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COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to the Republic of Moldova  
from 4 to 7 March 2013

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited the Republic of Moldova from 4 to 7 March 2013. In the course of his visit, the Commissioner held discussions with representatives of the national authorities, civil society and international organisations concerning the administration of justice, systematic work for implementing human rights, and National Human Rights Institutions.

### **I. Administration of justice**

The Justice Sector Reform Strategy for 2011-2016 is a major undertaking for reform in the area of the administration of justice, aimed at improving judicial transparency, impartiality and independence, as well as tackling corruption. In the framework of this Strategy, Parliament passed a package of legislative amendments in 2012 which have introduced a number of changes, including bringing the composition of the Superior Council of Magistrates – the self-governing body of the judiciary - closer to European standards, expanding training for court and probation staff, abolishing provisions concerning the statute of limitations for torture and prohibiting granting of amnesty to persons sentenced for torture.

The Moldovan judiciary remains underfunded and salaries of judges are strikingly low. The legislation and practice should be further reviewed with a view to enabling the Superior Council of Magistrates to have an increased role in the decisions regarding the allocation of resources to courts.

The Commissioner considers that the initial five-year probationary period for judges should be revoked in the interest of preserving judicial independence. Moreover, officials from other branches of government should refrain from any actions which may be viewed as applying pressure on judges, such as initiating disciplinary proceedings against them because of the decisions they take.

Reform of the Prosecution service is urgently needed and will require considerable efforts. In particular, it is imperative that the process of appointment of the Prosecutor General is depoliticised. There should also be clear and transparent criteria and procedures for the selection, appointment and promotion of individual prosecutors.

Impunity for torture and ill-treatment remains a serious issue in the Republic of Moldova. The European Court of Human Rights has delivered a significant number of judgments finding a violation of Articles 2 (right to life) and 3 (prohibition against torture) of the European Convention of Human Rights in cases implicating representatives of public authorities. Investigations of such cases are often ineffective, including because of a lack of promptness, and punishment for ill-treatment tends to be lenient. The Commissioner is particularly concerned that regarding the torture and ill-treatment inflicted by police officers during the events of April 2009, all conviction sentences have been suspended by courts.

Non-enforcement or delayed enforcement of final judgments issued by national courts has been identified by the European Court of Human Rights in a pilot judgment as being the most significant problem in the Republic of Moldova in terms of the number of applications pending before the Court. The Commissioner urges the Moldovan authorities to take resolute steps to address this structural problem at the domestic level through a speedy and effective remedy which secures adequate and sufficient redress.

## **II. Systematic work for implementing human rights and National Human Rights Institutions**

While welcoming the adoption of the National Human Rights Action Plan (NHRAP) for 2011-2014, the Commissioner notes that in the interest of coherence and sustainability of the policies concerned, there should be better coordination with sector-specific plans and with the on-going justice sector reform. Preferably, the NHRAP should serve as an “umbrella”, with the individual sector plans developed in a logical and consistent way.

Apparently, a lack of resources has impeded the implementation of many of the NHRAP’s planned activities. The Commissioner therefore urges the authorities to review budget proposals from a human rights perspective and allocate adequate resources to priority areas. Civil society and National Human Rights Institutions should be actively involved in the implementation and evaluation of the NHRAP.

An effective external communication strategy should be developed for the NHRAP to reach the general public for enhancing awareness in relation to human rights policies. The Commissioner recommends that an independent evaluation of the results of the NHRAP be carried out in due course.

There have recently been developments with regard to the much-needed reform of the Ombudsman institution, which at present comprises four “Parliamentary advocates”. A draft law which was approved by the Government on 4 September 2013 would introduce some fundamental changes to this institution, aimed at addressing its institutional deficiencies and ensuring its effective functioning. A key aspect of the government-approved draft amendments is a merit-based and transparent appointment procedure of a single Ombudsman with a deputy responsible for children’s rights, as well as requirements to ensure that the reporting process is more open and conducive to meaningful policy discussions on key human rights issues. The Commissioner calls on the authorities to step up their efforts to reform the Ombudsman institution in line with the Paris Principles and the draft which has been approved by the Government.

In May 2012, a separate anti-discrimination body was established, the Council on Preventing and Combating Discrimination and Ensuring Equality. Albeit with a delay, all five members of the Equality Council have been appointed.

The report also contains the Commissioner’s conclusions and recommendations to the authorities. It is published on the Commissioner’s website.

