very morning till about 19.00 in the evening. Also, the Committee

²⁰¹ See art. 5(5) of the European Convention reads: "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation"

²⁰² In Romanian: Legea privind modul de reparare a prejudiciului cauzat prin actiunile ilicite ale organelor de cercetare penala si de ancheta preliminare, ale procuraturii si ale instantelor judecatoresti, din 25.02.98

²⁰³ See art. 4 of the Law: The right for reparation of damages, in the volume and in the way established by the law, appears in the following cases: a) court acquittal decision; b) closing penal files/case, in the condition of lack of the fact of crime, of elements of crime in the actions or evidence proving that a physical person participating in the crime committing; c) adopting by court a decision on voiding the administrative arrest or a correctional labor with regard to the person's rehabilitation.... (In Romanian art. 4 al legii: dreptul la repararea prejudiciului, in marimea si modul stabilite de prezenta lege, apare in cazul: a) pronuntarii sentintei de achitare; b) clasarii dosarului penal, date fiind absenta faptului infractiunii, a elementelor infractiunii in actiunile savirsite sau a probelor doveditoare ca persoana fizica a participat la comiterea unei infractiuni; c) adoptarea de catre instanta judecatoreasca a hotararii cu privire la anularea arestului administrative sau a amuncii corectionale in legatura cu reabilitarea persoanei fizice;...)

²⁰⁴ See art 35 of the Regulation on vagrants, 1970.

received further, however not thoroughly checked, information that the detainees of the Center are also engaged in the works of private parties being "sold" per day at the rate that has not become known to the Committee²⁰⁵. In the light of the below described criteria, the Moldovan Helsinki Committee cannot firmly, without a shadow of doubt, state that the detained are subjected to the compulsory labor by the authorities of Vagrancy center in Chisinau. The lack of all relevant information and concrete cases preclude making that statement. However, it has become evident that the elements of the compulsory labor are present that cannot be justified by the ordinary work performed by the detainees.

Detention Conditions. The Center is located in the Center of Chisinau, just several blocks down from the residence of the President and the Parliament. The detention cells are in the very old building, probably built of the gyps' materials. The building seems to grow into the soil more and more as time goes by. The feeling of wet stays all the time of the presence in the building and especially in the cells. A long 15-20 m corridor divides distribution of cells in two, with heavy metal doors and small guard windows.

The Center has 7 detention cells from 6 to 12 m². The cell high from the concrete floor is about 2 meters and from the wooden floor is about 1,5 meters. A medium tall person cannot stand up without bending his head. The walls are of concrete and are barely white. Each cell looks as follows: at the more than half of the room, there is a wooden upper (about 40-50 cm) floor. The detained stayed all day long on the wooden floor. The toilet is of a basket in the cell. Also, twice or thrice a day they are allowed to go to a separate toilet, where they also have a chance to use cold running water to wash themselves. The dimension of the window is about 1 m², that for all the cells clearly not enough and in the cells is always half dark or nearly to that. The artificial light is regulated from outside of the cell. No matrices or other normal bed accessories are given. The detained naturally sleep on the wooden floor and always with some clothes on.

There some cells for "exceptionally dirty detained", as we said, and later confirmed as staying there for about 5 minutes reveals the presence of insects on entrée skin. All cells smell is for the outsider is extremely difficult to tolerate until he/she stays long enough to get used to it. In small (6 m²) cells, the Committee met from 2 to 4 detained and in the big cells (12 m²) from 4 to 8 detained. Average length of detention of questioned persons was around one week and several cases going towards the end of the second week.

The interviewed detainees said that the food is three times per day, however meat or fish was never given. The food basically is of different vegetable soups, macaronis, and some breadstuffs. The detainees say that they are encouraged to bring food through the relatives and those whom manage have better alimentation. Also, we were said that only half of the relatives brought food reach them.

