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**DRAFT**

## **OBSERVATIONS ON THE CENTER FOR HUMAN RIGHTS – OMBUDSMAN OFFICE IN MOLDOVA**

*<<... The Center ... seems to be continuously unclear on its mission as is the specialized  
commission on human rights of the Parliament ... >>*

from the Report

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## About Moldovan Helsinki Committee for Human Rights

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

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

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

<http://chdom.ngo.moldnet.md>

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## **1. Report Objective**

The Report wants to give the reader a clear message that the Center for Human Rights is an important institution and instrument needed in the Moldovan society for the effective assurance of the human rights during the process towards a democratic society. It is therefore of paramount importance that an active and efficient institution is established and functions. The content intention of the report aimed at highlighting the existing major problems at the Center for Human Rights to improve the efficiency and quality of its work. It is presumed in this report that a significant public interest is involved in the matter and therefore a great public scrutiny is required.

## **2. Report Summary**

The Report states the overall unsatisfactory performance of the Center for Human Rights – the only human rights specialized public institution in the Republic of Moldova. Therefore, relevant improvements badly needed if the Center to maintain legitimacy, its positive meaning and potential asset in the public eyes of the Moldovan society.

The parliamentary commission on human rights has shown little, if any, public interest contributing to the improvement of the Center overall performance and dealing with herein mentioned drawbacks.

The Center most importantly lacks a clear, exact and narrowly defined mission. The vagueness of the relevant legal framework of the Center and incapacity of the Center to develop it are the reasons.

The Center fails to identify and focus on the priority critical human rights issues measurable to the capacity of the Center.

The Center lacks the institutional capacity to develop the problem solution-oriented approach in dealing with identified priority human rights critical issues in Moldova.

The Center has established a rigid internal organizational structure that fails to react and address the priority issues and handle the priority issues and problems.

The Center professional institutional and individual human rights competence remains a questionable issue in the Moldovan society and in human rights community.

The Center has failed to gain people's trust and positive attitude of the Center commitment and dedication for human rights work building on the independent human rights position with regard to the human rights concerns.

The Center has failed to become the independent consolidating body of the all human rights initiatives to streamline the human rights agenda of the Government, provide human rights perspective of the public decisions and develop strategies and actions needed for the prevention of human rights concerns and situations.

### **3. Recommendations for Improvement**

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

- Parliament of Moldova, parliamentary commission on human rights should take action on defining and clarification of the mission of the Center for Human Rights by either narrowing down the institutional sphere of activity (public administration) and/or take the most urgent thematic approach, subject of revision as appropriate.
- Commission on human rights should actively oversee the activity of the Center to identify the specific objectives of the Center for the respective periods of time and on needs assessment basis.
- UNDP should work on providing the necessary support for developing Center capacity on identification of the major relevant problems and develop Center capacity in tailoring strategies and action plans for providing solutions.
- Human Rights Center should not engage in the educational activity as a priority area and rather engage in the educational activities exclusively in extent to the need improvements established in view of their promotion, educational activities should target specifically the stockholders of the problems, educational activities should have narrowly defined result oriented and practical objectives.
- Human Rights center should predominantly focus its attention and resources on petitioning the Constitutional Court bearing in mind the underrepresented and marginalized strata of society.
- Moldovan parliament should appoint persons with clear and strong human rights image shared and enjoyed in Moldovan society free from biased perceptions or being strongly and negatively affected on different grounds and reasons.
- The Center should continuously and persistently build upon raising personnel competence and knowledge in the field of human rights.
- The Center should develop capacity on taking active and authoritative position on the subjects and situations of human rights interest or sensitivity.
- The Center analysis of the cases and situations should be considered and examined in the light of the existing developed international bodies of jurisprudence and case law.
- The Center should be actively engaged in legal work of analysis of compatibility of the existing legislation with human rights law pertinent to the cases and situations.

