MOLDOVAN HELSINKI COMMITTTEE
FOR HUMAN RIGHTS

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REPORT
ON RESPECT OF HUMAN RIGHTS
IN THE REPUBLIC OF MOLDOVA

(INCLUDING TRANSDNISTRIA REGION)

January 2000-January 2001

international obligations
political background
freedom of expression and media
freedom of assembly and association
fair trial
independence of judiciary
forced labor
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elections and referenda
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refugees and internally displaced

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Foreword

Moldovan Helsinki Committee is a human rights advocacy non-governmental organization that seeks to monitor, promote and implement international human rights standards in the Republic of Moldova. Moldovan Helsinki Committee is an independent public interest non-governmental organization guided by understanding of universal superior values of individual freedoms, social justice, equity and nondiscrimination.

This report covers the human rights concerns of the period of January 2000-January 2001. It 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 referred to herein:

- Report On The Respect Of Patients Rights In Alcohol Addicts Institutions Of The Ministry Of Justice Of The Republic Of Moldova, July 2000, (Ro, En) by Moldovan Helsinki Committee;
- Report On The Respect Of Patients Rights In Alcohol Addicts Institutions Of The Ministry Of Health Of The Republic Of Moldova, May 2000, (Ro, En) by Moldovan Helsinki Committee;
- Shadow Report On Compliance Of The Republic Of Moldova With The Obligations Under European Framework Convention On National Minorities, July 2000, (En) by Moldovan Helsinki Committee;
- Draft Shadow Report on Implementation of Convention on Elimination of all Forms of racial Discrimination, 2001 (En), by Moldovan Helsinki Committee.
- Comments on the response of the Government of Moldova to the report of the European Committee on Prevention of Torture, December 2000, (En), by Moldovan Helsinki Committee;
- Report on the Efficiency of Administration of Justice: Remedial Value of Appeal Procedure in the Republic of Moldova, November 2000, (Ro), by Moldovan Helsinki Committee;
- Report on the Respect of Human Rights in the Republic of Moldova in 1999 (En), by Moldovan Helsinki Committee;
- Report on the Respect of Human Rights in the Republic of Moldova in 1998 (En), by Moldovan Helsinki Committee;

- Report on the Respect of Human Rights in the Republic of Moldova in 1997 (En), by Moldovan Helsinki Committee;

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

Political background

Constitutional reform

The year 2000 was marked by further confrontation between the President Lucinschi and the Parliament on the dispute on the form of governance in the Republic of Moldova[1]. Two initiatives: one presidential – to transform Moldova into a presidential republic- and initiative of the Parliamentary political parties – to transform Moldova into parliamentary republic- consumed over the year most of the attention of political establishment. Parliamentary initiative received the Constitutional Court approval as early as late 1999, the initiative of the president Lucinschi was seen as containing some serious pitfalls with respect to guarantees for the independence of the judiciary and balances with respect to other branches[2]. A mixt commission was established under auspices of Venice Commission of the Council of Europe that included three representatives of the President Lucinschi and three representatives of different political parties to work out the common grounds constitutional modifications.

Several sessions were scheduled, in Strasbourg, Venice to definite all details of the common constitutional modifications. As the Constitutional Court interpreted that constitutional referenda could be only held after the approval of the Parliament of the referendum and the constitutional modifications could be voted only 6 months after the positive decision of the Constitutional Court on the results of the referendum, the President Lucinschi hurried to submitted "un-finalized version" of the amendments of the common commission to the Constitutional Court. The later, however, did not examined the proposal for modification of Constitution, since the Parliament voted with overwhelming majority of 78 votes out of 101, for transforming Moldova into a Parliamentary Republic. President Lucinschi, after some hesitation, promulgated the law on constitutional modifications.

The modifications provided for the Parliament to elect the President with 3/5 of parliamentary votes, with the election to start in December 2000. After two unsuccessful attempts, with two candidates: Vladimir Voronin-the Communist leader proposed by the Communists and Pavel Barbalat-the president of the Constitutional Court proposed by Democratic Party and the Party of Revival and Reconciliation, (in last voting Voronin received 59 votes), the President disposed dissolution of the Parliament and named the anticipatory elections.

[1] See 1999 Moldovan Helsinki Committee report on the Practice of Respect for Human Rights
[2] See ibid and Venice Commission of the Council of Europe reports.

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). The results of elections made possible that the Communist Party form up their won Government (necessary only 52 votes), elect a new President (62 votes) and make any constitutional amendments (68 votes). Immediately after results became known, the Communist leader declared that the Communists would opt to unification with Union of Belarussia and Russia and introduce Russian as a second official language.

Honoring human rights obligations before international organizations

Council of Europe

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

Penal Code and Code of Criminal Procedure have been drafted and are in the Parliament. The procedure may take as much as one year before both will be adopted.

- *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 standards;*

Although several bills 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[3]. 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. supervision over the legality of all administrative acts, access to justice in the places of detention, etc.

[3] See chapter Judicial system for details.

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

Moldovan legislation lacks the necessary substantive and procedural norms guaranteeing international standards in the field of extradition[4]. Moreover, the protection from "re-foulement" is disputable as Moldova has not signed the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol.

- *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.*

The Moldovan Government once again refused the registration of 'Metropolia Basarabia'. The complaint in the matter has been submitted for adjudication to the European Court of Human Rights. The Parliamentary Commission on Human Rights, Religions and National Minorities recommended the Government to register "Metropolia Basarabia" with 5 votes against 4.

- *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 service[5].

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

The "Law on new organization of the administrative territories in the Republic of Moldova" has been passed and 10 districts (so-called) were created and the District Council are elected directly. However, the law fails to grant the right to local District Councils to petition to the Constitutional Court when the laws passed by the Parliament violate principles of self-government[6]

- *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*

Moldovan authorities take little initiative to promote human rights concerns in the Transdnistrian region in the agenda of negotiations between constitutional

[4] See 1998 IHF Annual report, chapter on Moldova.
[5] See chapter on Human Rights and Military Service.
[6] In the opinion of the chair of the Moldovan parliament to grant this right is 'pre-mature' in Moldovan conditions.

authorities and de facto authorities of "DMR"[7]. Specific concern constitutes the actions of Moldovan police and other law enforcement agencies that fail, and even some times, assist, to guarantee the principle of non-refoulment with regard to persons participated in Transdnistrian armed conflict.

United Nations

Moldovan authorities fail to submit the reports of the implementation of UN human rights obligations. As to the moment of writing the only report submitted is under the Convention on Elimination of all Forms of Discrimination against Women. Initial reports with respect to implementation of International Covenant on Civil and Political Rights, Convention on Elimination of Discrimination, Convention on Rights of the Child have not been submitted with the delay of already 5-7 years.

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. No substantial effort has been made to comply with the agreement.

Individual Liberties and Freedoms

Freedom of expression, mass-media and access to information[8]

Draft Penal Code provisions affecting freedom of expression

Moldovan Parliament has approved 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[9]. The draft Code penalizes expression of propaganda of incitement to war[10], expression of

[7] Probably one exception makes the Report on Human Rights in the Transdniestrian Region of the Republic of Moldova, prepared by Interdepartmental Commission for Coordination of the State Policy in the Settlements on the Left Bank of Dniester River. The report is based on a considerable body of human rights ngos contributions.

[8] See also chapter 4 (pp. 11-14) of the REPORT ON HUMAN RIGHTS RESPECT PRACTICE IN THE REPUBLIC OF MOLDOVA (January - December 1999) by the Moldovan Helsinki Committee

[9] See opinion of Moldovan Helsinki Committee on the provisions of draft Penal Code affecting freedom of expression.

[10] 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… "

state secret[11], defamation (calumny)[12], insult[13], confection or dissemination of works that make propaganda of violence and cruelty[14], produce or dissemination of pornographic objects[15], calumnious advertising[16], insult (offense) of a judge[17], calumny of a judge, prosecutor, investigator[18], civil disobedience[19], profanation of state symbols[20], insulting a military servant.[21]

[11] See Art. 135 "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 submerse the state security."

[12] 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. "

[13] 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… "

[14] 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.

[15] 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"

[16] 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. "

[17] 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."

[18] 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. "

[19] 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."

[20] 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

Defamation

Constitutional Court sustained constitutionality of defamation provisions of art. 7[22] of the Civil Code limiting of freedom of expression. In its June 8, 2000 decision the court failed to make distinction between "facts" and "value judgement" interpreting the notion of "information". It cites in decision's support provisions of art. 32(2, 3)[23] of the Constitution of Moldova and art. 4 of the Press Law. Both referred provisions received as earlier as in 1998 critics as being unacceptable vague and broad. These provisions were subjects of modifications to be brought in the line of the European standards.

In a June 19, 2000 explanatory decision of the Plenum of the Supreme Court of Justice of the provisions of art. 7 of Civil Code, however stated clearly that the notion of "information" should invoke liability only if "the critics are false from the point of view of facts or are excessively offensive". At the same time the second part of the explanatory decision contains further explication of the definition "information-to be understood any wording of fact, a opinion or an idea…" Although, the decision of the Supreme Court of Justice is extremely elaborated and specific it still seems to be controversial and fails to give several other guarantees for freedom of expression, developed by the European Court of Human Rights and other courts: exception from liability in case of fact inexactitudes proving reasonable journalistic practice, weight of public interest, etc.

Moldovan Helsinki Committee submitted an amicus curie to the Constitutional Court hearings, bringing in its attention art. 10 of the European Convention case law, leading Lingens and other cases and Moldovan courts practices violating the freedom of expression under auspices of art 7 of Civil Code.

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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 "

[21] 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."

[22] relevant portion words "any person …has a right to judicially revert the information that abuses his/her honor and dignity, if that who disseminated the information fails to prove the information corresponds to reality… ".

[23] Article 32. Freedom of Opinion and Expression. (1) All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible. (2) The freedom of expression may not harm the honor, dignity or the rights of other people to have and express their own opinions or judgements. (3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the investigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.

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.

Limitations on grounds of "defaming nation and state"

Coordinating Audiovisual Council (CCA) decided withdrawal of license to broadcast of a private TV company on the grounds of "contesting and defaming the state and nation". On August 29, 2000 CCA decided to suspend the license of a private TVC21 cable TV station for a period of three months. It motivated its decision that on 29 July, 2000 TVC21, in the informative news program aired an interview with one of the leader of self-proclaimed "Dniester Moldovan Republic" ("DMR") about "DMR" recent local elections. CCA arguments that "…the interview with Maracuta, a person that fights for separation of Moldova as a unitary state and incites for territorial separatism" violates the Constitution. The decision grounds on the provisions of art 32 (3)[24] of the Constitution of Republic of Moldova and art. 3[25] of law on Audiovisual.

The incident takes place while provisions of art. 32(3) of the Constitution and art. 3 of law on Audiovisual had been under scrutiny of monitoring of PACE[26] Committee on honoring of Moldova'c obligations before the Council of Europe in the context of not application these limitations of freedom of speech.

[24] Article 32. Freedom of Opinion and Expression.
…
(3) The law shall forbid and prosecute all actions aimed at denying and slandering the State or the people. Likewise shall be forbidden and prosecuted the investigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence, or other actions threatening constitutional order.
[25] Article 3. The freedom of audio-visual expression presupposes the strict observance of the Constitution and does not allow the detriment of other persons' honor, dignity, private life and right to have their own views.
[26] PACE-Parliamentary Assembly of the Council of Europe

Moldovan Government proposed draft modifications of the mentioned legal provisions to comply with the mentioned obligations.

Limitations to broadcast in unofficial language

Coordinating Audiovisual Council initiated the withdrawal of broadcasting licenses of several radio-stations that "were violating the provisions to broadcast at least 65% of total airtime in the official language". The Coordinating Audiovisual Council warned with withdrawal of licenses "Russkoe radio", "Radio Nostalgie", "Radio D'or", "Serebreannii Dojdi" for failure to respect art. 13(3)[27] of the Law on Audiovisual. On Court of appeal satisfied the petition brought by Club of Students graduated from High Education Institutions from Abroad and Romania (CAIRO) against Coordinating audiovisual council and eventually against the mentioned radio-stations obliging the Council to withdraw the respective licenses.

Meanwhile, The Parliament of Moldova interpreted art. 13 (3) of the law on audiovisual in a such a manner that the obligation to air at least 65% of the total airtime applied only for local (Moldovan based) radio-stations, excluding retranslating stations. The Supreme Court of Justice is to examine the case on appeal in late January 2001.

Limitations on electoral political propaganda

Moldovan Parliament modified art. 23/1[28] of the law on Audiovisual forbidding local broadcasters to insert local information in programs produced and retranslating on the territory of Moldova. That modification targeted primarily political adds during elections. Constitutional Court, however, declared on 14 December 2000, the modifications unconstitutional.

Transdnister region

Local Transnistria authorities created a very aggressive informational environment towards any deviation from the official ideology. As cited in paper "Baltiscaia gazeta" in the opinion of "chairman" of the Supreme Soviet of DMR, G. Maracuta those who do not recognize the DMR should be not tolerated and

[27] Article 13. (1) The public audio-visual companies are broadcasting operatively and free of charge all communications of public interest, sent from the Parliament, from the President of the Republic of Moldova and from the Government. The procedures to diffuse the official information are established with the agreement of the TV & Radio Coordination Council. (2) The audio-visual companies, public or private, are required to inform within the established period of time about the emergency situation and natural calamities. (3) Audiovisual institutions, public or private, broadcast at least 65% of their audiovisual programs in the state language. This provision does not extend to the TV programs broadcast via satellite and provided by cable, as well as foreign stations and stations that broadcast in areas compactly populated with ethnic minorities. (4) At least 50% from the programs of public audiovisual institutions will consist of products made in the Republic of Moldova.

[28] Article 23/1 (2) of law on audiovisual says "Audiovisual institutions cannot combine retranslating with making, producing and emitting of original audiovisual programs on frequencies (channels) which carry the retranslating of programs of news produced abroad, with exception of commercial adds.", 22.06.2000.

Sevtov-Antiufeev, the chief of DMR security added,: "it is necessary to pull out of the circulation a certain number of people! … today in DMR as well as in the ex USSR, was created a similar situation as in Moscow. We have an attitude towards this situation according to the position of the 1980-1990 years, and this is not right. We have to have an attitude like in 1945-1947, when all activities directed against the order was equal to a crime against the state order."

With overall population in DMR of probably less than 500 000, a number of military: military detachments of a special destination and security forces of DMR as well as other paramilitary reaches the number for about 8 000-10 000.

Mass-media is activating in the conditions of a serious censorship, imposed by the Tiraspol administration. Already for 8 years by the means of mass-media is very insistently created the image of the enemy that is for them the constitutional power from Chisinau and all the attempts to relieve the situation from a tolerant point of view is considered as a betrayal. As an example of the freedom of expression is the one of the paper "Novaia gazeta". On January 28, 1999 the officers of the "ministry of security" confiscated without any legal support the circulation of the paper "Novaia Gazeta" only because this paper published more opinions regarding the perspective of solving the transnistrian conflict. Although the general prosecutor of Transnistria considered these actions illegitimate, later were confiscated two papers more. On June 4, 1999 the "ministry of security" confiscated again the circulation of the paper.

DMR press law forbids creation of media by foreign citizens as citizens of Moldova are considered. At the moment there are no non-state or state papers published in Moldovan, Ukranian or other languages in the region. There are several programs on DMR state television (mainly official news) in Moldovan language and the same in Ukranian with total time about two hours per day. There are no private audiovisual operators in any language, according to rule, only the Government of Transnistria may set up an audiovisual media.