The detainees are not allowed to have any papers, pencils, pens with them. The guards and the vice director said that this is for the security purposes, since they can transmit some information out that might be of "criminal investigative value". The paper we gave them while interviewing and inviting to formulate a compliant if there was a ground, if not used was taken from them. The number of sheets given was calculated thoroughly. Personal things were not allowed except just clothes on. Majority of the detained said that no walking was offered or just several time a week for a less than half an hour. The walking was only during going to the toilet and back.

²⁰⁵ In case of the patients of social rehabilitation institution of the Ministry of Health a similar practice was observed and the rate was about 5-7 lei per day in 2000, equivalently to 0,5 Euro per day, of which 60% have remained in the institution and the rest "went" to the patients. For further details see REPORT ON THE RESPECT OF PATIENTS RIGHTS IN ALCOHOL ADDICTS INSTITUTIONS OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF MOLDOVA by the Moldovan Helsinki Committee for Human Rights, 2000, <http://chdom.ngo.moldnet.md>.

The food was given three times per day: morning (kasa-), mid day (potato and cabbage soup), evening (kasa). No conditions to wash their clothes. The same clothes are on them during the whole stay. No detergent or soap given.

Case of Ali E., Turkey. The person is the driver of a Turkish auto company “Gazajoglu”. Ali Erdugen drives on route Istanbul-Chisinau. Ali E. was detained on 17/05/2001 in the apartment situated in Sadoveanu street of Ciocana district of Chisinau that belongs to A.B. a Moldovan woman. Ali E. declared that they live together while he is in Chisinau. As he declared police entered the apartment requested to check the identity cards. Ali E. was taken to the Center of Temporary Administrative Detention in Chisinau on 17/05/2001. When he was detained he had his passport and other documents confirming his identity and the fact that he is the driver of the mentioned company. Ali E. received Prosecutor’s order of detention for 30 days for violating the regime of visa of residence. A.B. has visited him several times bringing some food and clothes. Ali’s lawyer has visited him. Vice-director of the Center refused to give us access to the files of Ali E. even though the chair of the Committee made assurance that the information will be used strictly for the interest of improving the situation.

Case of E. Gheorghii. The person is of Georgian citizenship with no particular occupancy. E. came to Moldova, as he says, to visit his close relative who married a Moldovan and settled in one of the village of Hincesti judet. Elicasvili was detained on 15/05/2001 in the evening in Chisinau, after as he says, he stayed for a couple of hours in a bar drinking wine. He says that he probably was drunk, therefore he was picked up by the police. He was brought to the Center and on 16/05/2001 received a Prosecutor order of detention for 30 days for violating the regime of visa of residence. Moldovan Helsinki Committee received access to the files of E.. As we learned from the file, E. has been detained for the second time for the same reason during last two years. First time he was detained in 2000. During his first detention the Police of the center sent an inquiry to the Georgian police to find out about E. Only they received an answer on the second inquiry stating that E. left his village of residence with his wife a couple of months before the date of the first detention to unknown direction.

Case of Leonid S. and Vadim D. Both are the residents of Straseni town – a suburb of Chisinau, situated about 20 km northwest. Both were detained by Chisinau police on 18/05/2001 night at about 21.00 in the region of Traktor plant park near the lake, where they separately were spending their leisure time with other friends and accompanied by their girlfriend and wife. Both companies accoutered for about 8 persons. Both companies, as they assure, usually gather together on the occasion with different holidays in Chisinau as some of the members of the companies reside in Chisinau, so it is more convenient for them to meet in Chisinau. Both persons were detained by police since they lacked any identity cards with them around 21.00 and were kept until 2.00 a.m. in the police car, until, as they say, the police filled in with the car with the “other similar people spending time in the park”. They were brought to the Center and on 19/05/2001 received the Prosecutor order of detention for 30 days for the violation of residence regime. They claim that they were not shown to the Prosecutor. Interestingly enough that only men of the companies were detained while the ladies were left free even though the later also did not have the identity documents with them. Both provided the police of the Center with necessary information (telephones and addresses) for checking their identities. When Moldovan Helsinki Committee asked the policemen of the Center why they did not use the references provided to them to check two persons identities, they answered that it is not their business.