#### **4. Background information**

The Center had been established in conformity with the Law on Parliamentary Advocates (No. 1349 – XIII of October 17, 1997) and the Regulations approved through the Decision of the Parliament of the Republic of Moldova No. 1484 – XIII of February 5, 1998.<sup>1</sup> The Center had been supported with the generous financial support from UNDP. The work on the creation of the Center has started in 1995-6 with participation and consultation of the relevant constituencies, including human rights community and civil society. Vladimir Solonari, the head of the Parliamentary commission on human rights has led the project supported by Alla Skvortova as a project manager on behalf of the UNDP. The three parliamentary advocates were appointed in the end of 1997 after the Law on parliamentary advocates had been adopted. The first three parliamentary advocates were Alexei Pottinga- director of the Center, Mihail Sidorov and Constantin Lazar. In spring 2001 Mihail Sidorov has been elected on behalf of the “Alianta Braghis” to the parliament and headed the parliamentary commission on human rights. As of spring 2001 a new parliamentary advocate Ms Ianucenco has been appointed to serve the public duty focusing on the issue of right to child.

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<sup>1</sup> “In 1997, the Parliament adopted the Law on Parliamentary Advocates. The corresponding institution, named the Centre for Human Rights, is supported financially by the United Nations Development Programme. Three parliamentary advocates are elected for a period of 5 years by a majority vote of the Parliament, at the proposal of the President or at least 20 deputies of the Parliament and the Government. The Director of the Centre for Human Rights is appointed from amongst the parliamentary advocates by the Parliament at the proposal of the Chairman of the Parliament. The parliamentary advocates are granted the status identical to that of the judges of the Supreme Court of Justice. Parliamentary advocates have the right to notify the Constitutional Court of the need to control the constitutionality of the laws and decisions of the Parliament, Presidential decrees, decisions and instructions of the Government, and of their compliance with the international principles and legal acts on human rights. The institution of parliamentary advocate is not supported by any particular provision of the Constitution.

## 5. Center Mandate and Mission

The main responsibilities of Center for Human Rights, as declared, are: “examining complaints on violations of individual’s rights of lawful interests; contributing to national legislation’s modification and its adjustment to international legal instruments; contributing to legal education and information of the population”<sup>2</sup>.

The mission of the center is formulated too general comprising, as declared by the center, from rights of prisoners, children, refugees and migrants, retiree, etc.<sup>3</sup> The Law on Parliamentary Advocates had been formulated vaguely and the specialized commission on human rights took little, if any, interest in promoting the efficiency of the “main” public human rights institution.

Compared to the similar institutions in other countries where the institution has clear focused attention on a specific areas of, for instance, overseeing the human rights in the public administrative bodies thus availing itself from the judiciary remedies available; or thematic approach: information and data protection commissioner, children rights, etc in Moldova the institute encompassed variety all imaginable possible obligations.

The Center, till the present, seems to be continuously unclear on its mission as is the specialized commission on human rights of the Parliament.<sup>4</sup>

As early as 1999, a Report of UNDP Human Development report of Moldova in Chapter “Human Rights and Social Cohesion” mentioned some potential problems with the law on Parliamentary Advocate, including with regard to the Center mission and the mandate; however, it unfortunately remained on the paper<sup>5</sup>.

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<sup>2</sup> See <http://www.iatp.md/cpdom>, web site of the Center for Human Rights.

<sup>3</sup> In reality the mission of the organization is driven by the funds put available including by the international donors. In practice, international donors torn the Center apart, by competing for putting their money into the Center and get the desired activity through the very democratic sound institution.

<sup>4</sup> Citation from <http://www.iatp.md/cpdom/en/advocates.htm> “Complaints of people whose rights and civic freedoms have been violated should be related to administrative acts or facts. Example: issuing an authorization or a certificate, etc., formally registering different recognitions of different qualities as stated by law; acts of local councils, county councils, mayors, county mayors and county authorities chairmen, etc. In the area of administrative, administrative-judicial or judicial procedures related to the specific legislation, an advocate has no right to substitute the bodies established by the law” Shows unclear understanding since first sentence refers to the acts of the public bodies but later excluded through “administrative” or “judicial-administrative” procedures.