Freedom of association and peaceful assembly

Political association

The Ministry of Justice of Republic of Moldova refused to accept the new program and new Status of association – National Romanian Party (PNR) cold before Victims of Communist Regime of Occupation and Veterans of Wore of Romanian Army and was registered at the Ministry of Justice. The decision of modification the name of Association – in National Romanian Party was adopted by more than 600 delegates at the 4th ordinary Congress of Association. The Ministry considers that the objective: "Contribute to the reintegration to Mother Country[29] trough liquidating the Molotov – Ribentrop

[29] They mean reunification of Basarabia with Romania

pact" is on outrage to the suzerainty and integrity of Republic of Moldova and it's contrary to art. 41.4 of Moldovan Constitution. The statement of Ministry of Justice is that the name PNR "includes an identification element of the other state" and has ethnic association criteria.

The chairman of the National Romanian Party Mr. Gh. Ghimpu and I. Buga member of Republican Board of PNR declared in an press conference that the position of Ministry of Justice is on discriminatory to words PNR. At that time already was registered Party founded on ethnic base criteria: "New National Moldovan Party", "Association of Gagauze women", "Popular Gagauze Party" and others. More than that, some of them with their actions and declarations attempted to the suzerainty and territorial integrity of the Republic of Moldova. As a results of press communicate signed by Gh.Ghimpu and I. Buga with their action the Ministry of Justice violate the rights and the interests of over 10000 member of Association, who aspire for this many years.

Professional association

Constitutional Court declared constitutional provisions that require sportsmen to be mandatory a member of the one of Moldovan sport club or national sport federation, require the consent of authorities to become a member of any international sport federation/association. On 25.04.2000 the Constitutional Court found that the provisions of art 16(3)[30] of the law on Physical Culture and Sport do not represent the excessive obligation laid on Moldovan sportsmen. The Court arguments its position on the grounds of permitted limitations under art. 54[31] of the Constitution of the Republic of Moldova "constitutes measures to protect sportsmen health" and on the basis that "sportsmen benefit from a qualified medical assistance and are assured against eventual trauma or other consequences for their health." A similar situation Constitutional Court examined[32] with reference to practicing a law profession where the court declared the mandatory membership in Lawyers Association of Moldova unconstitutional. Also, the Republic of Moldova undertook obligation before adhering to the Council of Europe "not to interpret the limitations art. 54, 55 of the Constitution in discordance with limitations provided by the European Convention on Human Rights", which seems not to be the case.

[30] Art. 16(3) says "In order to participate on a local, national, official sport competition a sportsman of performance has to be a member of one of the national sport association, club or federation"

[31] Article 54. Restricting the Exercise of Certain Rights or Freedoms.
(1) The exercise of certain rights or freedoms may be restricted only under the law and only as required in cases like: the defense of national security, of public order, health or morals, of citizens rights and freedoms, the carrying of the investigations in criminal cases, preventing the consequences of a natural calamity or of a technological disasters.
(2) The restrictions enforced must be in proportion to the situation that caused it, and may not affect the existence of that right or liberty.

[32] See Constitutional Court decision (#8, 15.02.2000) invalidating the mandatory membership of the Union of Lawyers of Moldova to practice a lawyer profession.

Same decision found constitutional the provisions of art. 21(5)[33], 22(2)[34] of the law as well as provisions of art. 21(6)[35]. Both provisions are seen as excessive and amount to greater limitations and control on behalf of the authorities in sport liberty and activities.

Religious association

Orthodox Chrisian Church is a dominant religion in Moldova. It is believed that orthodox church receives direct and indirect support from the state. High ranking Moldovan politicians and elected public authorities often affiliate themselves with Orthodox Church. Moldovan Government has been quite sensible towards the so called "untraditional" religions. Since 1991, as the law on religions adopted and before the Constitution of Moldova adopted in July 1995, till beginning 1999 religious proselytizing has been illegal. That would include direct or indirect actions of active manifestation of religious beliefs with the scope to convert or without it. Limitations to religious manifestations would be provided according to the law applicable in Moldova at the same extent as to religious beliefs. The State Agency on Religious Affairs is composed of some representatives of "recognized" (i.e. being registered by the Government of Moldova) religions mainly orthodox and exclusively Christian orientation. There are about ten functioning and "unrecognized" religions or religious organizations in Moldova.

The State Religious Service has 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 temporary 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)[36] the Government of Moldova to refuse registration.

On 12 February 2001 Court of Appeal[37] 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

[33] Art. 21(5) says "National Sport federations can affiliate to international sort affiliations or to other international forum on the basis of consent given by the specialized central authority"
[34] Art. 22(2) says "Professional leagues are subordinated from methodological aspects to corresponding national sport association… "
[35] Art. 21(6) says "National Federations organize and coordinate development of particular sport, taken in consideration the contract signed with the central specialized authority, with respective financial stipulations and other obligations of parties "
[36] 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…."
[37] See case Spiritual Council of Muslims v. Ministry of Justice, Court of appeal, judge Budai.

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"[38] the statute of the Spiritual Council of Muslims and repair the moral prejudices resulted from the refusal. The Spiritual Council of Muslims will lodge an appeal with the Supreme Court of Justice.

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 Appeal and the Supreme Court of Justice upheld the Government decision on different grounds[39].

Tax discrimination on religious grounds

Moldovan Orthodox church (Mitropolia Basarabia) enjoys a special tax exemptions, facilitating its activities including commercial, in the conditions when other religions do not[40]. The private joint-stock company "Fondul Mitropoliei" founded by the Metropolitan Church of Chisinau and Moldova and the "Tiganesti" monastery. Parliament granted tax exemptions to this company. V.Chitan, the minister of finance in its memo granted this private joint-stock company exemption from VAT on imported goods. The funds generated due to exemptions were to be spent on construction and renovation of monasteries and religious sites, which have cultural value and are in the register of monuments protected by the state. Due to the procedure of establishing the transfer prices, other private companies:

[38] As required by the Moldovan law on Religions
[39] The Supreme Court of Justice decision motivated that the founders of the religious organization has chosen a wrong organizational form of the organization.
[40] See REPORT of the Accounting Chamber of the Republic of Moldova on the results of control over public material and financial resources management and utilization in 1997

"Fidesco", "Rodaj", "Acorex Trading", "Elita 5", "Interforum M", "Texcom", "Catalan", etc. rather than the "Fondul Mintropoliei" took advantage of the tax exemptions[41]. Only during the 10 months of this private joint-stock company imported (or rather acted as an intermediary) food products, cars, consumer electronics, petrol, diesel fuel, etc. worth MDL 20.6 million. The cost of VAT exemptions for in 10 months was MDL 6.6 million.

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 organization[42] 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"[43] and

[41] Thus, the "Rodaj" (a limited liability company) had originally entered in a contract for supply of VAZ cars with the "Velis LTD"(the Austrian company), received the first shipment of cars (20 cars of various makes) in February 1996 and paid customs duties and VAT. Since March 1996 the"Rodaj" purchased cars through the intermediary service of the "Fondul Mitropoliei". Till October 1996 the company, through its intermediary the "Fondul Mitropoliei", imported 245 VAZ cars of various makes worth MDL 6,205,900. By reflecting in the documents the fact that of the "Fondul mitropoliei" was the intermediary in the import of goods the "Rodaj" avoided paying MDL 1,196,100 worth of import taxes on the goods. Thanks to this deal the financial position of the "Rodaj" on the domestic market was more advantageous than that of other importers of cars.

In 1995 to 1996 the "Fidesco" ltd. imported food products using the intermediary services of enterprises, to which the Parliament of the RM had granted tax exemptions. In 1995 the "Fidesco" imported goods through the "Olympic Club" company. After the Chamber of accounts interfered, and the illegitimate exemption was terminated, from January 1996 the "Fidesco" imported goods through the private joint-stock company "Fondul Mitropoliei", i.e. used other ways for avoiding taxes. The president of the "Bolid" company (Frankfurt-on-Main, Germany), L.Zuaman, which supplied goods to the "Fondul Mitropoliei' and the main founder (54 % of the statutory capital) of the "Fidesco" limited liability company, L.Zusman, which purchased the goods from the "Fondul Mitropoliei" are one and the same person. Till October 1996 the "Fidesco" purchased MDL 6,898,000 worth of goods through the intermediation of the "Fondul Mitropoliei". By reflecting in the documents the fact that the "Fondul Mitropoliei" was the intermediary in the import of goods, the "Fidesco" avoided paying MDL 2.2 million worth of import taxes and VAT. Thus, the position of the said company was more advantageous than that of other similar companies.

The "Acorex trading" is the third largest customer of the "Fondul Mitropoliei". In June through September 1996 the "Fondul Mitropoliei" supplied MDL 2,397,100 worth of goods (food products, beer, cars, animal food, consumer electronics) to the "Acorex trading". Using the intermediary services to import goods from other countries, the "Acorex trading" illegitimately evaded payment of MDL 554,800 worth of import taxes (of which those on beer would have been MDL 238,500) and MDL 373,300 worth of VAT, the total of which was MDL 928,100.

[42] 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"

[43] 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,… "

that "this contravenes the essence of a non-governmental organization…These scopes cannot be effectuated by in this organizational form"[44]. 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"[45]. 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"[46]. 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, so that the case is pending examination before the Supreme Court of Justice scheduled for 07 February 2001.

Police disperse of students strike

On 17-18.04.2000 a group of around 6 000 students get together in National Assembly plaza and in front of City Hall in a strike protesting against recent decision of the City Hall council lifting travel and other social benefits. The announcement of the public went on in mass-media a day before the events took place.

On 18.04.2000 there were detained[47] around 50 students on the grounds of "active participation in an unauthorized strike", provided in art. 174/4[48] of the Code of Administrative sanctions, on the grounds of " using in public place injurious expressions" provided in art. 164/4[49] of the Code of Administrative sanctions. The strikes on 17.04 and 18.04 were dispersed by police. The police relied on the provisions of art. 5,[50] 11,[51]12(2)[52] of the law on peaceful assembly and carrying out public events to justify illegality of the meetings.

[44] 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.
[45] 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.
[46] 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.
[47] This is the estimation made according to the data collected and researched by the Moldovan Helsinki Committee.
[48] Art. 174/1(4) provides "Active participation at the an authorized meeting in the condition of art. 174/1 (2)"
Art. 174/1 (2) provides "Organization and carrying out a meeting without the consent of City Hall , as well as for violations of conditions (way, place, time) of carrying out a meeting indicated in consent"
[49] Art. 164 provides "Petty hooliganism, injurious words and expressions in public places, … other similar actions that tulburate public order and peacefulness of citizens…"
[50] Art. 5 says "Declaration of meetings. Meetings can take place only after being declared by the organizers at City Hall."
[51] 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"
[52] Art. 12(2) says "City Hall, examines the beforehand declaration submitted in its extraordinary or ordinary session, …and takes the decision of authorization"

The organizers complained of the restrictive and actually unachievable formulation and procedure of obtaining the authorization that allows the police to outlaw the strikes and meetings and detain the participants.

On 18.04.2000 M.Mihaiescu, participating in the event was bitten to unconscious, afterwards transported by police to hospital and detained in custody for 8 hours resulted on "active participation in an unauthorized strike" grounds. On 18.04.2000 C. Ziliberberg, participating in the event was hunted out by police, detained for 7 hours and sanctioned on "active participation in an unauthorized strike grounds. Similar 20 other cases are registered only by the Moldovan Helsinki Committee.

Police ban of constituting meeting of gay and lesbian organization

On 23.10.2000 a group of gay and lesbian planned to hold a constituting meeting at public library hall of Hajdau library for which concluded a contracted for this place. On the day event the director of library advised tem to change the meeting in a Art Library at Izmail street, "since the Chisinau police would be very angry"-as the director of the public library hall of Hajdau library said them and that a group of aggressive students of theology will boycott the meeting outside. The group went to Art library at Izmail street where started the meeting, when at the certain moment the vice Commissioner of Chisinau Police-Mr. A.Covali, intruded and asked A.Marcikov-the leader of organization for the certificate of registration of the Gender-Doc and other constituting documents. There produced heated discussions and as participants said threats on behalf of police, the event half-way resulted in discontinuation of the meeting.

The police justified its intrusion relying on law on assembly and holding public meetings that requires consent of public authorities to hold a public meetings[53] and in principle prevent unregistered groups to exercise peaceful assembly.

Transdnister region

No political parties are registered in the region. As to very recently a political association was not legally possible as there was not Law on political parties. However, Communist party of Moldova successfully runs electoral campaign in the region. Other parties are forbidden. In late spring 2000, the Supreme Soviet of DMR passed amendments to law on associations that equalized non-governmental organizations with political and social movements and required at least 150 persons to set up an organization. Add on local political ellections

There are several cultural organizations of minorities as "Association of Russians", "Association of Ukranians", etc and even "Association of

[53] See Student strike section discussions of legal provisions

Moldovans" who militate for maintaining of traditional roots with Slavic origin of Moldovans. On the left bank of Nistru, there were founded also other public organizations, whose members tried to oppose to separatists manifestations ("Integrity", for example). But their activity became impossible in that atmosphere of aggressiveness from DMR authorities.

Fair Trial Guarantees

The judicial reform started in 1995 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.

Effective Appeal procedure

The judicial reform introduced the institution of appeal with regard to civil and penal procedural laws. The modifications however, only partially touched the institution of appeal solely on the grounds of law (known in Moldova also as recourse). It has became a widespread practice of the Moldovan superior courts, namely Supreme Court of Justice, Court of appeal but also Tribunals, who examining cases in recourse (appeal on the grounds of law) to sent the cases for re-examination in the first instance courts[54]. In general, and contrary to the legal definition in Moldovan law as an extraordinary measure, the recourse examination often is understood with no intention for reparation of the defects of the previous examination where applicable. The recourse is basically seen, as the "cassation" once that the inferior courts "have not found a solution for the case". The decision to send for re-examination settles no limits for the re-examination and the new examination is not bound or affected in any way by the recourse decision. These practices result in many cases to complete several circles until one of the party finally exhausted to fight. For the specific examples see below throughout this subchapter. These practices contribute overall to the significant delay of the administration of justice, extra economic burdens for the judiciary and the parties, violation of the right to the effective remedy, etc.

Legal aid in administrative cases

[54] For more details see the thematic Report on the Remedial Value of the Appeal and Recourse in the Procedural Law of the Republic of Moldova (in Romanian), available from the Moldovan Helsinki Committee for Human Rights.

Legal aid in administrative cases disadvantages persons with low income. Code of Administrative sanctions provides[55] that the administratively accused person can have as a legal representative only lawyer with bar association license. In a number of Administrative Code classification cases the minimal cost of legal representation of a lawyer (about 133 lei or a little more than 10 Euro) is higher than the administrative fine provided[56]. As the respective provisions are of somewhat broad formulation and police frequently invokes them for initial detention of persons against the most disadvantaged it makes the situation open to abusive interpretation and application at disadvantage of legal representation of the detained persons. Some courts interpret these provisions restrictively forbidding any representation administratively investigated/detained person unless by licensed lawyer, even though the accused so requests and the representation are in the interest and benefit of the accused.