Case of Lionea M. The person resides in Soroca city, 6 Onica street. Soroca is a city in the northeast of Moldova, approximately 200 km off Chisinau. He claims that he came to Chisinau with his wife, since the wife originates from Chisinau, to stay with his wife’s parents for some

time. They married some several time before. He is of age of 20. Police detained him on 18/05/2001 in the evening from his wife parents improvised summer house. At this place, situated in Posta Veche region of Chisinau, they grow during the springs and summer, on a piece of land, fruits (cherry, strawberry, etc), to sell on the Chisinau market. Even though the conditions for living are not quite good they are forced to stay there even during the night as night watchman to secure the fruits from theft. In the night of detention, it happened that M. and his wife were at the place. M. could not produce and document identifying him. He was detained and brought to the Center and received on 19/05/2001 Prosecutor order of detention for 30 days for violating the visa residence regime. He claims that he was not shown to the Prosecutor. His wife was not detained. He claims that if one goes to the mentioned place his wife and his wife parents will confirm his identity. M. accepted the assistance of the Moldovan Helsinki Committee. Later after the intervention assisted by Committee's lawyer released on the basis of revised decision of the Prosecutor in ten days after the complaint was lodged.

Case of Vasili P. P. is a citizen of Russian Federation. His city of origin is Sent Petersburg (Russian Federation). As he says he had the passport of the Russian Federation when he came to Moldova several years ago on some family reasons. P. is about 30. His passport was stolen a year ago, since then he could not leave back. As he says the cost of the passport of Russian Federation he needs to go back is about 100 EUROS, which is a lot of money to him. He says he engages in manual labor at the Chisinau market, where he earns money to pay his staying. He claims he can earn enough money this way, although with very hard work, to make up the 100 EUROS for the passport. P. was detained on 22/05/2001 on the grounds that he could not produce the identity documents. Next day he received the Prosecutor order of detention for 30 days for violation of residence regime. It was his first detention. He claims that, if Police inquiry the Embassy of the Russian Federation in Chisinau, they could confirm his identity, since they have the records of the last his external passport he received from them. P. asked that the Embassy of Russian Federation be informed of his detention and refused further assistance.

Case of T. Stela. T. Stela is a citizen of the Republic of Moldova. She was detained at the railway station. She does not have a profession, stable working place. She earns her living by prostitution. She was approached by police and asked for the identity cards which could not produce since lost them. She was brought to the center on 12 May 2001 and received Prosecutor sanction for 30 days. She has no relatives anyone else.

Case of E. Sveta. E. Sveta is a citizen of the Russian Federation. Detained while at place of her friend in Riscani district of Chisinau. The police came over, as there was a phone tip of an alleged robbery. She could not provide identity documents, since she never had them. She does not have anybody to confirm her identity. Detention started on May 15 2001 for the period of 30 days.

Case of P. Alexandra. Detained on 15 May 2001 from the street by police as a vagabond since she could not produce an identity document.

Case of Rodica P. Detained by Chisinau police on the alleged grounds of selling narcotics from her place. Police opened criminal investigation on art. 225 of Penal Code. However, brought to the Center as an administrative sanction for the period of 30 days, since she could not produce an identity card.

10. Privacy

- draft Penal Code on homosexual orientation

Draft Penal Code provisions. The draft Penal Code considered by the Parliament of Moldova in second reading contains provisions that could have negative effect on the privacy with regard to the homosexual orientation of the people²⁰⁶.