<sup>5</sup> “To strengthen the institute of parliamentary advocate, it is recommended to take the following measures: to develop amendments to the Constitution which would constitutionalise the institute of parliamentary advocate; to modify and make more precise provisions regarding the unhindered access of parliamentary advocates to all public authorities in order to ensure a correct impartial judicial process; to modify provisions on free access to private and non- government institutions; to specify the relationship between the institute of parliamentary advocate and public authorities (prosecutor's office, police, judiciary); to elaborate provisions that would allow to initiate a legal process for reinstating the rights of people whose rights were violated; to specify the need to abide by the recommendations made by parliamentary advocates; to strengthen the statutory independence of parliamentary advocates in order to avoid their dependence on the policies promoted by the majority in the Parliament; to extend their functions regarding recommendations to public authorities having the right to initiate amendments to the current legislation; and to broaden the jurisdiction of the ombudsman (parliamentary advocate) with regard to his/her monitoring and control functions over the police and places of preventive detention.” See 1999 UNDP Human Development report, chapter “Human Rights and Social Cohesion”

## 6. Center Action Capacity

As exhibited below, Center for Human Rights composed of 17 persons of whom 12 are lawyers and 5 of supporting personnel. The auxiliary personnel are left outside discussion. A couple of persons work on behalf of UNDP program in supporting the Center, as is for instance project manager on behalf of the UNDP.

Structure as of February 2001. Parliamentary advocate Sidorov has been replaced by Parliamentary Advocate Ianucenco.

The Structure of the Center for Human Rights of Moldova			
Director:Alexei Potinga,Parliamentary Advocate			
Parliamentary Advocate Mihail Sidorov (Ianucenco as of spring 2001)		Parliamentary Advocate Constantin Lazari	
Public relations and educational section: -Vasile Gutu -Valentina Didencu -Liudmila Cojocaru	Legislative analysis section: -Ion Vasilache -Ion Mitum -Maia Banarescu	Complaints section -Petru Ciuchitu - Cornelia Vintilova -Dorin Catana	Administrative-financial section: -Victor Toma -Victoria Tirfan -Claudia Concear Rodica -Madiudin Grigore Radu -Sabina Colomiicenco

Article 39 of the Law on Parliamentary Advocate stipulates the possibility to create Council of Experts under the Center for Human Rights composed of experts in human rights and in other areas of activity. The Council of Experts is composed of 26 persons including representatives of the Ministry of Foreign Affairs, Ministry of Interior, university professors and NGO's. The Council membership remained unknown, as no information is available including the qualification of the members of the Council.

### 6.1 Management by Objectives and Efficiency

Shared vision by all parliamentary advocates and the Center personnel as a team is crucial for a successful and effective work.

The allocation of human resources considering the nature of work and the societal needs seem rather unbalanced leaving too little for the work with complaints. It seems that educational and PR unit is over staffed, considering it also in the light of the suggested priorities. It is seen more reasonable and efficient, contrary to the rigid action approach (complaints-analysis-education) to tailor the distribution of human resources on the basis of the priority theme or situation. The administrative and financial section (leaving aside the auxiliary personnel not included in the drawing) seems to be out of proportion high.

The three parliamentary advocates concentrations<sup>6</sup> are drawn on the mechanical criteria of division of law of Moldova: Civil law-Labor law-Land law; Penal law-Administrative Law-Penitentiary Law; Pension Law-Family Law. An integrated approach deriving from specific situations drawing rather on the rights alleging the violation and not subordinating it to the Moldovan legal classification of the law. Respectively, the organization of the work in the situations should be subordinated to it on a flexible case-by-case and working group approach.

## 6.2 Individual Independence and Professional Competence

As observed earlier<sup>7</sup> the image of an independent and politically and professionally unbiased person is crucial in case of the ombudsman as the “main” human rights public institution. Parliamentary advocates were appointed by the Parliament, drawing on the candidates who formally served as a prosecutor, trade union lawyer and a parliamentarian, law professor.<sup>8</sup> People perceive also the office they address through individuals who deal with the cases and therefore avoiding the negative perception or allege of a biased vision should have been strongly avoided when selecting the individuals for the office.

The Center independence on variety of human rights situations and cases is not only the subject of silence or absence from the scene but primarily of occupying an active interpretative role sustaining the attachment to human rights values through balanced and authoritative position.

The parliamentary advocates and the personnel should be considering continuous raise of their professional human rights competence, knowledge and skills in field of human rights becoming the centers of human rights opinion, expertise and consultation prompting the society with valued positions and opinions. However, the real situation seems to be different from the desired as Center for Human Rights has not played the mentioned role upon different “difficult” Moldovan situations.

The Center professional human rights capacity as a whole but also individually is of little knowledge in the society and human rights community. As the formal access to extensive and comprehensive body of human rights law determined by possessing in sufficient extent of the international language and persistent consultation and investment in acquiring by learning and practicing, the individuals deemed served in the respective “human rights” capacity should meet the high qualification and public scrutiny on relevant proficiency, as it seems to be crucial in effective exercise of the public human rights duty.