In Mihaiescu case[57], a student prosecuted for participating in "unauthorized meeting" and examined by Centru court of Chisinau, judge D.Suschevici refused that M.Mihaiescu a student of 18 years be represented by a jurist of a public interest organization. The hearings have taken place on 19.06.20006 as the case was being re-examined after the decision of the Chisinau tribunal. The judge admitted in the courtroom only M.Mihaiescu refusing anyone else to be present. M.Mihaescu was represented earlier, including before the Chisinau tribunal by a jurist from a public interest organization. The judge refusal motivated that "other courts mistakenly interpreted the provisions of art. 257 of the Administrative code".

Length of proceedings

A good number of decisions adopted in final instances are not executed on various grounds. To the knowledge of the Moldovan Helsinki Committee there are about 15 documented cases and around 150 known cases of this kind with general tendency of about 30% unexecuted civil cases.

In the case of Vitan E. v. ASITO State Assurance company, where the assurance contract provided for due payment of 2635.00 Moldovan lei. As ASITO refused to honor the due payments under the contract, the Riscani district Court and Chisinau Tribunal finally on April 25, 2000 obliged ASITO for payments. Until now the decision is not executed. Similar cases of Timbalista M. v ASITO, Russu T. v ASITO, Vitan E v. ASITO, Cernobiliskaia v. ASITO, Dorita v. ASITO are not executed as of writing of this report.

[55] Art. 257 of the Code "Lawyer, that participate on the examination of the case regarding the administrative contravention…. The representation is certified by the order issued by the bar Association."
[56] See for instance chapter 13 of the Code "Administrative Contravention against public order", "consume of alcohol in public places", "petty hooliganism", "inducing a minor in consuming alcohol", "tulburation of public order" etc
[57] See Raportul privind monitorizarea examinarii cazului M.Mihaiescu in judecatoria sec. Centru (19 si 21 iunie 2000) by the Moldovan Helsinki Committee

Court Hearings Procedure not followed

On 12.01.2001 Supreme Court of Justice examining in recourse a case[58] a case of refusal to register a public interest organization after withdrawing to the deliberation room disposed delaying of examination on the grounds that "there is a need to clarify the position of the Ministry of Justice in that case". Representatives of the Bureau of Legal Advice on Individual Rights were summoned at 10.00 a.m. at the supreme Court of Justice, when presented at court, they were told that the Court chamber has to change its composition and therefore the hearings are scheduled for 14.00 p.m. When came at the indicated time the representatives waited until 15.30 for the case examination to start. At 15.30 the court announced examination of the case. The representative of the Ministry of Justice was absent without any motive. The representatives of Bureau submitted a petition: to allow video registration of the case which was refused by the Court. After explications given by the representatives of Bureau, the presiding Court president announced its withdrawal for deliberation in order to give out the decision. In 15 minutes time the judges came out to announce that they decided to have another hearing since "there is a need to clarify the position of the Ministry of Justice in that case". The Code of Civil Procedure applicable in that case prescribes that after withdrawal to deliberation the Court should give the decision on the case[59]. After the announcement the representatives of the Bureau lodged a petition that they are recuperated the costs incurred from the absence of the representative of the Ministry of Justice resulted in time loss but the Court refused to examine the petition. The case is scheduled for 12.02.2001.

Reasons for decision

According to Moldovan courts practice the description of reasons and motivations for decisions are not given to parties unless the decision is not appealed by a party. The court decisions are given orally, citing only the prescription or decision without giving the motivation for it. Moldovan law provides for the period from 10 to 15 days for the appeal to be lodged. Within this period of time most frequently the reasons for decision are not given as well. In a number of public interest cases taken in court by the Moldovan Helsinki Committee and by Bureau of Legal Advice on Individual Rights the courts usually do not give reasons on all allegations brought by plaintiffs or accused. In some cases courts practice intentional omissions or reliance inadequate reasons in violations with even Moldovan law requirements.

[58] See Bureau of Legal Advice on Individual Rights v. Ministry of Justice (2);
[59] Art. 188 of the Code of Civil Procedure "Withdrawal of the court to the deliberation room. After the participants made their verbal presentations, the court withdraws to the deliberation room to make up the decision and the president of the camera announces the withdrawal."
Art. 189 of the Code of Civil Procedure "Pronouncing of the decision. After signing the decision the court returns to the courtroom, where the presiding judge announces the decision. …The presiding judge declares the closure of the hearings."

-omissions

On 18.01.2000 Court of Appeal, examining in appeal[60] a public interest case of refusal by Chisinau Tribunal access to court, was asked, apart from obliging the Chisinau tribunal to examine the access to courtroom case, to state on the fairness of the trial at Chisinau tribunal. Court of Appeal did not give any considerations to two allegations of the plaintiff "to state on violation of right to fair trial[61]" and "recuperation of incurred damages resulted from refusal". These omission of considerations of allegations as well as lack of reasons for that contradicts also the provisions of art. 309(10)[62] of Moldovan Civil Procedure Code.

On 22 May, 2000 Court of Appeal, examining in first instance the case of refusal of registration of Bureau of Legal Advice on Individual Rights[63] relied on inadequate and absolutely irrelevant reasons not even mentioned by litigated parties. As the Ministry of Justice invoked that organization cannot "monitor and participate as observers of the process of administration of justice" and internal structure did not conform Moldoval law. The Court of Appeal found these two reasons illegal could not state violation of the right to association since founders has chosen a wrong constituency form to protect rights of others as proposed in the statutory documents. This argumentation however is allowed according to art. 194[64] of Moldova law only in some cases and under compelling interest of rights affected. Court did not examine or consider these during court hearings and did not give motivation for argumentation.

On 12 February 2001 Court of Appeal[65] ruling to partially satisfy the claims of the Spiritual Council of Muslims of three claims against the Government of Moldova did not provide reasons for the refusal of the remaining two claims and giving ill-founded reasons for the first one. The ruling stated no terms for response or the essence of the ruling. Petition requested registration within time limits provided, "recognize"[66] the statute of the Spiritual Council of Muslims and repair the moral prejudices resulted from the refusal.

[60] See case Moldovan Helsinki Committee v. judge Suschevici (unmotivated refusal to access court room)
[61] The allegations grounds on violation of four provisions of Moldovan law (in-existence of protocol of hearings of 17.08.2000; in-existence of any information on three motions submitted by plaintiff in hearings; error summon of plaintiff resulted in hearings in absence of plaintiff; falsification of summon data) that cumulatively amounted to violation of "fair trial".
[62] Art. 309(10) providing the motives for lodging recourse of decision says "…the court did not state on all allegations…"
[63] See Bureau of Legal Advice on Individual Rights v. Ministry of Justice (1), Court of Appeal, judge Ion Corolevschi
[64] Art. 194 of Code of Civil Procedure says "Examination and consideration of other pretentious than those formulated by parties "In accordance with circumstances that became clear in the course of trial, the court can consider other pretentious formulated by the plaintiff, if this is necessary for the protection of rights and interests protected by law…"
[65] See case Spiritual Council of Muslims v. Ministry of Justice, Court of appeal, judge…
[66] As required by the Moldovan law on Religions

-lack of reasons

On 18.05.2000 Chisnau Tribunal examining the case in administrative appeal a case of participation in an unauthorized student strike[67], did not give the argumentation for refusal to launch a special constitutionality verification procedure[68]. The representative of the student submitted a request with detailed motivation that the Tribunal petition the Constitutional Court in order for it to examine weather certain provisions of the law on peaceful assembly are in compliance with the freedom of assembly guarantees of the Constitution. The Tribunal, after a retrieve announced the refusal of the request citing just that "one cannot raise the question of constitutionality in order of appeal" and that that "should be done only in the course of examining in the first instance". The case was sent for re-examination in the court of first instance. None of the scare argumentation appeared in the decision nor even there were the protocol of the hearings regarding the refusal to petition the Constitutional Court and even the request with motivation absented. Moreover, cited motivation appears to have no legal grounds in the Code of Civil Procedure.

On 14.05.2000 Centru district court of Chisinau[69] re-examining a case of unauthorized participation in the student strike dis-considered the petition of the student to verify the constitutionality of the some provisions of the Law on assembly, giving no reasons at all. After the judge denied representative of M.Mihaiescu to stand in his favor in trial, M.Mihaiescu submitted a petition asking the court to start the procedure of verification of constitutionality of some provisions of the law on assembly submitting a petition with detailed motivation. The judge did not examine the petition. No notice appeared in the trial protocol nor even the petition was filed in the case materials.

Interpretation

It became a common practice rooted from soviet time law when superior courts deciding in appeal on the matter of substantive or procedural legal provision interpretation send cases back for re-examination. There are many of this kind cases when superior courts reduce the nature of recourse (revision of the interpretation of the matter of law and legal provisions of the law applied) to sending the case to re-examination to the same court which is not bound by the previous decision thus delaying the justice. Sending for re-examination a case does not remedy the pitfalls found in appealed decision.

[67] See case of Mihaiescu v. Chisinau police, Chisinau Tribunal.
[68] Art. 213(4) "Suspension of the process… in case when there raised an exception of constitutionality of a law or an legal provision that is to be applied in that case", art. 215(3) "…in cases provided in 213(4) … before pronouncing the decision in examination… " of the Code of Civil Procedure, art. 4(1g) "In exercising constitutional jurisdiction, Constitutional court:…solve exceptions of nonconstitutionality of legal acts, petitioned by the Supreme Court of Justice", art. 38(1d) "Constitutional court exercises the constitutional jurisdiction being petitioned by … Supreme Court of Justice" of the law on Constitutional jurisdiction.
[69] See case Mihaiescu v. Chisinau police (2), judge D.Suschevici, Centru district court of Chisinau City.

This practice is based on ambiguities and vagueness of appeal procedure and function used to delay the administration of justice incurs supplementary economic costs for parties and the judiciary.

On July 19, 2000 Supreme Court of Justice, examining the registration case of Bureau of Legal Advice on Individual Rights[70] in recourse (examining just points of legal interpretation) in the clear case circumstances without new aspects and evidence decides sending the case for re-examination in the Court of Appeal, as a court of first instance. The decision states the wrong conclusions reached by the Court of Appeal in sustaining the refusal for registration of the organization. The decision for sending to re-examination did not remedy the pitfalls of the Court of Appeal decision and only delayed the effectuation of justice as well as did not oblige or provide a framework for examination by Court of Appeal to look into a particular aspect of the case. The Court of Appeal re-examined the case[71] totally as a new case without being bound by the decision of the Supreme Court of Justice[72]. Moreover, according to Moldovan Civil Procedural Code[73], Supreme Court of Justice, in clear circumstances should have remedied all the pitfalls on the matter of law and legal interpretation and give a new decision in favor of one of the party.

Pecuniary and Non-pecuniary loss

On 12.10.2000 Court of Appeal, examining in first instance[74] a case of refusal by Ministry of Justice to register a public interest organization[75] refused to grant plaintiff organization "compensations incurred from refusal to register" simply motivating that the right is not guaranteed in Moldovan law. The decision does not contain any motivation of the refusal and moreover contradicts art. 10(2)[76] of Moldovan law on non-governmental organizations providing for fair compensation and remedy upon violation of right to association.

[70] See Bureau of Legal Advice on Individual Rights v. Ministry of Justice (1), Supreme Court of Justice, judge Anastasia Pascari presiding;
[71] See Bureau of Legal Advice on Individual Rights v. Ministry of Justice (2), Court of Appeal, judge Tudor Lazar.
[72] Interestingly compare with the contradiction of the later decision of the Court of Appeal with art. 315 of Code of Civil Procedure "Indications of recourse instance are obligatory for the court that re-examines the case. The recourse court, sending the case for re-examination, does not state or consider circumstances demonstrated that were not cleared or were rejected by the decision, give opinion when weather an evidence inspires a truth or some evidence are more reliable than others as well as a specific provision of the substantive law should be applied and which decision should be given."
[73] Art. 313(2)/6 says "Supreme Court of Justice annuls the recourse decision and give a new decision in cases when the circumstances of the case are clear, but the matters of law and legal norms were applied wrongly"
[74] The case was sent for re-examination according to the decision of the Supreme Court of Justice.
[75] See case Bureau of Legal Advice on Individual Rights v. Ministry of Justice (2), by Court of Appeal, judge T. Lazar
[76] Notwithstanding art. 20(1) of the Constitution of Moldova and art 13 of the European Convention on Human Rights invoked in Court of Appeal by plaintiffs, Art. 10(2) of the law on non-governmental organizations says "judicial or administrative defense of the violation of right to association can result in redress of the violation committed by an authority... creating the difficulties in exercising the right to association, and compensation of damages caused pertinent to violation of the right"

Torture, inhuman and degrading treatment in the places of detention[77]

The European Committee for the Prevention of Torture has visited Moldova on 11-21 October 1998 producing a comprehensive report[78] on the practices in the places of detention.

CPT findings

Committee general recommendations

- to re-examine the legislation and the practice as regards provisional detention to assure that it complies with principles stated in the Recommendation N° R (80) 11 of the Committee of the Ministers to the Member States of the Council of Europe (paragraph 15);
- actions should be taken to make the integral transfer of the responsibility for the detained to the Ministry for Justice (paragraph 13);
- Moldovan authorities should observe principles governing placement of detained persons during initial time in police custody for a period of ten days maximum time in the event of transfer of people of a prison in a EDP (paragraph 14).

Torture and other forms of ill treatments

- to extend the investigation of the police station of Balti to whole of the establishments of police force of the country (paragraph 23);
- to give a very high priority to vocational training of the police officers of all the ranks and of all the categories, by taking account of the remarks formulated with the paragraph 24, and to utilize in this training of the experts not belonging the police force has (paragraph 25);
- to make practice of interpersonal communication an essential factor of the procedure of recruitment of the police officers and to grant, during the training of these civil servant, a considerable importance to the acquisition and development of the techniques of interpersonal communication (paragraph 25);
- that the national authorities, at the political level, transmit a clear message with the police officers that the ill treatments of the people detained of freedom are unacceptable and will be severely sanctioned (paragraph 26);
- to recall and to take appropriate measurements so that the supervisory staff of the police force exerts an effective supervision on the activities of their subordinate and points out, at regular intervals to them, the prohibition of the ill treatments of the people detained of freedom (paragraph 26);

[77] Information in this chapter is a summary of THE RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION OF THE CPT

[78] Moldovan Helsinki Committee provided its relevant reports during confidential meetings.

- that each time that a person brought, presented before a prosecutor or a judge the person exits of police custody, pretend to be a victim of ill treatments inflict by the police force, the procureur/judge instructs on allegation in writing a medico-legal examination and immediately orders necessary measurements taken so that the allegation is documented and examined. This approach should be followed, when the person concerned carries also not visible bruises. Same in the absence of allegations of ill treatments, the procureur/judge should order a medico-legal examination each time that it notes that a person apprehended who is to him presented is likely to have been victim of ill treatments (paragraph 29);
- not to ask and not authorize to it (re)transfer detainees in the buildings of the police force, for nor fundamental reason but only when it is absolutely inevitable, and to subordinate such a measurement to express authorization of the qualified procureur/judge (paragraph 30).
- a take actions after the receive of sanctions and penalties applied following substantiated complaints for ill treatments (paragraph 28);
- detailed information on the procedures of complaint and disciplinary within the police force, including the guarantees to ensure their objectivity (paragraph 28).