In order to assess whether the draft is in compliance with Council of Europe standards better than the existing one, there is a need to read all of articles together. There is a strong doubt to conclude that the whole chapter (all article) with regard to decriminalization of homosexuality (as we discuss only this aspect) is better than the existing one. There are several definitions remained unclear:

- "Pervasive actions" (from art. 173) presents very unclear wording of art. 170, - "Pervasive actions" separately present problem, since of the tradition to include homosexuality and other "unnatural sexual relation" but also in conjunction with art. 170;
- very unclear wording of art.170, so that the legal norm is still unclear whether "homosexuality", "lesbianism" separately are considered as violent actions. The legal norms enumerates "homosexuality", "lesbianism" or "other sexual actions made by physical and psychological constraint of these", or "profiting from impossibility to self-defense or to express the victim's will". It could be read as 4 different violent actions, including "homosexuality" and "lesbianism" separately without applying "made by physical and psychological constraint of these" to them since there is no comma after the word "actions". The published draft version and there is no comma there. Therefore it is not sure if "homosexuality", "lesbianism" should be read together with "made by physical and psychological constraint of these" or without. In case it is not read without "made by physical and psychological constraint of these", the labeling "violent actions" imposes some bias, etc
- Similar analysis is applicable to art. 171.
- It is certainly a bad evolution with "lesbianism" being included along with "homosexuality".

Nowadays realities. Supreme Court of Justice explanatory decision on 29-08-1994(nr. 7)/20-12-1999 (nr. 38) that "homosexuality is unnatural relation between two men" (decision nr. 23) serves a proof that the Supreme Court of Justice still considers homosexuality as part of Penal Provision. Supreme Court of Justice, through "interpretation" of art. 106²⁰⁷ "makes law" and does not interpret the legal provisions of art. 106, since interpretation should not develop a new

²⁰⁶ See Draft Penal Code:

art. 169 - Rape (rape of women by physical and psychological constraint or by her impossibility to self-defense or to express her will)

art. 170 - Violent actions with sexual character (homosexuality, lesbianism or other sexual actions made by physical and psychological constraint of these or by impossibility to self-defense or to express the victim's will)

art. 171- Constraining to actions with sexual character (Constraining a person to sexual relation, homosexuality, lesbianism or to making other actions with sexual character by blackmail, or profiting from material dependence, job dependence or any other victim's dependence)

art. 172 - Sexual relation and other actions with sexual character made with a person that is under 16 (sexual relation, homosexuality, lesbianism, as well as other actions with sexual character made by a person that of 18 and higher with a person who are without doubt known to be under 16)

art. 173 - Pervasive actions (Pervasive actions without violence to a person, that is without doubt known to be under 14)

²⁰⁷ Art. 106 of present Penal Code reads "Homosexuality by constraint", Homosexuality, made with a minor by physical or psychological constrained or using the victim incapacity is penalized with detention from 2 to 5 years. Before 15 June 1995 the article was "Homosexuality", Homosexuality is unnatural relation between two men. The same deed made with a minor, or by physical or psychological constrained or using the incapacity of victim is penalized with detention from 2 to 5 years. (In Romanian 106. Homosexualismul este o relatie nenaturala intre doi barbati. Aceiasi fapta savirsita fie asupra unui minor, fie prin constringere fizica sau psihica, fie profitandu-se de starea de neputinta a victimei, - se pedepseste cu privatiunea de libertate pe un termen de la doi pana la cinci ani.)

legal provision or do it inconsistently with the legal provision adopted by the Parliament of Moldova. Moreover, Supreme Court of Justice is a judicial authority and not a legislative one. Therefore the "interpretation/explanatory" decision in this respect runs clearly against and legal/juridical principle, including of Moldovan legal principles. It proves once again how deeply it is rooted in the minds of judiciary. It is certainly inclined/favors the attempt of the investigative authorities (police, prosecutor) and poses an instrument for intimidation. According to the information received from the Ministry of Justice²⁰⁸ 12 (all men) persons were condemned on the basis of art. 106 of present Penal Code within the period of 15 June 1995 and January 2001.

Moldovan legislation discriminates homosexuals giving them different age of consent. The age of consent for heterosexual relationship is 16 years old²⁰⁹, while for a homosexual relationship it is 18 years old²¹⁰. Also discrimination in giving different punishments for a heterosexual and a homosexual rape²¹¹. GenderDoc-M information on cases to include...