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<sup>6</sup> See <http://www.iatp.md/cpdom/ro/avocatii.htm>

<sup>7</sup> See Moldovan Helsinki Committee observations on the opportunities for development of Human Rights Center, 1999.

<sup>8</sup> **Alexei Potinga** is formally a chief of a prosecutor civil section of General prosecutor office, **Mihail Sidorov** is formally a trade union lawyer and a majority political party representative at the time of selection (in May-July 1992 he was appointed by the temporarily leader of “Dniester Moldovan Soviet Socialist Republic” through transfer from chief lawyer of trade union as a “Minister of Justice” of the unrecognized “Dniester Moldovan Soviet Socialist Republic” as stated in second issue of “Verhovnii Soviet” vestnik of “Dniester Moldovan Soviet Socialist Republic”), **Constantin Lazar** is formally criminal investigator, advisor to President of Moldova and a law professor.



## 7. Center Activity and Results

### 7.1 Educational programs

It seems that Center educational programs overwhelm the rest of the activity of the Center. Center has been competing in that respect with a number of human rights educational and civic organizations, which in many instances were better positioned professionally and efficiently. In some instances Center had been repetitive and in some cases even commissioning the ngos to take over responsibility for educational programs, claiming the activities carried out by the Center.

### 7.2 Constitutional Court petitions<sup>9</sup>

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

1999 cases:

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

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<sup>9</sup> Based on research of the Electronic legal database JURISTUL [www.moldlex.md](http://www.moldlex.md) and 1999 and 200 Reports of Center for Human Rights.

9. Petition to the Constitutional Court on the constitutionality of provisions of Law on Education restricting the right to freely choose the engagement place;
10. *Petition* to the Constitutional Court on the constitutionality of social assurance of retiree from prosecutor office;
11. *Petition* of Constitutional Court on unconstitutional limitation of legal acts concerning the suspension of the pension for the period acting as prosecutor, investigator, judge, member of Parliament, public official.

2000 cases:

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

2001 cases:

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

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

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

### 7.3 Reports on Respect of Human Rights in Moldova

The Center has published consecutively only two Annual reports on respect for human rights in the Republic of Moldova for 1999 and 2000.<sup>10</sup> The producing of the report on the state of human rights in the Republic of Moldova is to be seen one of the major statement and assessment of the human rights situation, as required also by law on Parliamentary Advocates.

The Reports deal preponderantly with the social and economic rights paying little attention to civil and political rights. Such subjects as torture and inhuman treatment, security and liberty, fair trial, freedoms of association are almost absent.

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<sup>10</sup> The Center did not produce publicly any human rights report in 1997 or in 1998.

The Reports also do not deal in detail with the analysis of the problems and situations based on the cases and other information. The analysis does not provide references to international body of case law and jurisprudence.

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

2000 report has the same structure, totaling to 38 pages in one language: UNDP and Center for Human Rights; Preamble with statistic of cases; Activity to redress of human rights violations; Education of population; Education of Center Personnel. Activity to redress of human rights violations states the most frequent violations of social guarantees, right to property, right to labor, access to justice, personal security, right to privacy, right to education, access to information, freedom of movement.

Under right to education, right to property no particular cases are mentioned.

Under access to justice reference is made to three situations. Among them are: situation of a "reasonable time" detention of persons in pre-trial detention, situation of non-execution of the civil decisions of the courts and a situation of denial of right to lawyer. In all cases however no discussions are followed of the actions needed to prevent the happenings.

Under security and dignity of person the reference is made to three cases of illegal detention for the period of three days; the delay in examination of the case of grave illness of TB; refusal to give access to copies of judicial decisions. No examination of the foundations for the discussed cases and how to create systems to improve situation avoiding the appearance in future these situations are given.

Under Social rights reference are made to cases and situations: general situation in places schools for children with handicap; places for rehabilitation for adults, nonpayment of salaries; compensation for accidents at work; reduce of the retiree age for persons working in dangerous conditions; pension for invalid child; quality of medical assurance; housing rights of special vulnerable categories of people.