Guarantees against the ill treatments recommendations

- ensure that people deprived of freedom by the police force are guaranteed the right to inform without delay (either directly, or by the intermediaries of a police officer) a close relation or a third because of their detention. Any possibility exceptionally of delaying the exercise of this right must be the subject of appropriate guarantees (for example, any delay should be instruction in writing with the reasons which have justifies it; the downstream of a judge or a prosecutor should be necessary) and to be strictly limiting in time (paragraph 34);
- take measures to guarantee that any person detained by the police force, as of the beginning of its loss of liberty, has the right of accesses to a lawyer such as defined in paragraph 36. The exercise of this right should not be subordinated to any authorization (paragraph 37);
- ensure that people deprived of freedom by the police force are guaranteed the right to accesses a doctor, from the beginning of their loss of liberty (and this independent of the place or it is), including the right to be examined - if they wish it by a doctor of their choice (paragraph 38);
- carry out all the medical examinations of the people deprived of freedom by the police force out of the listening and, except contrary request of the doctor in a particular case, out of the sight of the police officers (paragraph 39);
- give to the people deprived of freedom by the police force, as of the whole beginning of their police custody (it be-A-statement as of the moment or they is deprived of their freedom of going and coming), a form exposing their rights (including those cite in paragraphs 33 has 39) concise and clear manner. This form should be available in appropriate languages (paragraph 41);
- work out a code of conduct for the interrogations (paragraph 43);

- immediately take measures to guarantee that, each time that a person is detained in an establishment of police force, for whatever reason or whatever duration that it either, this fact or instruction without delay in a register (paragraph 44);

- take measures to guarantee that instructions of General decision of the College of Prokuratura of September 27, 1998 on the checking of the legality of the detention of the people in the buildings of police force (paragraph 47) are enforced.
- Moldovan authorities are invited to make sure that article 78 of the Code of penal procedure benefice of full and entire application (paragraph 33);
- recommendations formulated with regard to the fundamental guarantees against the ill treatments apply has all the people detained by the police force, including those deprived of freedom under the terms of the legislation relating to the administrative
infringements (retention and setting with the administrative arrests, wandering, alcoholic, foreign, etc.) (paragraph 49).

Conditions of detention recommendations

- take measures in order to mitigate the various deficiencies observed in police station of Ciocana (paragraph 52);
- verify that all the cells of police custody in Moldova are in conformity with the criteria given in paragraph 50 (paragraph 52);
- take without awaiting measurements more so that all the people detained in the police stations of district and the EDP of the police force:
· lays out each one of a clean mattress and covers;
· guarantee products of personal hygiene of premiere necessity and can proceed daily has their body toilet by having access has a sufficient quantity of water;
· assure the possibility of taking a hot water shower at least once per week;
· make available the products necessary to maintain their cell clean and in good condition of hygiene (paragraph 57);
- take without more awaiting measures to the police stations of district and the EDP of the police force in order to improve lighting of the cells and the aeration (paragraph 57);
- take necessary measures to provide detained persons with reading facilities (paragraph 57);
- examine in an urgent way the possibility of making to a practice that the people detained in the police stations of district and the EDP of the police force of a true exercise in the open air (it be-A-statement in a sufficiently vast space allowing them exercise physically) at least an hour per day (paragraph 57);
- ensure the respect of the general principle of separation of the minors and the adults, poses as in points 3.2.1. and 3.2.2. Instruction of the Ministry for the Interior n°112 of June 28, 1996 (paragraph 58);
- remedy the deficiencies observed in the cells in the course of renovation of the Department of fight against corruption of Chisinau (paragraph 59).

- recommendations formulated in paragraph 57 with regard to the police stations of district and the EDP of the police force apply mutatis-mutandis to the sorting office of the vagrants of Chisinau (paragraph 60);
- remarks formulated in paragraph 109 concerning the medical examination of admission in prison apply mutatis-mutandis to the police stations of district and EDP of the police force (paragraph 61).
- re-examine as soon as possible the standard of space for people detained for life. This standard should be fixed at least to 4 m2 per person (paragraph 66).

Ill treatments

- give a high priority to the development of the vocational training, so much initial that continues, of the personnel of penitentiary of all levels. During this formation, it is advisable to insist on the acquisition and the development of the techniques of
interpersonal communication. To establish positive relations with the detainees that should be recognized like a key element of the vocation of the supervisory staff (paragraph 72);
- supervisory staff should clearly make understanding that civil servant of penitentiaries and that the ill treatments of detainees are unacceptable and will be severely sanction (paragraph 73);
- work out a strategy of fight against violence and the intimidation between detainees, has the light of the remarks formulated in paragraph 75 (paragraph 75).
- actions taken on the project of creation of a center of vocational training for the personnel of penitentiary (paragraph 72).

Conditions of detention recommendations

- take measures so that the conditions of detention of the cells of buildings I, II and III of the prison n° 3 reach within the best times at least the level of the cells of the building V, in terms of cleanliness and salubrite as well as illumination (paragraph 85);
- put immediately has the provision of the detained have a sufficient quantity of products of personal hygiene of premiere necessity as well as the necessary products has cleanliness and salubrite cells (paragraph 85);
- reduce the occupancy rate of the cells of transit and not to use them for the placement prolong detainees (paragraph 85);
- gradually reduce the occupancy rates in the whole of the cellular districts, as measurements has to fight against overpopulation bear their fruits (paragraph 85);
- take measures, when the economic circumstances allow it, for remedying other deficiencies relieved in the prison #3. Installment of the toilets and the improvement of the infrastructure of the showers for the detained men will have to constitute a priority (paragraph 85);
- re-examine the use the fitting of the surfaces of walk so that the detained can benefit of a true physical exercise. It would be necessary to explore the

possibility of equipping one or the other surface with a minimum of sporting equipment (paragraph 89);
- explore the possibilities of putting more materiel of reading diversifies has the provision of the detained (paragraph 89);
- take without delay of measurements in order to put has the provision of the minors a minimum of educational and sporting activities (paragraph 89);
- progressively to introduce improvement of the situation of the work programs. The objective has to reach should be to ensure that all the detained, including the prevented, are able to pass a reasonable part of the day except cell (it be-A-statement eight hours or more), occupy has activities justifying and of nature variee
(has associative character, work comprising of preference a value on the professional level, studies, sport). The minors would benefit a complete program of educational activities, free time like other justifying activities likely to stimulate their potentials insertion / of social reinsertion. Physical education should constitute a significant part of this program (paragraph 90);
- take without delay of measurements for remedying the defects of order materiel in the district of the detained condemned for life, expose to paragraph 91. To ensure accesses adequate A the natural light should be the premiere priority (paragraph 95);
- take urgent measures to develop the modes of detention of condemn has life, by taking account of the remarks formulated with paragraph 94. If necessary, it will be advisable to modify the relevant instructions (paragraph 95);
- re-examine the rules applicable to the visits of the detained condemn has life in order to appreciably increase their possibilities of contacts with the world exterior (paragraph 95).
- assure possibility offered to the detained condemned to have a work adapts constitutes a fundamental element of their process of readjustment. Moreover, in the interest well-to be psychological for them, the prevented should also have, as far as possible, the possibility of working (paragraph 90).

Analysis of Government response to CPT Report[79]

Following the CPT report Moldovan Government on December 14, 2000 produced a response published on-line on CPT web-site. Here are the summary of comments and analysis provided by the Moldovan Helsinki Committee to the Response of the Government.

General observations on the Government response as well as on the actions undertaken by the government of Moldova since the reception of the Report shows a clear lack of the understanding of many concerns and in-compliances highlighted in the CPT Report. The response of the Government does not discuss in detail the deficiencies and pitfalls of the Moldovan legal provisions

[79] See for details Comments on the response of the Government of Moldova to the report of the European Committee on Prevention of Torture, December 2000, (En), by Moldovan Helsinki Committee, (editor-Serghei Ostaf);

observed or the ill-practices resulted but rather makes excuses for insufficiency or lack of financial, human and other resources. Overall, it creates the impression of the lack of the wish and will to initiate the specific steps to address these serous concerns.

Particular observations are followed:

- The excuse of the Moldovan Government of the difficult economic conditions could not justify entirely the neglect of certain civil rights not necessarily affected by the economic conditions. Overwhelmingly, CPT recommendations reefer to the negative obligations of the authorities or minimal positive obligations absolutely necessary for compliance with universally recognized human rights principles;
- The statement[80] that the overall detention time of 12 months includes only period prior to examining of a case by courts should not mean the trial exceeds a reasonable time limit. Moldovan Helsinki Committee attested numbers of cases of people detained during court examinations for periods of 3 (three) to 5 (five) years. In some cases these periods of time were comparable with the wanted condemnation time;
- The statement[81] that "all Moldovan authorities are involved in drafting of new Penal, Penal procedure, etc laws" preventing the further accomplishment of the transfer of all places of detention under jurisdiction of the Ministry of Justice does not correspond to reality. Since drafting of the mentioned codes are primarily done by groups of experts. Moreover, drafting new Penal Code, Penal Procedure codes etc and transmission of the penitentiary/Detention system under the jurisdiction of the Ministry of Justice are not casually related or dependable;
- The statement[82] that insufficiency of funds justify the over time detention granted by the judge or prosecutor against of provisions of Moldovan procedural law means erosion of the very notion of the rule of law principle. These practices should be eliminated immediately as the person can be deprived of liberty only in the cases provided by the law;
- The statement[83] that the adoption of Penal Procedure Code is expected in later 2000 is not met as of writing of this report;
- The statement[84] that administrative detention of persons, according to art. 249 of Penal Code, makes impossible the detention of more than 3 hours, in practice contradict to reality since the same article provides that calculation starts from the moment of starting protocol of detention and not from the moment of factual detention. There are also other administrative procedures, even according to Moldovan Law (alcohol addicts, psychiatric ill, violation of propiska, etc) regulated by provisions of

[80] Section 1 of Moldovan Government response.
[81] Section 2 of Moldovan Government response.
[82] Section 3 of Moldovan Government response.
[83] Section 4 of Moldovan Government response.
[84] Section 5 of Moldovan Government response.

Moldovan law elsewhere, that provide for administrative detention for a period longer that even 24 hours reaching up to 30 days[85].

- The statement[86] saying that the lack of funds preclude translation of all necessary human rights materials in Romanian makes the education difficult could not be considered serious since the bulk of materials are available from the Council of Europe, Penal Reform International, Association for Prevention of Torture and other organizations should address come in the one of the languages of Moldova. It is rather that a well thought strategy, program as well as intention and understanding of it that miss.
- The statement[87] saying that it is impossible to calculate how many sanctions were applied to law enforcement personnel for ill-treatment on the reason that there are too many organs involved, is considered as proof of eventually almost no cases of this kind exist. The only competent authority to apply sanctions for ill-treatment is the judiciary and the Ministry of Justice has all necessary information.
- The statement[88] on bringing different substantive provisions of Moldovan law outlawing the law enforcement officials misconduct and ill-treatment and sanctions provided for it are considered important. However, the lack of the corresponding procedural quarantines with regard of prevention of the application of ill-treatments, discussed overwhelmingly in the CPT Report, and especially the lack of the effective procedural realization of the access to justice, remedy and fair hearings in connection with complaints makes substantive provisions useless. The statement in section 11 of the government response serves a good prove for the expressed opinion.
- The statement[89] saying that there is no need for a special authorization (prosecutor or judge) for a transfer from on place of detention to another one, especially to policy custody since the investigating officer handles this, represent an eloquent fact of the conflict of interests of two functions of the same officer. It is incontestably known that a good part of the ill treatments take place during this kind of transfers.
- The statement[90] saying that a written formulae of the rights of the detained will be put in practice with the adoption of the new Code of Penal Procedure seems not to be convincing, if understood to be important and effective instrument by the Moldovan authorities. Any measure for better guarantee of the rights should be taken as soon as possible to comply with the obligations.
- The statement[91] saying that a new law is being drafted and pending the adoption regulating the administrative detention of vagabonds, etc, as of writing of this Report, is not known in public.

[85] See Moldovan Helsinki Committee Report on the practice of respect for human rights in 1999 and report on Respect of procedural rights.
[86] Section 7 of Moldovan Government response.
[87] Section 8 of Moldovan Government response.
[88] Section 9 of Moldovan Government response.
[89] Section 11 of Moldovan Government response.
[90] Section 13 of Moldovan Government response.
[91] Section 17 of Moldovan Government response.

- The statement[92] regarding reducing the overall population of places should be supplementary considered taken in consideration the concept of penal punishment reflected in the present Penal Code and the draft Penal Code. The Moldovan legislator should provide smaller or alternative sanctions for economic offences. Presently and the same is put in the bases of the draft Penal Code.
- The statement[93] saying that application of a sanction while in detention could be contested with the superior means effectively no remedy, since the superior of a officer who applied the sanction is not an independent authority in any sense and therefore no access to justice is observed.
- Information in statement[94] that there is an effective procedure to complaint against the abusive sanctions could not be sustained since the same law provides that the postal cost of complaints assured by the detainee, the sending of complaint is done with considerable delay of three days or 24 hours in case of prosecutor.
- It is not clear if with regard to three persons mentioned[95] and who "suffered from deficiencies of insufficient collaboration between medical and law enforcement" authorities resulted in their detention in psychiatric institution were taken necessary measures free the persons. It is not discussed the serious legal concerns related to placement of these people in the psychiatric detention, considering lack of some important procedural guarantees as: right to lawyer, access to medical files, right to alternative independent expertise, etc.

Ethnic and Linguistic minorities[96]

Comments regarding Report on compliance with the UN Convention on Elimination of all Forms of Racial Discriminations by Moldovan Government[97]

To be added (reports states that there is no in principle a racial discrimination since there nor races in Moldova)

Non-Moldovan/Romanian linguistic minority

The juridical concept and definition of "national minority" has though recently appeared in the usage in Moldova. In 1993 opinion of 52 scholars of Moldovan Academy of Science were expressed that there are no national minorities, but ethnic groups defined as "component part of an ethnicity that left its constituting historical basis and emigrate to territory of historic and ethnic of a different peoples". Also, there were recognized Russians,

[92] Section 18 of Moldovan Government response.
[93] Section 22 of Moldovan Government response.
[94] Section 23 of Moldovan Government response.
[95] Section 24 of Moldovan Government response.
[96] See For Comprehensive Information Shadow Report On The Compliance Of The Republic Of Moldova With The Obligations Under The European Framework Convention On National Minorities, July 2000 by Serghei Ostaf
[97] See draft Shadow report on the Implementation of Convention on Elimination of all forms of Racial Discrimination, by Moldovan Helsinki Committee in preparation.

Ukrainians, Gagauz, Bulgarians, and Jews as ethnic groups. The mentioned opinion played crucial role in formulation of respective provisions of art. 16 of the Constitution of the Republic of Moldova adopted in July 1994 as "…citizens of another ethnic origin…". A similar opinion expressed by an extreme right paper in 1994 would support that "on the territory of Moldova, there are no national minorities, disregarding the fact that apart of Romanian population there are representatives of Russian, Ukrainian and Bulgarian, etc minorities. They are minority ethnic groups with no compactly populated territory."