- Privacy of domicile

The right to respect a private life includes also the respect for the home. According to the registered case at the Helsinki Committee it has been understood the violation of this right in a case where the police officers entered and made an illegal search of the apartment which has been rented by a person. A.B.A arrived Moldova in June 2001, having a business visa and was renting an apartment. In October 2001, the police officers came to his apartment, entered into and made an illegal search. The single explanation, which has been given to the A.B. A is that he is suspected in using narcotics. The police officers conducted also an illegal seizure of the personal stuff (passport, personal documents, money, cloths and also parfumes and shoe's cream) and humiliated him using outrageous words. A criminal case has not been opened in this case, and the police station which conducted the illegal search in cooperation with the departments of anti-corruption and organized crime have not an official letter with the explanation and excuse for the caused moral damages. The answers to the lawyer's petitions were received from the deputy of police station and the district prosecutor which have stated that the special measures will be taken to the polices officers involved in that illegal search and seizure. The prosecutor office has not opened a criminal file even if under criminal code the illegal search and seizure is sanctioned. The police officers conducted those criminal actions without having legal reasons for, permission of the chief of the police station, and have not made any written documents during the search and seizure.

11. Discrimination of handicapped

2. (Firing of eye handicapped persons/handicape descrimination) Moldavskie Vedomosti, 9 june 2001.

²⁰⁸ See Letter dated 10.04.2001/02/1871 to Moldovan Helsinki Committee for Human Rights

²⁰⁹ See art. 103 Penal Code

²¹⁰ See art. 106 Penal Code

²¹¹ See art. 102 and art. 106 Penal Code

12. Governmental Initiatives to Promote Human Rights

- Activity of Governmental Center for Human Rights²¹²

Center for Human Rights – the only human rights specialized public institution in the Republic of Moldova. Therefore, relevant improvements badly needed if the Center to maintain legitimacy, its positive meaning and potential asset in the public eyes of the Moldovan society. The parliamentary commission on human rights has shown little, if any, public interest contributing to the improvement of the Center overall performance and dealing with herein mentioned drawbacks. The Center most importantly lacks a clear, exact and narrowly defined mission. The vagueness of the relevant legal framework of the Center and incapacity of the Center to develop it are the reasons. The Center fails to identify and focus on the priority critical human rights issues measurable to the capacity of the Center. The Center lacks the institutional capacity to develop the problem solution-oriented approach in dealing with identified priority human rights critical issues in Moldova. The Center has established a rigid internal organizational structure that fails to react and address the priority issues and handle the priority issues and problems. The Center professional institutional and individual human rights competence remains a questionable issue in the Moldovan society and in human rights community. The Center has failed to gain people's trust and positive attitude of the Center commitment and dedication for human rights work building on the independent human rights position with regard to the human rights concerns. The Center has failed to become the independent consolidating body of the all human rights initiatives to streamline the human rights agenda of the Government, provide human rights perspective of the public decisions and develop strategies and actions needed for the prevention of human rights concerns and situations.

Mandate and Mission. The main responsibilities of Center for Human Rights, as declared, are: “examining complaints on violations of individual's rights of lawful interests; contributing to national legislation's modification and its adjustment to international legal instruments; contributing to legal education and information of the population”²¹³. The mission of the center is formulated too general comprising, as declared by the center, from rights of prisoners, children, refugees and migrants, retiree, etc.²¹⁴ The Law on Parliamentary Advocates had been formulated vaguely and the specialized commission on human rights took little, if any, interest in promoting the efficiency of the “main” public human rights institution. Compared to the similar institutions in other countries where the institution has clear focused attention on a specific areas of, for instance, overseeing the human rights in the public administrative bodies thus availing itself from the judiciary remedies available; or thematic approach: information and data protection commissioner, children rights, etc in Moldova the institute encompassed variety all imaginable possible obligations. The Center, till the present, seems to be continuously unclear on its mission as is the specialized commission on human rights of the Parliament.²¹⁵

²¹² Based on Report: OBSERVATIONS ON THE CENTER FOR HUMAN RIGHTS – OMBUDSMAN OFFICE IN MOLDOVA, OCTOBER 2001, BY MOLDOVAN HELSINKI COMMITTEE

²¹³ See <http://www.iatp.md/cpdom>, web site of the Center for Human Rights.