## **7.4 Other result oriented activities of the Center**

1999 UNDP Report mentioned that as the law on parliamentary advocates is somewhat unclear and lack the proactive spirit of action and initiative the functions of the Parliamentary advocates therefore resembles the functions of other public institutions.<sup>11</sup> Complaint receiving is

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The Center for Human Rights performs some functions similar to those of the Prosecutor's Office and has jurisdiction over petitions concerning the decisions and activities (or inactivity) of all local and central public authorities, institutions, organizations and enterprises, public associations and persons holding responsible positions

considered by the Center as one of the major function to perform that places the Center in the passive position of “waiting the problems to come”. As it is known, the recommendations for improvement made by the international experts advising the Center, were confronted by straight argument that the direction of Center that it is driven by the complaints received from the people. It does have the legitimacy. But the scarce resources of the Center and its potential as a human rights institution should be driven by the efficiency and effectiveness reasons based on the identification of the combination of pressing needs and measurable situations to address. The Center, therefore, should rather explore and seek to identify the situations it can effectively engage than wait for whatever comes across.

The Center investigative capacity or reporting capacity not to say about human rights legislative drafting capacity is not known to be judged upon.

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at all levels which, in the opinion of the applicant, have violated constitutional rights and freedoms. After examining the petition and detecting the violations, the parliamentary advocates will present their recommendations to the respective authorities regarding the measures that are to be taken to reinstate the applicant's rights, informing the applicant at the same time. Failure to execute the recommendations is dealt with according to the existing legislation. Under the law, the parliamentary advocates cannot examine petitions related to parliamentary decisions, presidential decrees, and governmental decisions and instructions. The creation of the institution of parliamentary advocacy is a progressive step. If it manages to become an efficiently functioning institution, it will have a positive influence on the observance of human rights and the rule of law in the country.” **See 1999 UNDP Human Development report, chapter “Human Rights and Social Cohesion”**

## **8. Vision of the Center and its Role in Promoting Human Rights in Moldova**

One of the major existing problems in the Republic of Moldova is the inexistence of the important body that would provide authoritative interpretations of the variety of human rights problems and situations existing in Moldova. The huge existing wholes are being filled in by the reports and constataions of human rights ngos, relevant judicial decisions and decisions of Constitutional court. Reports of human rights ngos, including those international do not have the immediate authoritative impact to be taken into consideration by the public administration, etc. The judicial decisions are in most cases too narrow and actually responding to the already committed violations.

The Center should be actively involved in developing strategies and policies for preventing the facts of violations of human rights than merely responding on the facts of violations.

The Center, in our understanding, should fill in the existing gaps and play the role of preventing of the occurrence of human rights violations. The Center could play the role of developing and establishing the standards and recommendations for human rights respect in the Republic of Moldova, interpreting the international standards and practices into Moldovan circumstances and realities.

The Center should also play the role of conveying the human rights concerns towards the public authorities springing from the initiatives of human rights ngos, groups, etc, including the human rights expertise of relevant draft legislation and acts of the public authorities.

Presently handicapped, the Council of experts should play a significant role for assisting and helping the center in shaping and developing on the body of the specific and detailed *recommendations* for human rights sensitive policies, strategies, situations and cases. The Council could embrace progressive individuals coming from different fields and institutions that could help the Center to shape the policy and strategies, work on the interpretative bodies of the variety of human rights situations were unclarity or ambiguity still persist in the society.

The Center should play a major role in providing the relevant input for the governmental decisions on human rights sensitive issues and in providing the human rights dimension for the governmental decisions and decisions of public authorities and administration.

The Center should play an active role in promoting the human rights sensitive legal norms, initiating the necessary modifications and amendments.

## **9. References**

1. <http://www.iatp.md/cpdom>, web site of the Center for Human Rights.
2. Official Gazette, Monitorul Oficial al Republicii Moldova
3. 1997 Human Development report in the Republic of Moldova, chapter “Human Rights and Social Cohesion”
4. Report by Mr. Alvaro GIL-ROBLES, Commissioner for Human Rights, on his visit to Moldova (16 to 20 October 2000), for the Committee of Ministers and the Parliamentary Assembly
5. Millennium Report on Respect for Human Rights in the Republic of Moldova, 2001, 300 pages, (En, Ro), by Moldovan Helsinki Committee for Human Rights
6. Moldovan Helsinki Committee observations on the opportunities for development of Human Rights Center, 1999.
7. 1999 UNDP Human Development report, chapter “Human Rights and Social Cohesion”