Another aspect of the interpretation of "national minority" has been approached by the Official Report of the Republic of Moldova on the implementation of the Framework Convention on National Minorities. It states that '…Moldova proposes …the following criteria, distinguishing several categories of minorities: 1. Compact national minority, 2. Disperse-compact national minority, 3. Disperse national minority. The classification criteria are a). density per square meter, b). area of living (ethnic-geographic factor), 3. Demographic dynamics (historic-geographic factor). Taking that approximately 1/3 of the population constitute national minority of Moldova, consider that criteria has to correspond this one thirds barier. Russian, Ukranian, Bulgarian, etc minorities take part in of 14 cities, 51 towns and 658 villages at least 1/3 of the respective population, therefore it can be considered compact ethnic minority in the respective localities. In other cases, when the ethnic minority forms up less than 1/3 of population it is disperse minority. Russians, Ukranians, Gagauz, Bulgarians, according to the classification also take part in disperse-compact national minority. Polish (4739), Germans (7335), Armenians (2873), Jewish (40 000), Belarussians (19 608), Cazahs (2000), Asers (2 642), etc according the classification are disperse ethnic minorities' (see the report). The proposed classification has so far only doctrinal character, having no implementation in juridical regulations or government practice. The potential effects of the advanced doctrine presents though a subject for at least several relevant suggestions and ideas. It is not clear what is the intention of giving the classification of different types of minorities. There are some provisions in the Convention and in generally recognizable rights that do not admit discriminatory attitude based on the developed approach on behalf of the state, as it would be for instance, freedom of expression in private sphere or institutionalizing private education, etc. One however cannot recognize a rather large margin of appreciation when speaking of obligation of authorities to provide public education for and in minority language or communication with authorities in a minority language. Also, if the criteria are to be used in the last mentioned examples, a rather rigid standard imposed of one third of the population of a certain locality may produce clearly unjustifiable results. Therefore, the effects of proposed criteria are to be monitored and researched as it going to progress into the legislative provisions.

Hate speech

Some private and politically motivated mass media identifiably labels and practice hate speech towards Russian speakers. Also, orthodox media, Orthopress and Alfa si Omega, label and cultivate expressly xenophobia towards "non-traditional" religious minorities. As for instance, extremely right wing parties papers: "Flux" and "Tara" towards Russian speakers and Slavic ethnic minority as well as towards religious non-orthodox minorities. Even some quite professional politically non-affiliated papers, as "Jurnalul de Chisinau" sometime publishes intolerant conclusions regarding Russians. On the other hand there are papers, as for instance "Delovaia gazeta", published in Moldova that publish intolerant information towards Moldovans. Extremely left wing communists papers, "Communist", publish anti-religion propaganda.

Roma minority

Roma are not officially ever recognized and seen as a national minority. Roma constitute compact population in North of Moldova in several towns and in Central-West part of Moldova also in several towns. The total population is roughly estimated to 100 000-200 000 persons, however they seems to be more. Although, they are seen quite distinct from the other population through peculiarities of culture, distinguished language and mostly traditions, they have not been recognized a status of an ethnic groups, ethnic community, national minority, etc in all scholar or another discussions.

It is perceived that positive measures with regard to Roma minority are almost nonexistent. It has been given little, if any support for measures to assist Roma language education of primarily level or within the existent educational system. In some central areas of Hincesti sector, Lapusna county of Moldova, Roma compactly populated villages (Scinoasa, etc) are extremely poorer with no water canalization facilities, comparing with the next Moldovan villages. Comparing with other small minorities (Bulgarians, Germans, Polish) Roma does not have Roma cultural centers, libraries, books published in Roma language. Their language is not studied or researched on University level. There are no even a single audiovisual program on public television. Moldovan Government lacks a program on development of Roma cultural community. In rural areas majority of Roma study in Moldovan schools, Roma language exist only verbally.

Roma community is the most disadvantaged minority, whose access to media, including public is nonexistent. There are no programs in Romani language or programs in other languages about Roma culture, etc. Roma community does not have a printed media or other way to cultivate their identity, the public authorities give no concern with this regard.

Non-Russian linguistic population in Transdnistria region

The actual situation of non-Russian speakers in Transnistrian region desires many improvements. In generally one cannot speak of exercise of right to use

Moldovan/Romanian (hereinafter the use of Moldovan or Romanian substitution, unless expressly stated otherwise) language orally in public during demonstrations or in written in Latin script on displays, etc. Transnistrian authorities ban Moldovan schools in Latn script, impose discriminatory economic conditions for Moldovan private schools in Latin script. There are also examples of forced closure of these schools. Moldovan language is not used in public and administrative affairs and none of legal document is translated in Moldovan, with exception of Constitution of so-called DMR. Although Moldovan and Ukranian receive also the status of official languages their active or passive use is equalized to zero.

In reality the language of state administration in DMR is Russian exclusively. The provisions of the law states[98] that citizens may use other than Russian language in the official contacts but the same time administrative officials are not required to know these languages and also in all cases the administration or the Government decides upon which language should be taken the working language. The created situation results in the policy of subtractive bylinguism where the native language is being forced to be substituted with the language decided by the administration (in practice Russian). That has subtractive effect in majority of localities especially in rural areas, with probably some exceptions in Tiraspol city (Moldovans are only about or somewhat less than 20%), Tighina city (Moldovans are 40%) and Ribnita city (Moldovans are less than 20%). For some cites as Dubasari, Grigoriopol, Slobozia Modovans form up the majority and they still compelled to write in Russian for otherwise the authorities see it as a sensitive issue of state security.

In Transdnistria region, in reality local leaders, as for instance, Gh.Maracuta-president of local legislative assembly-would publicly use "good Moldovan" term in the sense of Moldovan being loyal towards the existing regime and share the opinion that Moldovan language is a distinct one from Romanian and is on Cyrillic alphabet, supporting the ban for Moldovan schools in Latin script.

In the area controlled by the unconstitutional separatist regime there had been many cases when persons compelled over1992-1999 to leave for the right bank of Dniester had their apartments taken away by decisions of the local courts. There are a number of such cases in Dubasari town (see attached copies of relevant decisions. Mr. A. T. from Slobozia had been persecuted only because he was involved in activities of the editorial staff of "Noutatile Sloboziene" newspaper. After being forced to leave for the right bank, he lost his apartment. Mrs. N. P. from Larga village, Dubasari district found herself in a similar situation. She had expressed her political opinions during 1989-1992 by participating in protest meetings, elections, etc. After the armed conflict had stopped, she tried to return to her village, but she

[98] Art. 21 of the local Law on functioning of languages states that 'The language of documentation and administrative work. Documentation and administrative work language in public authorities and associations, entities and organizations is done in one of the official languages (Moldovan, Russian or Ukrainian). The concrete language of administration and documentation is determined by a decision of the respective authority or entity, council of workers of the entity subject to consultation with the Government of DMR and local executives of people representatives.'

found her house already occupied. There were many cases when apartments belonging to persons who had been forced to displace were occupied by Cossacks who arrived to Trans-Dniestria in 1992 as mercenaries.

One cannot speak of any positive measures undertaken by Transnistrian authirities with regard to Moldovans, Ukrainians, and Bulgarians as to promote development of their education, culture in respective languages.

Contrary to the principle enunciated in the local law[99] in practice all judiciary or other juridical procedures are held exclusively in Russian.

Non-Russian private schools in Transdnistrian region

Authorities of Transnistria adopted and promote the policy of indoctrination of ethnic Moldovans, sustaining that Moldovans left bank of Nistru are ethically, linguistically and culturally a separate nation from Moldovans of right bank, which they blame to be romanised Moldovans. Authorities undertake discriminatory measures to advantage "right way thinking" Moldovans, by gross disproportionate economiuc support of Moldovan schools in Cyrillic script with teaching programs dated back 70-80's filled with communist-socialist doctrine. The number of all (cyrilic-public and Latin-private) Moldovan schools is disadvantagely disproportionate comparing with number of Russian schools. While the authorities forbid public and in practice private Moldovan schools in Latin script, they established exemplary with excellent, computerized classes, free food and rich extra curricular activities Moldovan school in Tiraspol.

With the only private Moldovan school in Latin script functioning in Tiraspol for South rural region of Transnistria (Slobozia district -population over 100 000 people) where more than 1 000 children study in three shifts and children needed to make sometimes 20 km, authorities support in Tiraspol a Moldovan Cyrillic school for only 100 children.

As according to the law on functioning of languages of DMR[100] the use of Latin script is forbidden in relation with Moldovan language. 1.The Tiraspol regime deprives the On the left bank of Nistru river there are three "state languages" – Russian, Ukrainian, Moldovan (in the Russian alphabet). At the

[99] Art. 12 states 'Language of law enforcement and in administrative aspects. Language of law enforcement in DMR is done in one of the official languages (Moldovan, Russian, Ukrainian) or in a language of majority of the people in the locality. Persons of the process who do not know the language of the process are given the right to get acquainted with all the materials, take part in law enforcement process through the translator and right to plead in his/her mother tongue. All related documents are given, upon the request, in the respective mother tongue or another language they know. The violation of the right is the basis for overturning the decision.'

[100] Decision of the Supreme Soviet of DMR states: 'Having examined and discussed the motion of V.N. Iakovlev, in respect of the fact that in some Moldovan schools the education is conducted in Romanian (using Latin graphic) on the basis of educational programs of the Republic of Moldova and Romania, it is decided: 1. Oblige the Government, law enforcement authorities and controlling organs take measures to prosecute the violations of the laws of DMR 'On Education' and 'On functioning of official languages in DMR' and hold the guilty accountable. 2.Oblige the deputies of the Supreme Soviet of DMR and deputies of local soviets to strengthen the propaganda on enforcing the laws of DMR 'On Education, 'On functioning of languages in DMR'.'

same time, in 1994 the educational process in the Latin alphabet has been forbidden. This means that pupils of Moldovan schools are obliged, respectively, to study in the Russian alphabet, using materials published during the Soviet Union' s times. According to the data of the cultural society "Trans-Dniestria" (public organization dealing with the protection of rights of the Republic of Moldova' s citizens on the left bank of Dniester). In localities on the left bank of the Dniester and Bender town there are 94 Moldovan schools (14 of them are mixed – Moldovan-Russian) with some 55 thousand children. In six villages under the Republic of Moldova' s jurisdiction schools are working in a normal way, facing, however, financial difficulties. As for the rest, only 7 schools (4,755 pupils) teach on the basis of the Latin alphabet and in compliance with the educational curricula of the Republic of Moldova. This right was obtained by teachers and pupils' parents as a result of protracted negotiations sided by the OSCE Mission. The banning of the Latin alphabet and books published in the Republic of Moldova generated a sudden degradation of the level of knowledge among graduates of the Moldovan schools. Being aware of this fact, teachers and parents started to fight for the right of their children to study on the basis of the Latin alphabet and in compliance with the educational curricula of the Republic of Moldova. The activity of all educational establishments using the Latin alphabet was developing in absolutely abnormal conditions.

At the request of parents, the Ministry of Education of the Republic of Moldova had issued the order no. 309 of 6 September 1996 "On financing the Moldovan schools of Grigoriopol no. 1, Butor, Malaesti, Delacau, Crasnogorca of the Grigoriopol district, Slobozia no. 1 and Dubasari no. 3". This meant that the Republic of Moldova committed itself to finance these educational establishments. Nevertheless, in reality, the above-mentioned schools continue to work in extreme conditions. The practice of intimidating teachers persists. Schools are working in inappropriate buildings. In the school no. 20 of Tiraspol 889 pupils are studying in 9 classrooms in 3 shifts (while 33 more classrooms are necessary). In the secondary Moldovan school no. 19 of Bender there are studying 2,004 pupils in 3 buildings. 27 grades comprising 752 pupils go to their class hours in the building of the forestry management, which is far from complying with the elementary sanitary-hygienic norms. At present around 250 children from Bender are compelled to go to study in Hagimus village.

A special case took place in Bender town, where on the basis of the instruction issued by the "ministry of education" of Tiraspol on 17 March 1999, Mrs. L. P., teacher of the Moldovan language, was dismissed from her position at the Pedagogical College "for the grave violation of the linguistic legislation of the DMSSR" (the United Nations High Commissioner for Refugees in Chisinau has referred this case to the OSCE). Her dismissal had been preceded by many threats on the phone; moreover, on November 1998 Mrs. L. P. was aggressively attacked at the entrance of her dwelling, she was robbed and beaten. It is obvious that one entry in her Labor Card severely

limits her chances to be employed in the areas controlled by the unconstitutional separatist regime.

On 5 April 1999, Igor Smirnov, leader of the Tiraspol regime, signed the "presidential decree" no. 145 "On the re-registration of educational establishments on the territory of the Moldovan Trans-Dniestrian Republic". This "decree" is interpreted as a new attack against schools that teach in the Latin alphabet.

Simultaneously, there are many cases when citizens whose children are studying in the Romanian language became targets of attacks. At present (since April 1999) at the Mayoralty of Chisinau is examining a request of Mrs. T. N., inhabitant of Bender town. Given the fact that her elder daughter is studying in Romania and the other child is attending the Moldovan school of the town, Mrs. T. N. has been dismissed from her position and her family became the target of permanent pressures. Now Mrs. N. is seeking protection in order to move from Bender town.

These schools are officially working according to the DMR "legislation" (in the Russian alphabet and on the basis of textbooks published in the USSR). In reality, pupils are studying on the basis of the Latin alphabet using textbooks published in the Republic of Moldova. Children have to carry with them two sets of textbooks. If any control occurs, only textbooks in the Russian alphabet are in the desks. Without any chance to resist to pressures of the unconstitutional separatist regime, parents and teachers have resorted to use this way of fighting for the right of their children to study in their mother tongue. The children are thus forced to develop a schizophrenic behavior, which eventually creates resentment to Russian speakers.

Forced labor

Social Rehabilitation Institution of the Ministry of Health and Ministry of Justice[101]

Ministry of Justice

Institutional "forced labor" has become a common practice in the institutions of social rehabilitation. The elimination of the practice of "forced labor" institutionally used on the basis of the Moldovan legislation in the condition of no consent of the person and under the threat of punishment for refusal, constitutes "forced labor" according to art.art. 4, 5 of European Convention on Human Rights. Moldovan Helsinki Committee urges Parliamentary Assembly of the Council of Europe to add this item to the obligations subject to monitoring of the Observance commission on the republic of Moldova. The

[101] See also detailed reports by the Moldovan Helsinki Committee: Report On The Respect Of Patients Rights In Alcohol Addicts Institutions Of The Ministry Of Justice Of The Republic Of Moldova, And Report On The Respect Of Patients Rights In Alcohol Addicts Institutions Of The Ministry Of Health Of The Republic Of Moldova.

conceptual review of the notion of social rehabilitation through compulsory labor is an extremely urgent matter.

According to the letter of Department of penitentiary of Ministry of Justice and Ministry of Health[102] there are more than 1 000 persons per year "rehabilitated" in the institutions of social rehabilitation.

The Law of social rehabilitation in art. 10[103] and point 10[104] of the Regulation briefly stipulates that work is not just qualified as a right of the patient or an education procedure, but an obligation. Thus, "the detained person" in the social rehabilitation institution is obliged, by the way, according to the above-mentioned Regulation, to work consciously. The forced character of the labor is confirmed also by point 11 of the Regulation which stipulates that the detained persons in the social rehabilitation institution are framed compulsory as socially-useful labor.

On the other side, "avoiding work" is explained by point 18[105] of the Regulation as a violation, because of the fact that "can be applied", and according to the words of the deputy-chief of the institution, disciplinary sanctions enumerated in the Regulation are always applied, the hardest one being the transfer to the disciplinary isolator for a term of up to 15 days. We consider very relevant the fact that one of the sanctions is the obligation to perform supplementary duties, mainly "the assignment outside the schedule to room or institution's territory cleaning, as well as work in the canteen." Thus, the patient that refuses to do a certain imposed duty, risks to be sanctioned to compulsory supplementary labor (without taking in consideration, when the disciplinary sanction is applied, other circumstances that led to "the avoidance of work" of the patient).