²¹⁴ In reality the mission of the organization is driven by the funds put available including by the international donors. In practice, international donors torn the Center apart, by competing for putting their money into the Center and get the desired activity through the very democratic sound institution.

²¹⁵ Citation from <http://www.iatp.md/cpdom/en/advocates.htm> “Complaints of people whose rights and civic freedoms have been violated should be related to administrative acts or facts. Example: issuing an authorization or a certificate, etc., formally registering different recognitions of different qualities as stated by law; acts of local councils, county councils, mayors, county mayors and county authorities chairmen, etc. In the area of administrative, administrative-judicial or judicial procedures related to the specific legislation, an advocate has no

Management Efficiency. Shared vision by all parliamentary advocates and the Center personnel as a team is crucial for a successful and effective work. The allocation of human resources considering the nature of work and the societal needs seem rather unbalanced leaving too little for the work with complaints. It seems that educational and PR unit is over staffed, considering it also in the light of the suggested priorities. It is seen more reasonable and efficient, contrary to the rigid action approach (complaints-analysis-education) to tailor the distribution of human resources on the basis of the priority theme or situation. The administrative and financial section (leaving aside the auxiliary personnel not included in the drawing) seems to be out of proportion high. The three parliamentary advocates concentrations²¹⁶ area drawn on the mechanical criteria of division of law of Moldova: Civil law-Labor law-Land law; Penal law-Administrative Law-Penitentiary Law; Pension Law-Family Law. An integrated approach deriving from specific situations drawing rather on the rights alleging the violation and not subordinating it to the Moldovan legal classification of the law. Respectively, the organization of the work in the situations should be subordinated to it on a flexible case-by-case and working group approach.

Individual Independence. As observed earlier²¹⁷ the image of an independent and politically and professionally unbiased person is crucial in case of the ombudsman as the “main” human rights public institution. Parliamentary advocates were appointed by the Parliament, drawing on the candidates who formally served as a prosecutor, trade union lawyer and a parliamentarian, law professor.²¹⁸ People perceive also the office they address through individuals who deal with the cases and therefore avoiding the negative perception or allege of a biased vision should have been strongly avoided when selecting the individuals for the office. The Center independence on variety of human rights situations and cases is not only the subject of silence or absence from the scene but primarily of occupying an active interpretative role sustaining the attachment to human rights values through balanced and authoritative position. The parliamentary advocates and the personnel should be considering continuous raise of their professional human rights competence, knowledge and skills in field of human rights becoming the centers of human rights opinion, expertise and consultation prompting the society with valued positions and opinions. However, the real situation seems to be different from the desired as Center for Human Rights has not played the mentioned role upon different “difficult” Moldovan situations. The Center professional human rights capacity as a whole but also individually is of little knowledge in the society and human rights community. As the formal access to extensive and comprehensive body of human rights law determined by possessing in sufficient extent of the international language and persistent consultation and investment in acquiring by learning and practicing, the individuals deemed served in the respective “human rights” capacity should meet the high qualification and public scrutiny on relevant proficiency, as it seems to be crucial in effective exercise of the public human rights duty.

Educational Activities. It seems that Center educational programs overwhelm the rest of the activity of the Center. Center has been competing in that respect with a number of human rights

right to substitute the bodies established by the law” Shows unclear understanding since first sentence refers to the acts of the public bodies but later excluded through “administrative” or “judicial-administrative” procedures.

²¹⁶ See <http://www.iatp.md/cpdom/ro/avocatii.htm>

²¹⁷ See Moldovan Helsinki Committee observations on the opportunities for development of Human Rights Center, 1999.

²¹⁸ **Alexei Potinga** is formally a chief of a prosecutor civil section of General prosecutor office, **Mihail Sidorov** is formally a trade union lawyer and a majority political party representative at the time of selection (in May-July 1992 he was appointed by the temporarily leader of “Dniester Moldovan Soviet Socialist Republic” through transfer from chief lawyer of trade union as a “Minister of Justice” of the unrecognized “Dniester Moldovan Soviet Socialist Republic” as stated in second issue of “Verhovnii Soviet” vestnik of “Dniester Moldovan Soviet Socialist Republic”), **Constantin Lazar** is formally criminal investigator, advisor to President of Moldova and a law professor.

educational and civic organizations, which in many instances were better positioned professionally and efficiently. In some instances Center had been repetitive and in some cases even commissioning the ngos to take over responsibility for educational programs, claiming the activities carried out by the Center.

Constitutional Court petitions. Center, to the moment of writing over the period of 3 years, has petitioned the Constitutional Court only on 13 instances, out of which 9 referred to the interests of professional associations, 3 referred to the interests of disadvantaged strata of society. These are more details on the cases: 1999 cases:

2. Petition regarding constitutional control of paragraphs 2 and 3 of the Decision of the Government “On returning of property, reimbursement of its value and payment of compensation to victims of repression”.
3. *Decision* of the Constitutional Court examining the mutual notification regarding the constitutionality of some governmental provisions of the Law “On Practicing Lawyer profession”.
4. *Petition* on the suspension of Article 32 of the Law regarding the status of judges as unconstitutional stipulating the social rights of judges for pension.
5. *Petition* 14.10.98 declared unconstitutional the provisions of law on pension that would limit the value of pension of civil aviation employees.
6. *Petition* with regard to the unconstitutionality of the Law on notary establishing maximum tariffs for the notary activity.
7. Petition to the Constitutional Court on the constitutionality of Law on privatization restricting right to property for state employees;
8. *Petition* to the Constitutional Court on the constitutionality of social assurance of retiree from prosecutor office;
9. Petition to the Constitutional Court on the constitutionality of provisions of Law on Education restricting the right to freely choose the engagement place;
10. *Petition* to the Constitutional Court on the constitutionality of social assurance of retiree from prosecutor office;
11. *Petition* of Constitutional Court on unconstitutional limitation of legal acts concerning the suspension of the pension for the period acting as prosecutor, investigator, judge, member of Parliament, public official.

2000 cases:

12. *Petition* on the Constitutional Court on the Law on lawyers limiting the access to legal profession.
13. *Petition* on the Constitutional Court on the excluding the social and material guarantees of the prosecutors and judges.

2001 cases:

14. Decision of the Constitutional Court on the regulation on administrative division of the military service concerning the satisfaction alternative military service that should be performed exclusively by a central military authority.

One can clearly see the tendency for “over representing” the professional interests of the “strong” elite groups of the Moldovan society composed of prosecutors, lawyers, judges, investigative authorities.

None of the petitions mentioned in the report are actually discussed in-depth and with argumentation pointing out the drawbacks, in compliance based on the known jurisprudence and case law.

Reports on Human Rights situation. The Center had published consecutively only two Annual reports on respect for human rights in the Republic of Moldova for 1999 and 2000.²¹⁹ The producing of the report on the state of human rights in the Republic of Moldova is to be seen one of the major statement and assessment of the human rights situation, as required also by law on Parliamentary Advocates. The Reports deal preponderantly with the social and economic rights paying little attention to civil and political rights. Such subjects as torture and inhuman treatment, security and liberty, fair trial, freedoms of association are almost absent. The Reports also do not deal in detail with the analysis of the problems and situations based on the cases and other information. The analysis does not provide references to international body of case law and jurisprudence.