Thus, it is important to underline the fact that the patients of the social rehabilitation institutions perform de facto a forced labor through constraints and, in the same time, this fact has legal support in present normative acts in the Republic of Moldova.

Regarding the consent. Once the term of one month, in which the person is held in the institution under a quarantine regime, passes, an individual labor contract is "signed" and the patient is send to his/her work place. When the

[102] See response of the Ministry of Health dated … on the letter addressed by the Moldovan Helsinki Committee.
[103] Art. 10(1) of the law "The patients of the social rehabilitation institution of the penitentiary system are involved compulsory to socially useful labor or to occupational therapy …"
[104] See art. 10 of the regulation of the social rehabilitation institution of the penitentiary system of the Ministry of Justice of RM "The patients from the social rehabilitation institution are obliged to: … work consciously, to respect discipline, as well as the labor safety rules and the technique of security, …" the decision of the government of the Republic of Moldova nr. 329 from 03.07.91.
[105] Art. 18 "in respect to the persons that do not obey the internal regime or avoid work, the following disciplinary sanctions can be applied: … the assignment outside the schedule to clean the rooms and territory of the institution, as well as at the canteen: the deprivation from the next meeting with relatives or other persons: the transfer in the section of internal supervision, the transfer in the disciplinary isolator for a term of up to 15 days."

labor contract is signed, it would be normal that the persons have the right to negotiate certain clauses of the contract, or at least, be aware of the contractual provisions. In reality this does not happen.

The labor reward is given according to the rule that the patients live from what they learn. They pay their medical treatment and therapy and what is left is taxed and transferred to their personal account. Art.14[106] enumerates all the possible expenses linked to the presence of the person in the social rehabilitation institution. More than that the instruction on the execution of the normative acts that regulate the activity of the social rehabilitation institutions[107] prescribes briefly in art. 18 that the social rehabilitation institutions are maintained and activate on the basis of the resources, guaranteed from the budget and the profits that core from the labor activity of the rehabilitating persons.

The patients, though, know only that "the salary is transferred to their account" and when they will be liberated from the institution they will be given 50% the total sum, in the case when the detention order was obeyed, and 30%, when violations of the order were registered. From the discussions with the patients we understood that they do not know their salary, and the accountant told us that the monthly salary of the patient is maximum 10 lei, in the conditions when the minimal monthly salary in the Republic of Moldova is 18 lei and the consumption basket is 700 lei. The above mentioned instruction stipulates in art. 32 that the remuneration is performed resulting from the proportion of 45% (construction works) and 50% (industrial works) from the real salary of the person. Appendix #11[108], regarding the daily schedule of the persons that are in the social rehabilitation institutions, stipulates that the total number of labor hours is 7 hours, 6 working days a week (3 hours and 30 minutes before lunch and 3 hours and 30 minutes after lunch). Thus, we can compute that the total number of working hours per week is 42.

The present legislation referring to the social rehabilitation of the patients of chronic alcoholism, drug-addiction and toxicomany does not regulate explicitly the work relations between this patients and the economic agents with which the institution signs contracts to offer services, but only refers to the labor legislation, labor safety rules and the security techniques, the norms and tariffs established fir the given branches of the national economy. Resulting from this, we conclude that, where the Regulation does not establish norms

[106] Art.14 of the regulation stipulates "The labor of the patients detained in the mentioned institution is reworded based on its volume and quality, according to the norms and tariffs, established for the given branches of the national economy. The salaries are calculated, by paging first for the expenses linked with the maintenance of the social rehabilitation institution. With the earned salary, the patients of the given institution must cover the costs of drugs, alimentation, clothes and footwear, with the exception of the labor footwear and the special alimentation. After recovering this expenses from the salary of the patients the sums, … including the maintenance expenses of the social rehabilitation institution, are retained"

[107] Instruction nr. 216, from July, 5, 1991

[108] The appendix is an integrated part of the Instruction

with a special character (of labor rights), these patients are treated according to the provisions of the common labor legislation. From the described situation we detect serious violations of labor legislation.

Another problem consists in the fact of whether this work is "imposed normally". Here it is relevant to mention that besides the compulsory labor described thoroughly and analyzed, the patients are involved, according to art. 15 of the Appendix 2[109] of the Regulation, also in work for territory arrangements and improvement of the social conditions, which are not rewarded and which does not exceed two hours a day or 4 hours a week. In our vision the notion of "normally imposed labor", contained in art. 4 (3a) of ECHR, refers exactly to this type of work. Further on will concentrate on "compulsory labor".

In the case when the work is not imposed normally, we will meet again with the type of forced or compulsory labor. Convention #105 of ILO stipulates "the mobilization and utilization of labor for purposes of economic development; work discipline" which is quite similar to the situation described above. The European Court developed the following criteria in this regard[110]:

The service/work does exceed normal obligations;
None of the criteria met by the worked the patients subjected. Is the offer a reward (in principle, it is admitted that the reward not be satisfactory, but it depends on the concrete case); Is it a part of the previously consented activity and stipulated prior to hiring; After the performance of the conditions, including the given work/service, will have an assurance of a constant benefit; A limited number of hours.

Even though this criteria where adopted for a situation different than the one discussed in the report, we think that probably none of this conditions is fulfilled in the case under discussion for qualifying the imposed work - normally. In our vision the compulsory and sanctioning character of the labor implies that in the majority of cases excessive inevitable hardships, which would not be agreed upon by the person, which would be asked if he/she wishes to sigh such a contract and follow such a treatment through work.

In our vision the efficiency of such type of treatments is minimal. The result of the "treatment" has as an effect the exploitation and physical exhaustion of the person, provoking hate and suspicion regarding the unjust actions of the state institutions (starting with the police, the doctor, the court, the social rehabilitation institution, etc.). The practice confirms that there is no person, which would be hospitalized just once. Is not this the most visible criteria that the treatment is not efficient at all?

[109] Appendix 2 of the Regulation on social rehabilitation institutions of the Ministry of Justice, from July, 3, 1991, #329.
[110] See case Van der Mussele vs. The Kingdom of Lowlands, November 23, 1983, A70, p.16

Ministry of Health

The use of labor, 'labor therapy', in the narcological institutions subdued to the Ministry of Health of Moldova started simultaneously with the use of forced treatment[111], which was applied in the narcological sections in the hospital from Curchi, Orhei, and in the Clinical hospital in Costiujeni. This form of treatment was set in the competence of the Ministry of Internal Affairs[112] and of the Ministry of Justice[113] of Moldova. Some elements of the labor reports remained however in the institutions of the Ministry of Health too.

The Republican Narcological Health Unit makes every year contracts with the Cardboard Factory from Chisinau. Beginning with 1976 on the Glas Factory's territory was set up the section #3 of the Republican Narcological Health Unit. On the basis of the contract between the Republican Narcological Health Unit and the respective factory, the patients of this section become automatically part of the contract.

The labor legislation, as the collective labor too, stipulates the monthly salary of the employees. In fact, the patient's salaries are paid to them by the book-keeping of the Republican Narcological Health Unit when they are liberated from stationary, that's in discordance with the national legislation and the international standards.
During the conversations with the patients we found out that they didn't know the content of the contract (the salary, working time, time for rest).
According to the contract's stipulations, the patients have the salary of 1.6 lei/hour. 40% of these (0.64 lei), which are not subjected to income tax, are transferred to the account of the Republican Narcological Health Unit. As the headmaster of the Republican Narcological Health Unit said, this sum is used for necessary expenses on the patient's treatment.

On the other side, the chief of section #3 of the Republican Narcological Health Unit, told us that there are insufficient medicines in the section and that the patients often have to buy the necessary medicines for the treatment.

The contract between the Glass Factory and the Republican Narcological Health Unit doesn't stipulate on the facilities, safety precautions, the insurance and the conditions of canceling the contract.

From the remained 60% there are paid off the taxes stipulated by law, and it's also paid the salary. The ordinary employees of the factory, performing the same quantity of work, are paid quadruple. As the patients said, they are

[111] The decree of 09.02.1961.
[112] The decree of the Supreme Council of Republic #8484, 07.06.1966 "Regarding the forced treatment".
[113] The decision of the Government of the Republic of Moldova regarding the subordinating of the Management of Penitentiary Institutions to the Ministry of Justice, # 865, 28.12.1995.

ill-treated and abused by the factory staff, being imposed to the most 'dirty' work.

To answer this question, according to the above-mentioned situations, we must specify the following aspects. If these are satisfied, they will prove the existence of forced labor applied on the alcoholism patients in the framework of the Ministry of Health.

Situation 1: Can the patient refuse his sending to the sections where labor is applied? In case of refuse, will there be applied any administrative sanctions? These will be examined in the context of labor's efficacy with the view of alcoholism's treatment.

Situation 2: If the patient doesn't refuse to be sent in a section where labor is practiced, but he doesn't agree to be engaged in that labor, can he refuse to go on staying in that institution? Will any disciplinary sanctions be applied?

Situation 3: If the patient consents to be sent in that section and, with the view of treatment's efficacy, he is engaged in labor, will he be paid for that work without discrimination? Does this person know the contract's stipulations and the conditions of its canceling? Is the patient remunerated respectively for his work? Is the necessity of his detention in this institution periodically revised?

In our vision, these three situations reflect three different grades of 'forced labor' phenomenon, with the view of the discussed situations. The first situation is absolutely clear, since the 'forced labor' phenomenon is very obvious. In our vision, this situation takes place in section #3 of the Republican Narcological Health Unit and, especially in the narcological section of the hospital in Curchi.
The second situation is doubtlessly applied to the best majority of patients from the section #3 of the Republican Narcological Health Unit and from the narcological section in Curchi.

The third situation is a lighter form of forced labor, nevrtheles it must be vehemently condemned, especially for the fact that the patients are not remunerated for their work in concordance with the labor legislation. The Republican Narcological Health Unit holds back 40% of the salary to buy medicines. The patients buy the medicines from their own resources (because there are not enough medicines in the section). In this way the patients of the section #3 of the Republican Narcological Health Unit pay for their treatment twice. The patient's discrimination by their inadequate salary (lower than that of the common employees who do the same work), leads to their use and exploit as force of labor. We affirm surely that this situation is a form of institutionalized forced labor applied on the patients.

Armed forces

To be added from report on compliance with CoEurope Directive

Elections and referenda

Local elections in Taraclia

To be added from Report on elections in Taraclia

Local elections in Transdnistria

To be added from Report on analysis of elections in transdnistria

Liberty and security of person

Administrative detention of alcohol addicts

The compulsory treatment as a form of administrative detention. In the legislation of the Republic of Moldova there are stipulated different forms of detention and of depriving of liberty[114]. The code of penal procedure is an organic law, generally adjusted to the stipulations of the European Convention, of Human Rights, and it provides the main warranties of personal security and liberty. The problem is that the Code of Penal Procedure is not applied in all cases of detention, for example the self-styled violations of the staying, coming in and out of the country regime, the infringement of the alcoholism and narcomany treatment's system, administrative offences, etc. All these cases are settled by other operative laws and norms, which aren't in concordance with the stipulations of the European Convention of Human Rights. The organs of protection of judicial norms and the judicial instances refuse to apply in these cases the norms and warranties stipulated at least in the Code of Penal Procedure.

The procedure of 'bringing' a person to whom there was applied the compulsory treatment in a narcological institution qualified to carry out this treatment. The relatives, the social organizations, the police, the narcologist may address a claim or a petition to the police, for that person to be supposed to a medical examination with the view to find out the necessity of

[114] See the report of Helsinki Committee for Human Rights "The Procedural Rights of Detention, 1999".

a compulsory treatment of alcoholism. The claim or the petition arrived to the police, may be used by the police officer in such a way that he will organize a 'forced hospitalization' (in fact, this places the person under the custody of the police station) for the period of 10 days, requiring from the 'correspondent medical institutions' (in fact, this is the narcological cabinet) to carry out a medical examination. The decision to apply a medical treatment (a medical report that declares the person to suffer of chronic alcoholism) is performed by the police, it is responsible for bringing that person to the narcological institution which will carry out the treatment. The law also stipulates that 'in case that the individual is not agreed with the medical report declaring him suffer of chronic alcoholism, … the respective decision may be appealed in the hierarchically superior organ of health protection or in a judicial instance in the fixed way[115].'

Another problem and contradiction in the discussed case is that the compulsory treatment is interpreted as a medical-administrative constraint. This interpretation of the phenomenon excludes explicitly the provision and respect of the warranties stipulated by the code of penal procedure (that offers procedural warranties in case of penal offences) for the whole period of detention: the period of medical examination (10days) and the detention/treatment in the narcological institution (till 6 months). The 10 days restraint may be disputed in the presence of the public prosecutor of supervision; the detention/compulsory treatment may be disputed in a hierarchically superior institution or in a judicial instance. In the both cases the person is warranted the procedural rights stipulated by the procedure of administrative detention, not by that of the penal one. It is known that the procedure of administrative detention differs considerably of the penal one as regards the provision of procedural warranties of restraint and detention; this fact offends the obligations assumed by the Republic of Moldova according to art.5 of the European Convention of Human Rights[116].

The right to be informed about the reasons of restraint and the stipulated rights. The law does not stipulate a positive obligation on the part of police that a person who's going to be sent for examination for a period of more than 10 days, should be informed about the procedural rights and warranties and about the reasons of restraint for this period. In some cases, evidenced by Helsinki Committee, the persons didn't even know that they were subjected or waited for a medical examination 'with the view to declare him suffer of chronic alcoholism'. Also, these persons weren't informed about the possibility and the means of disputing the decision of 10 days' hospitalizing. This situation is also aggravated by the impossibility to inform somebody else (eventually, a person who may represent his interests) about the fact of restraint. This proceeding offends the stipulations of art.5.2 of the European Convention of Human Rights[117].

[115] See art. 4(4) of the law.
[116] See the report of Helsinki Committee "The Procedural Rights of Detention, 1999".
[117] See the case Winterwerp, Holland (24.10.1979).

The reasons of restraint for the period of 10 days. The law stipulates that the reason for subjecting to a medical examination with the view to send to compulsory treatment in a narcological institution[118] (read: restraint for the purpose of subjecting to medical examination) may be: 'shirking from voluntary treatment' and 'continuation of drinking', or the consuming of 'alcoholic substances' after the 'cure to which they were subjected[119]'. Here we are interested if these reasons are in concordance with the stipulations from art.5 of the European Convention. Art.5(e) from the Convention refers to the case when the person is deprived of liberty 'if talking about lawful detention … of an alcoholic'. The legality of detention implies the following requirements: 1) The quality of the organ issuing the independent decision, etc.(if these lack, it is required an immediate and effective access to such a qualified organ to revise the decision); 2) The explicitness, exactness, clarity and in-ambiguity of the reasons of detention; 3)The consideration of a non-privative measure, while the depriving of liberty will be rather an exception than a rule. The notion of 'alcoholic' would rather imply the link and the results of the alcoholism with the impact on the concern to protect the public health and order, being an action commensurable with the necessities of the case. It is affirmed that just the fact that the person has a past affected by alcoholism or of its treatment, won't have any implication in the concrete case of restraint. Moreover, this kind of information is private, that's why, like any other medical information, it is protected from the not-approved access of executive and administrative organs, implying a limit on the administration of this information on the part of the curator doctor.

None of the reasons of restraint cited from the national law can be considered in concordance with the requirements submitted by the judicial norms of the European Convention of Human Rights for reason that they are very general, so that they don't allow a person of good-faith to infer the results and the conditions of their applying (indeed, 'shirking from voluntary treatment' isn't an objective sign having any links with the public effect of the shirking from the treatment, as well as the 'continuation of drinking'). The same motivation refers to the other condition (indeed, the 'consume of alcoholic substances' after the 'cure to which they were subjected' are subjective signs, there is no objectiveness of the link with the effects on the public order, etc.).

The reasons of detention for the period till 6 months. The law stipulates that 'the medical report referring to the declaration of a person subjected to examination that the patient has to continue the argumentation of chronic alcoholism[120]' will be a reason for sending a person for compulsory treatment. In fact, this formulation contains no reason for treatment, but only a mention that the eventual report will contain them. Obviously, this formulation isn't a 'lawful' one according to the European Convention. First of all, the person

[118] In case that a person violates systematically the public order or the rights of other citizens, the treatment will be carried out in the institutions of social rehabilitation of the penitentiary system of the Ministry of Justice of the Republic of Moldova. See art. 1(5) of the Law.
[119] See art. 4 of the Law.
[120] See art. 4(3) of the Law.

who may be affected by this decision doesn't know the reasons that may lead to the application of compulsory treatment. Also, the medical report is inaccessible for the affected persons, this makes it impossible for this person to know the reasons of the decision to send her/him to compulsory treatment. The immediate result of this situation is that the person doesn't know the reasons of detention/compulsory treatment and that's why he/she can't dispute them effectively in any organ qualified to decide about the legality of the applied measure

The decision of a 'qualified organ' Art. 24[121] from the chart and art.4 (1)[122] from the law stipulate that a medical commission made of 4 members must elaborate a report referring to patient's health, with the view to apply a compulsory treatment with obligatory implementing. A member of the commission may be the narcologist, who's responsible for the treatment and monitoring of the person's situation – so a person concerned about any results – and two other doctors who surely had formerly an attribution on determining his state of health and the director of the institution – the person directly concerned about the maintaining of the patients' number. So, we can see that the commission is not impartial in taking the decisions, because it is implied in the person's treatment. This conflict of concerns, redoubled and amplified by the lack of judicial qualification of the decision (including its lack of judicial competence), makes this organ unqualified, according to the European Convention, to decide on the restriction of any personal rights.

The right to appeal to a law court in order to utter on the legality of the detention. Since both decisions of restraint (for the period of 10 days, made exclusively by the police organs) and of detention/compulsory treatment (for the period of 6 months, made by a medical administrative organ) do limit the person's security and freedom, it is very important to analyze if there exists an effective method to appeal to a competent law court. The effective capitalizing of this right becomes extremely urgent by virtue of existence of serious problems of providing procedural warranties in previous stages. Art.4 (5) from the law stipulates that in case that the person is not agree with the medical report concerning his declaration as suffering of chronic alcoholism … the respective decision may be appealed by her in the hierarchically superior organs of health protection or in the judicial instance in the established way.

Over 70% of the patients sent for compulsory treatment declared that they didn't know that the decision to send them to compulsory or forced treatment could be appealed to the prosecutor's office; the others said there's no sense to complain; if they did it had no results.

[121] Art. 24 "The sending to compulsory treatment as well as the prolongation of stationary or ambulatory compulsory treatment is done on the basis of a medical commission with the following componence: the president – chief of the curative institution, the narcologist, the therapeutic and the neuropathologist. The patients are sent to a commission; the narcologist must motivate the reason of that in the polyclinic card or the card of general clinical observation. In 3 days the commission decides on the type of the indicated treatment.

[122] Art. 4(1) "The patient is declared ill of chronic alcoholism … by the corresponding organs of health protection in the way established by the Ministry of Health of the Republic of Moldova."

Consider the quality of 'the hierarchically superior organ of health protection', with the view to find out if this combines the requests of a 'prosecutor's office' qualified 'to decree in short terms the legality of the detention'[123]. First of all, it's notable a serious obstacle in advancing an appeal to any organ, because the person isn't informed about the reasons of restraint/detention (the decision is inadmissible for any representative of that person, who is part of the medical report annexed to the personal medical card, kept in the narcological cabinet), but only about the respective decision. The person isn't also informed about the opportunity of this procedure. Secondly, any hierarchically superior organ of health protection, considering its functions, can't be a 'prosecutor's office' – a judicial instance. Also, the respective organ cannot utter on the legality of detention since it isn't qualified of this function, by virtue of existence of a judicial system independent of the executive organs, the hierarchically superior organ of health protection being part of these. The respective medical organ can't decree on the legal/judicial aspects, but only on the correctness of the diagnosis of the proposed treatment. The hierarchically superior organ of health protection doesn't stipulate, according to the law, the public contradictory examination of the case, respecting the principle of equal opportunities, which is characteristic only to the examination in a judicial system. So, this method isn't in concordance with the conditions stipulated in art.5 (4) 0f the European Convention.

Analyzing the second opportunity, stipulated in art.4(5), according to which the person may appeal the respective decision 'in a judicial instance in the established way'. There may be serious objections at this point, referring to the accessibility and efficacy of the procedure of appeal, on the following reasons: the person isn't informed neither about the reasons of restraint/detention, nor about the opportunity to dispute the decision. The law doesn't stipulate explicitly the procedure of deposition and examination of the complaints. We consider that the fact that there does exist a general formulation of the opportunity to dispute the decision without an exact settlement in concordance with the urgent problems mentioned in this passage, makes the exercise of this right practically impossible.

The positive obligation to provide a legal representative. The law doesn't stipulate explicitly the positive obligation to give to the person a legal representative (attorney) who would represent his interests during the process of taking the decision about the obligation of compulsory treatment. Particularly, the administrative procedure (the discussed subject refers to this category) differs from the penal one in a lower level of providing the procedural rights of detention, especially regarding the positive obligation to grant a legal assistance. Here it is mentioned a doctrinaire gap, in discordance, at least in some cases, with the jurisprudence of the European

[123] Art. 5(4) of the European Convention stipulates that "Any person deprived of liberty by arrest or detention has the right to submit an appeal to prosecutor's office, in order that that would statute in short terms on the legality of this detention and the right to be liberated if his detention is illegal."

Convention, according to which only in penal cases it is stipulated the positive obligation to grant legal assistance. At this chapter, the jurisprudence of the European Convention requires from the states the providing of obligatory legal assistance proceeding from the nature of the situation, in fact the nature of personal rights limit despite of the national qualification of the cause, either administrative or penal. In case of limitation of the person's liberty and security – an extremely important fundamental and unalienable right – for such a long period as 6 months, the concern to provide obligatory legal assistance by the state obviously prevails by virtue of the necessity to provide the person's fundamental right. In this case too, we observe the looseness of national legislation and practice towards the obligations assumed before the face of the European Council.

The right to an efficient remedy in case of non-observance of procedural rights. The discussed law stipulates only[124] the rectification, according to art.4 (5), of 'the declaration of a person' to suffer of chronic alcoholism, in other words, sending to treatment in a narcological institution. Yet this is considerably complicated because the person doesn't have access to the respective medical report. The other 'warranties' are only declarative. This law doesn't screen the rest

Ministry of Justice administrative detention

[124] Art. 1(3) "… Being granted medical assistance they (the patients of chronic alcoholism) are warranted the judicial and social protection stipulated by the working law".
Art. 3(1) "… With the view to protect their rights and legal concerns, these persons are provided judicial assistance, prosecutor's supervision and they are also granted judicial and social assistance".
Art. 4(5) "In case that the person isn't agree with the medical report where she is declared ill of chronic alcoholism, … , the respective decision may be appealed by her in the hierarchically superior organ of health protection or in the judicial instance in the established way".

Administrative qualification of the phenomenon. The Law[125] stipulates that the measure of sending patients in social rehabilitation institutions represents a measure with a medical and administrative compulsion character. The administrative qualification of the measure of detaining in the penitentiary system has a special meaning, since it implies the application of the procedural dispositions from the Administrative Contravention Code[126]. According to a procedural aspect, the guarantees stipulated by the administrative law are inferior to the guarantees stipulated by the procedural criminal law in the Republic of Moldova. This qualification, in the conditions when the law fails to guarantee efficiently the protection of individual rights, has a negative effect proved by the institutional practice in this domain. Also, in our vision, the inclusion of the measure of alcoholism treatment in the area of administrative law is discussible in the existing formula in the Republic of Moldova, which is amplified to the degree of depriving an individual of freedom.

This problem is one of conceptual nature that deserves to be touched specially through the prism of the obligations imposed by the European Convention.[127] In the case in discussion, the national legislation qualifies the measure of sending in a social rehabilitation institution as a disciplinary/administrative measure. We dare to affirm that the contracting states that have a similar context and character do not have a resembling practice (with the exception of the Ukraine and Russia, a fact, which, fortunately, does not constitute a common denominator). In the examined case, the person risks a punishment from 6 months to 2 years inclusively. In our opinion, this period is considerable, and sufficient to meet the criteria of the punishment for committing a criminal offence.

This short analysis allows us to affirm with certitude that in the majority of cases of sending to a social rehabilitation institution we are talking about an accusation with a criminal character in the sense of the European Convention for Human Rights, even though the legislation of the Republic of Moldova qualifies it as a simple

[125] See art. 1 (6) "Sending patients in social rehabilitation institutions of the penitentiary system is a medical and administrative compulsion measure, which is applied with the purpose of educating through work and voluntary treatment of the persons that suffer from alcoholism, … in order to prevent violations by these persons and to educate them in the spirit of law obedience"

[126] See articles 232-261 of the IV Title of the Administrative Contravention Code, 1985.

[127] In the case Engel and others vs. Holland, June, 8, 1976, the European Court, in relation to this aspect in paragraph 80 questions whether the solution of differentiating between disciplinary/administrative procedures and criminal ones is decisive from the point of view of the Convention. Also, the Court, in paragraph 81, stipulates that the term "accusation" must be understood "in the sense of the Convention" and not as an internal (autonomous) classification of the phenomenon. The dividing line, stipulates further on the Court, between the two will be conditioned by certain circumstances. Regarding the choice of designating as a disciplinary/administrative violation the subject is subdue to several stricter rules. This conditions are: 1) the affiliation of the phenomenon, in the legal system framework, to criminal or disciplinary legislation, examined in the light of a common denominator of the respective legislation of different contracting states; 2) the nature of the offence; 3) the degree of severity of the punishment, which the given person risks to attract on him/herself. In this context, the freedom deprivations, which are susceptible to be imposed as punishments belong to the "criminal" sphere, with the exception of those that by their nature, duration and modality of execution do not become harmful in a considerable way.

administrative measure. This conclusion imposes corresponding obligations to all the chapters discussed in the present report.

Reasons for hospitalization. The Law stipulates[128] that the person will be sent to treatment in social rehabilitation institutions if he/she is chronically alcoholic and violates systematically the public order or the rights of other persons. The decision to place a person in the category of "chronic alcoholic" is the competence of the regional narcologic office and, precisely of the narcologic doctor. The determination procedure implies a lot of problems[129], which have been already discussed through the prism of protection of human rights in the previous and present reports. In respect to the "systematic" violation of public order or "the rights of other citizens", this naturally is the duty of the authorities that protect the legal norms, meaning the police.

According to the observations of the Moldovan Helsinki Committee based on the institutional practice of the police bodies and confirmed in the discussions that took place during the documenting visits, the sanctioning of the person through administrative measures, for three times, for consumption of alcoholic beverages in public places and the appearance in public places in a drunk state[130] is enough to qualify the consumption of alcohol as "systematic".

The medical examination that "recognizes" the person sick of alcoholism is the second request on the basis of which the court takes the decision about the necessity of the compulsory treatment through labor. The medical report must demonstrate that the particular person "suffers of chronic alcoholism". This examination is "ordered" by the authority that submits the necessity of the person's detention. The medical report, which in order to determine the chronic dependence of alcoholism probably requires an ample examination, containing some data, which are personally sensible, is presented to the police.

Thus, the reasons for hospitalization have more a routine prophylactic character, than an urgent implication[131] in order to protect others or the

[128] See art 7 (1) "The persons that suffer of chronic alcoholism and systematically violate the public order or the rights of other citizens, in spite of measures of public, disciplinary, and administrative influence directed toward them, will be sent to education through labor and voluntary treatment in the social rehabilitation institutions of the penitentiary system according to the decision of the court."
[129] See the chapter Procedural Rights of hospitalization in the rehabilitation institutions of the Ministry of Health, in the report of the Helsinki Committee for Human Rights in the Republic of Moldova "The Report on the observance of the rights of the patients from the rehabilitation institutions under the subordination of the Ministry of Health"
[130] See art. 167 "The consumption of alcoholic beverages on the streets, on stadiums, in squares, in parks, in all types of public transportation and in other public places, with the exception of commercial enterprises and public alimentation, where the portioned selling of alcoholic beverages is authorized by the executive body of the local auto-administration, or by appearing in public places in a drunk state that offends human dignity and social morality…" of the Administrative Contravention Code.
[131] We compare the reason for hospitalization used in Holland, even though incomparable, since there we are talking about the detention of an alienated person, which provides that with the exception of

particular person from the effects of "being chronically ill of alcoholism". The quantitative criteria on the basis of an eventual court decision about sending a person to compulsory treatment is important. For comparison, the European Court utilizes qualitative criteria.[132]

Detention before the decision of the court. The procedure of administrative detention for a period not longer than 10 days. The Law stipulates[133], and usually this takes place, that the initiative for hospitalization comes from the health protection or legal order authority and, in some cases, from the local public administration authorities and the relatives of the particular person. Thus, the police, according to the law[134], complete the report on the eventual consumption of alcohol in public places, which is sent for examination[135] to the court in a period not longer than 10 days. Meanwhile, during this period of 10 days, usually, the person is detained in the custody of the police and is brought in front of the judge, who will pronounce the decision. The legal character of the detention measure is discussible (precisely, of the administrative detention as a result of causing prejudices to the public order), as well as the necessity and relevance of this measure for the situation discussed in the present report.

Also, the person is subject to medical examination according to the procedures stipulated by the present law.

The duration of the detainment for medical examination. The Law, referring to the detainment[136] of the person in order to be subject to medical examination up to 10 days, does not stipulate the procedure and the guarantees. The dispositions stipulate that the authorities that protect the legal norms are competent to take the decision and to execute the forced hospitalization up to 10 days. The possibility and method for contesting this hospitalization decision is not stipulated. We affirm that the detainment, for a period as long as 10 days, for performing certain measure on the person in order to stabilize the chronic dependence, meaning to be related to the

urgent cases: "a danger for him/herself, for others or in general for the safety of the persons and goods".

[132] See the chapter "Forced Labor", "The legal notion of alcoholic".

[133] See art. 8 (1) "The request to send to education through labor and voluntary treatment in the social rehabilitation institutions of the penitentiary system can be made by the close relatives of the particular person, by the work collectives, state authorities, public organizations, institutions, as well as by the administration of the rehabilitation institutions of the health protection authorities that perform the compulsory treatment of the patients or by the local public administration authorities according to the procedure stipulated for the cases of administrative contravention."

[134] See art. 8 (2) "Materials regarding sending patients to education through labor and voluntary treatment in the social rehabilitation institutions of the penitentiary system are fulfilled according to the provisions of articles 241-245 from the Administrative Contravention Code…".

[135] See art. 8 (2) "…The examination of the materials is performed in a period not longer than 10 days in a public trial with the participation of the person against whom the request was made, and at his/her will with the participation of a lawyer."