1999 report had 4 chapters: Analysis of the complaints received by the Center; Activity regarding the redress of citizen's rights; Information on legal training; Conclusions and proposals. Three lingual version (Ro, Ru, En) of report was of 60 pages. In summary it discusses seminars and meetings organized through the center. In chapter on Activity regarding the redress of citizen's rights it says that the Center has made 5 proposals to the Parliament and the Government, 12 petitions to the court in the interests of the people. The report does not discuss the content of the mentioned proposals and petitions, with exception of two: on returning of a sum of money from a private bank and on with regard to not fulfilling the contractual obligations by an assurance company ASITO. It also refers to 10 cases of petitioning of the Constitutional Court, out of which 5 representing the interests of professional associations. More see in the chapter on Constitutional Court Petitions.

2000 report has the same structure, totaling to 38 pages in one language: UNDP and Center for Human Rights; Preamble with statistic of cases; Activity to redress of human rights violations; Education of population; Education of Center Personnel. Activity to redress of human rights violations states the most frequent violations of social guarantees, right to property, right to labor, access to justice, personal security, right to privacy, right to education, access to information, freedom of movement. Under right to education, right to property no particular cases are mentioned. Under access to justice reference is made to three situations. Among them are: situation of a "reasonable time" detention of persons in pre-trial detention, situation of non-execution of the civil decisions of the courts and a situation of denial of right to lawyer. In all cases however no discussions are followed of the actions needed to prevent the happenings. Under security and dignity of person the reference is made to three cases of illegal detention for the period of three days; the delay in examination of the case of grave illness of TB; refusal to give access to copies of judicial decisions. No examination of the foundations for the discussed cases and how to create systems to improve situation avoiding the appearance in future these situations are given. Under Social rights reference are made to cases and situations: general situation in places schools for children with handicap; places for rehabilitation for adults, nonpayment of salaries; compensation for accidents at work; reduce of the retiree age for persons working in dangerous conditions; pension for invalid child; quality of medical assurance; housing rights of special vulnerable categories of people.

- Initiative to Elaborate Human Rights Strategy

²¹⁹ The Center did not produce publicly any human rights report in 1997 or in 1998.

On 28 December 2001, Moldovan Parliament adopted the decision to establish the commission for the elaboration and implementation of the National Plan of action in the field of Human Rights in the Republic of Moldova. The Strategy development and its implementation are financially supported by the UNDP project. The commission, headed by Vadim Mision-vice chair of the Parliament and seconded by Mihail Sidorov-chiar of human rights parliamentary commission and Galina Chirinciuc-vice Minister of Justice, is composed of the 23 members with 6 parliamentarians²²⁰, 8 representatives of the Government and the different ministers²²¹, 7 representatives of different ngos²²², director of Center for Human Rights²²³ and an UNDP project manager for Center for Human Rights²²⁴. The commission is deemed as a consultative organ to the Parliament to coordinate the activities of elaboration and implementation of National Human Rights Plan. The elaboration of national plan is a good opportunity to streamline the human rights issue of Moldova and it is in a great extend depends on the courage of each commission member and their professionalism to develop a professional and realistic strategy.

13. Property rights

3. (refusal for restitution of property of Molocans-religious association) Monitorul Oficial 9 june 2001, #428

²²⁰ Andrusceac Victor (Communist Party), Borgula Ludmila (Communist Party), Plamadeala Mihail ("Alliance Braghis"), Secareanu Stefan (People Christian Democratic Party)

²²¹ Babenco Oleg (vice-minister of Education), Bahnarel Ion (vice-minister of Health), Petuhov Vera (director Department of Interethnic relations), Sainciuc Sergiu (vice-minister of Labor), Stratan Nicolae (vice-minister of ecology), Slonovschi Vitalie (vice-minister of Foreign Affairs)

²²² Silitkaia Natalia ("Nezavisimaia Moldova" paper), Goncarova Olga ("Olexpo" company), Strutzescu Paul (League for Defense of Human Rights), Moldovanu Iosif (director Children Rights Documentation and Information Center), Luchiancicova Miroslava (director Women association "Imparativ"), Beleac Anatol (director Society for Education and Human Rights), Hincu Mihail (Trade Unions confederation)

²²³ Alexei Potinga

²²⁴ Alla Skvortova