[136] See art. 4 (3) "… at the request of the rights protection authorities, to be forcefully hospitalized for a period of up to 10 days for the performance of the medical examination according to the modality established by the Ministry of Health of the Republic of Moldova. The results of the medical examination will be presented to the particular persons, which should confirm this fact with their signature."

general state of health, invested to the executive body (the police) is inadmissible.

The duration of the detainment during the period of the examination of the materials up to 10 days. The law does not refer to the procedure of detaining the person for up to 10 days during which the court examines the materials. The administrative procedure of detainment, yet, stipulates the term of up to three hours[137]. This unclear situation and the legal gap, from that data that the Helsinki Committee has, are utilized abusively by the authorities for protection of legal norms, which resort to different illegal detentions, when the person does not even know the reason for detainment[138], or to the "fabrication" of other administrative offences, as the insult, intoxication in public places or resist the arrest.

The constitutional character of the total duration of the detention. The right to be informed about the reasons of detention. The administrative procedure for detention does not contain any mention about the obligation to inform the person about the reasons of the detainment, and, later, about the legal qualifications of the case, so that the person can have enough time to prepare his/her defense. General mentions of the kind "…the persons are guaranteed the protection of their rights…" are apparently insufficient and just declarative. During the forced hospitalization the obligation to inform the person about the medical examination, which might declare him/her "chronic alcoholic" is missing. The results of the examination, but not the content of the medical report, are announced to the particular person, who will sign the report. The medical report that depicts the chronic alcoholism, normally, should contain also the argumentation. But from the institutional practice of the different authorities involved, we remark the fact that, in reality, the content of the medical report is not shown to the particular person.

In the same context, we should mention the fact that there are no brief dispositions referring to the obligation to inform the person about the reasons for detention at the moment when he/she is detained for examination in court. The administrative procedure does not stipulate[139] positive obligations in this sense.

[137] See art. 249 (1) of the Administrative Contravention Code, which stipulates that "Administrative detention of the person, which committed an administrative contravention can last not longer than three hours. In exceptional cases, related to a special necessity through legal acts of the Republic of Moldova other terms of administrative detention can be established"

[138] See, for example, the provisions of art. 249 (4) "The duration of administrative detention is calculated from the moment when the violator was brought for the fulfillment of the report, and, for a drunk person – from the moment when he/she got sober."

[139] See art. 254 of the Administrative Contravention Code "The person, which is brought to trial for administrative contravention, has the right to get acquainted with the materials from the file, give explanations, present probes, formulate requests, utilize during the examination of the case the legal assistance of the lawyer; … to appeal the decision on the case…"

The insurance of legal assistance. The Law[140] stipulates the right, but not the positive obligation correlated to the right that the person be guaranteed legal assistance or the representation of his/her interests. The difference between these two situations is important. Since in the case of positive obligations, any measure taken related to the person with his/her participation is not valid without the participation of his/her representative. In the case of the right to a lawyer, any such measures can be taken without the presence of the legal representative. This aspect has a special connotation regarding a fair trial. In the case when the circumstances of the case will prove the unfairness of the trial and of the process of legal administration, fully, even though the corresponding legal assistance of the person is not ensured, it can be affirmed with certitude the violation of the right to a fair trial and the violation of the liberty and safety of the person. In this order of ideas, resulting from the qualification as criminal accusation of the problem being discussed, the position of the European Court is interested.

The right to appeal. The Law[141] stipulates briefly the possibility of appealing the decision of the court in a judicial institution, which is hierarchically superior during a period of 10 days from the moment when the decision to send the person to a social rehabilitation institution was announced. The realization of the practice of this disposition necessitates answers to serious questions regarding the accessibility of this ordinary means of attack. A large part of the decisions to send a person to treatment do not specify in the disposition part the possibility and the procedure for contesting the particular decision. Since the Law[142] stipulates the immediate execution of the pronounced decision by the court, the majority of persons will appeal the particular decision while being in the social rehabilitation institution. This presumes the high responsibility of the institution's personnel, which is obliged to offer the hospitalized person all the necessary information in order to contest the above mentioned decisions. During the documentation visit we noticed regretfully that at least two of the managers that we talked with about the possibilities for appealing the hospitalization decisions, affirmed with certitude the existence of only one measure to attack the decision, precisely, to bring to the attention of the Prosecutor's Office to oversee the observance of the law. This means, even though extraordinary, in general can not be considered compatible with the norms of the European Convention, which refers mainly to the ordinary means of appealing, which are accessible to every person.

Unfortunately, there are no known cases when the person would contest the hospitalization decision using ordinary means.

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[140] See the preceding note and art. 3 (1) "…The particular persons, in order to protect their rights and legitimate interests, will be guaranteed legal defense, … , will also be offered legal and social assistance."

[141] See art. 8 (5) "the decision of the popular court can be appealed by the person against whom it was pronounced or by his/her lawyer during 10 days in a judicial institution, which is hierarchically superior or contested by the prosecutor with a title of supervision"

[142] See art. 8 (6) "The complaint of the particular person or the protest of the prosecutor does not suspend the execution of the decision of the court"

The right to an effective treatment in the case of violation of the procedural rights. The administrative law does not stipulate any material norm that would ensure the effective remedy of the violations of the procedural rights of the person. The general context suggests the appeal to the Prosecutor's Office as an authority for supervision of the execution of the present legislation, authority, which has a decision power, which is only discretional.

The legal examination of the case. The Law stipulates[143] that the examination of the suggestion to send to treatment during the trial with a public character, with the participation of the lawyer of the person according to his/her desire. It is not stipulated, thus, the obligation to ensure legal assistance. With certitude, the lack of legal assistance in the situation under discussion contravenes with the provisions of art. 6 (3c)[144] of the European Convention.

Taking in consideration the fact that the nature of the case is criminal, meaning the systematic violation of public order, the person is recognized as chronically alcoholic, and deprived of freedom. The duration of the detention and the lack of access to medical data result in the lack of a fair trial[145]. Besides this we observe the lack of equality during the examination of the case.[146]

Privacy

Respect for personal data of medical character

According to the practice and the rights established in the implicated institutions, the persons who followed a voluntary treatment are obliged to come periodically to the narcological cabinet from the sector for monitoring their situation by the narcologist. The results of the monitoring can be decisive for a possible re-hospitalizing and sending of these persons[147] to obligatory treatment. Some persons who follow the obligatory treatment[148] declared that the monitoring procedure is mechanism acting with intimidation

[143] See art. 8 (2) "The materials on the sending of patients to education through labor and voluntary treatment in the social rehabilitation institutions of the penitentiary system are fulfilled according to the provisions of articles 241-245 from the Administrative Contravention Code of the Republic of Moldova and are examined by the court at the place where they are situated at the moment when the appeal is made. The examination of the materials is is performed in a period of 10 days in a public trial with the participation of the person who presented the appeal, and at will – of the lawyer

[144] See art. 6 (3c) "Any accused has, especially, the right: c) to protect him/herself alone or be assisted by a lawyer chosen by him/her, and if he does not posses the necessary means to hire a lawyer, to be assisted for free by an office lawyer, when the interests of legislation demand it"

[145] See the case Kraska, A99

[146] See Feldbrugge, A99 (the equality of arms in the cases of administrative and criminal cases; the impossibility to examine the medical report in order to be commented); X. Austria, apl. 8289/78 (inadmissibility of creating obstacles regarding the necessary information); Bonish, A92 (the plaintiff presented the conclusions of an expert, whose functions and position did not allow him to be fully independent, being an eye witness).

[147] Namely of the persons who followed a voluntary treatment and those who were subjected to compulsory treatment.

[148] See the case O. (Section #2 of the Hospital Codru, the Glass Factory).

and control on the person. In fact, the results of following a voluntary treatment, during which the person comes under the supervision of the respective public authorities, are felt in the fact that the person becomes extremely vulnerable towards these public institutions and towards other persons who know how to use these institutions or the fact that the treatment was done on purpose.

Another consequence of the voluntary treatment is that the medical documents[149] are put at hand to the local police station. If the person follows the voluntary treatment without anonymity, his medical card is sent to the narcologist from the sector and may be easily accessed and identified by the policeman from the sector[150]. When the person followed the voluntary treatment anonymously this person is introduced in the "register of 'unidentified persons' presenting a piece of information to the local police station about his hospitalizing, with the exact description of his physical particularities or annexing a photo of the patient for his later identification[151]". In this way the person, involuntarily and without consent is monitored by the police too.

Supervision of the patients

The supervision of "alcoholic patients" by the rehabilitation institutions and the local police department is a phenomenon discussed earlier.[152] The Law on the Social Rehabilitation of Chronic Alcoholism, Drug Addicted and Toxicomania Patients (Nr. 487-XII from 07.02.1991) stipulates in art. 15[153] the obligation to place a person under evidence, thus realizing the discrete supervision of the person by the corresponding authorities of the state. Also, art. 13 (3)[154] of the Law stipulates that the local public authorities should be informed in due time about the release of the patient from the social rehabilitation institution. In the conditions when the public authorities usually are the initiators of the hospitalization, the respective persons become very vulnerable to the above-mentioned authorities.

[149] Inaccessible for the persons who followed the voluntary treatment.
[150] It isn't clear if this rooted practice is legal or we'd rather could talk about an illegal practice, established and developed during the years.
[151] See art. 16 of the Charter, Annex #1.
[152] See the chapter "Respecting procedural rights for hospitalization" from the report regarding "The Observance of the Rights of the Alcoholism Patient in the Rehabilitation Institutions under the subordination of the Health Ministry".
[153] Art. 15 The supporting record and treatment. The patients that passed the education through labor and voluntary treatment of alcoholism, drug-addiction and toxicomany in the social rehabilitation institutions of the penitentiary system, after being released, must register at the rehabilitation institutions of the local health protection authorities and take a supporting treatment according to the conditions established by the Ministry of Health of the Republic of Moldova.
[154] Art. 13 (3) of the Law stipulates that "the administration of the social rehabilitation institution must send to the local public administration authorities at the place of residence (in the case of sick people without a permanent residence – at the chosen residence) an acknowledgement about the patients released from the institutions, before their liberation, in order to help them find a workplace and organize their life, as well as to the rehabilitation institutions of the health protection bodies in order to offer them medical assistance in case of necessity.

Art 12.9 of the Instruction nr. 29[155] stipulates briefly the obligation of the police authorities to monitor the persons released from the social rehabilitation institutions through locations of maintenance of public order, using for this purpose public organizations, syndicates, etc.

In this case the person, according to material and procedural norms, does not have an efficient way of disputing this supervision practice and does not have the right to access pertinent information with a medical character or of a different nature that could infringe his rights.

Compulsory Treatment in the social rehabilitation institution of the Ministry of Health[156]

The patients placed for compulsory treatment in the institutions of the Ministry of Health continue to be engaged in labor. The working law referring to the rehabilitation of alcoholics doesn't settle explicitly the labor relations between the patients subjected to treatment and the economic agents with whom the hospital contracts the performing of any services. In some cases there are general references, for example in the mentioned Charter, that the patients subjected to compulsory treatment are engaged in labor according to the working Charter[157]. Yet, according to the legislation, there are two categories of patients: subjected to voluntary treatment (sometimes anonymous) and those subjected to compulsory treatment

The sending to compulsory treatment is made on the basis of the medical commission's decision[158]. In three days the commission indicates in its decision the type of compulsory treatment necessary for every patient. So, if

[155] Instruction nr. 29 from July 5, 1991, about the execution of the normative acts that regulate the activity of the social rehabilitation institution.

[156] According to the representatives of narcological institutions, since the law doesn't regulate this, the meetings with the relatives are not limited as long as these do not prejudice the process of treatment. According to our information, in fact this corresponds to the reality, with the condition that the meetings are agreed each time with the curator doctor and these are limited in time. The meetings are observed by the staff of the institution as a favor, not as a normal situation of a patient. The detainee or the detainee- patient in a penitentiary institution may have a certain number of meetings, which are strictly monitored. According to the representatives of the narcological institutions, the patients' communication with the outside are neither limited nor intercepted or censured. In the case of a prisoner all the communications are censored, practically with no discretionary motivation. A narcological patient and a prisoner are practically in identical situations when disposing of their own body. In both cases there is lack of consult and there is no access to personal medical records. As to sanctions application, in both cases the reasons are in essence identical, so are the structures of the organs that apply the sanction: the administrative organ, composed of the respective institution's administration. In this case the narcological patient is more disfavored, since the administrative commission can take decisions such as the prolongation of the treatment by 6 months; the penitentiary commission doesn't have this permission. Compulsory labor exists in the penitentiary as well as in narcological institutions. The degree of compulsion is disputable but the situations are practically identical. Referring to the material conditions, the comparison is in practice unfavorable for some narcological institutions (for instance, Curchi).

[157] See art.29 of the Charter.

[158] The decision of the Government of the Republic of Moldova "Regarding the approbation of the Charter of narcological institutions subdued to the Ministry of Health of the Republic of Moldova and the Charter of the institutions of social rehabilitation of the penitentiary system of the Republic of Moldova", art.4.

the commission decides to send a patient to treatment in a section from the hospital where it's practiced the labor, and it isn't clear if he will participate and isn't asked of that, the patients will be engaged in labor in the framework of that institution besides his treatment.

In the conversations with the patients of the section#3 of the Republican Narcological Health Unit (Glass Factory) none of the persons confirmed the fact that he was sent to treatment knowing where he goes. In fact, the best majority of the patients in this section don't even try to ask why did that happen, here we see the results of the Soviet system of initiative's uprooting.

Refugees and internally displaced persons

Non-refoulement principle violation

Authorities of the Republic of Moldova fail to guarantee the security of persons prosecuted on political, and other reasons by the authorities of sa called Transdnistria. These results in the alleged violations of the articles 1, 3, 5(1), 5(2), 5(3), 5(4), 5(5), 6(1), 6(2), 6(3a), 6(3b), 6(3c), 6(3d), 6(3e), 13, 14 of the European Convention on Human Rights[159].

While Moldova has made a reservation[160] with regard to Transdinistria region[161], Moldovan police offers support and collaboration with regard to refoulment of people allegengly committed crimes and other offences. The administration of justice in this region is done with institutional and legal ciolation of the principles of fair and impartial trial. The accused lacked other fundamental guarantees with regard to security and liberty, legal representation, etc. Recent cases of Alexandru Chelsa, Valeriu Solonari, Alexei Cenusa and others being detained by Transdnistrian militia and with support of Ciocana disctrict of Chisinau police, Police of Chisinau represents a clear cut violation of the provisions of the European Convention. All persons would reside in Chisinau and in other localities in the right bank of Dniester. The persons were being detained on the grounds of possession of illegal possession of arms other alleged offences on the territory of Transdniester. Chisinau Police detained persons having the order of prosecutor from Transdnister region. In the case of Solonari and Cenusa, they were detained for 20 days in Chisinau #3 pre-trial detention center without any legal ground issued by Moldovan judge.

Being given up to Transdnistrian authorities they face trial without guarantees provided by the standards of the European Convention ratified by the Republic of Moldova.

[159] See Reports on the case of A. Chelsa, V. Solonari other by the Moldovan Helsinki Committee; 1999, Report on the Respect for Human Rights by the Moldovan Helsinki Committee and A Report on the Legal Conditions of Refugees in the Republic of Moldova by the Moldovan Helsinki Committee in 1999.
[160] ibid
[161] See 1997 and 1998 Reports on Human Rights in Moldova