## **Introduction**

1. The present report is based on a visit to the Republic of Moldova by the Council of Europe Commissioner for Human Rights (the Commissioner) from 4 to 7 March 2013.<sup>1</sup> The aim of the visit was to review the following human rights issues:
  - the administration of justice and protection of human rights in the justice system (section I);
  - systematic work for implementing human rights with reference to the National Human Rights Action Plan 2011-2014, and the functioning of the National Human Rights Institutions (section II).
2. In the course of the visit, the Commissioner engaged in a dialogue with representatives of the national authorities, including the Speaker of Parliament of the Republic of Moldova, Mr Marian Lupu; the Minister for Foreign Affairs, Mr Iurie Leancă; the Minister of Justice, Mr Oleg Efrim; the Acting Minister of Interior,<sup>2</sup> Mr Dorin Recean; the President of the Constitutional Court, Mr Alexandru Tănase; the President of the Supreme Court of Justice, Mr Mihai Poalelungi; members of the Superior Council of Magistracy; and the Deputy Prosecutor General, Mr Igor Serbinov. In the Office of the Prime Minister, the Commissioner had exchanges with the Head of Office, Ms Lilia Snegureac, and with the Senior State Adviser to the Prime Minister, Mr Ruslan Stânga. He also visited the National Institute of Justice and held discussions with its Director, Ms Anastasia Pascari.
3. During his visit at the Centre for Human Rights (the Ombudsman institution), the Commissioner met with the Parliamentary advocates, Mr Anatolie Munteanu, Ms Aurelia Grigoriu, and Mr Tudor Lazăr. In addition, he held discussions with several non-governmental organisations working in the field of human rights, as well as representatives of international organisations. He also had exchanges with the members of the Council of the Bar Association.
4. The Commissioner wishes to thank the authorities of the Republic of Moldova in both Chişinău and Strasbourg for their valuable assistance in organising the visit, in particular for the prompt re-scheduling of meetings in view of the voting by the Parliament on 5 March 2013 on a no-confidence motion regarding the Government. He expresses his gratitude to all of his interlocutors for their willingness to share their knowledge, insights and comments with him.

## **I. Administration of justice**

### ***Preliminary remarks***

5. Independence and impartiality are two fundamental principles in which justice should be grounded, being inherent elements of the rule of law. In accordance with the case-law of the European Court of Human Rights, in order to establish whether a tribunal can be considered independent, for the purposes of Article 6, paragraph 1, of the European Convention on Human Rights, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence, given the confidence which the

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<sup>1</sup> The Commissioner was accompanied during the visit by his Advisers Ms Olena Petsun and Mr Victor Munteanu.

<sup>2</sup> On 5 March 2013, the Government of the Republic of Moldova received a no-confidence vote from the majority of Members of the Parliament. Consequently, Mr Dorin Recean, whom the Commissioner met after 5 March 2013, is referred to as "Acting Minister".

courts in a democratic society must inspire in the public. The individual independence of judges in the exercise of their functions is not less important than institutional independence. European standards prohibit any kind of undue pressure, influence or interference with judges, including that exerted by members of the judiciary themselves.<sup>3</sup>

6. The European Charter on the Statute for Judges emphasises that judges should be involved in “any decisions taken on the administration of the courts, the determination of the courts’ budgetary resources and the implementation of such decisions at the local and national levels”.<sup>4</sup> It is therefore important that the judiciary is able to participate in the formation of its own budget by direct negotiations with the other relevant stakeholders and representatives of the executive. The level of remuneration to which judges are entitled for performing their professional judicial duties must be set so as to shield them from pressures intended to influence their decisions or judicial conduct in general, impairing their independence and impartiality.<sup>5</sup> Courts should be staffed with the appropriate number of judges and support staff so as to be able to carry out their functions efficiently and avoid overloading.
7. A comprehensive Justice Sector Reform Strategy (JSRS) for 2011-2016 is currently being implemented in the Republic of Moldova, with the key objective of strengthening the independence, accountability, impartiality, efficiency and transparency of the judicial system.<sup>6</sup> The JSRS is accompanied by an Action Plan which outlines strategic directions, actions to be carried out, and implementation costs.

#### **1. The role of the Constitutional Court**

8. The Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova, with the role of safeguarding the supremacy of the Constitution and its fundamental provisions, e.g. regarding the separation of state powers and relations between individuals and the state. It consists of six judges appointed for a six-year term of office. The Parliament, the Government, and the Superior Council of Magistrates appoint two judges each. A procedure before the Constitutional Court can be initiated by the President, Government, Minister of Justice, Supreme Court, Prosecutor General, members of the Parliament and parliamentary groups, Ombudsman, or the People’s Assembly of Găgăuzia. The Constitutional Court is not competent to deal with applications submitted by individuals or legal entities.
9. The Commissioner noted with concern the draft amendments of 3 May 2013 to the Law on the Constitutional Court allowing the Parliament to dismiss Constitutional Court judges by a qualified majority of three-fifths, following an initiative by at least 25 MPs, on the grounds of “lack of trust”. The President did not sign the amendments into law and returned them to Parliament; the text remains with the parliamentary commission for appointments and immunities. The above-mentioned draft amendments appear to contravene the Moldovan Constitution, which provides: “For the tenure of their mandate, the judges of the Constitutional Court shall be irremovable, independent and shall abide only by the Constitution.” In addition, European practice is for the rules on the dismissal of judges on constitutional courts to be very restrictive; in this regard, the European Commission for Democracy through Law (Venice Commission) underlined that it is not permissible for political

<sup>3</sup> See Council of Europe Committee of Ministers’ [Recommendation CM/Rec \(2010\)12](#) on judges: independence, efficiency and responsibilities, paragraph 22, adopted on 17 November 2010.

<sup>4</sup> See the Explanatory Memorandum to the [European Charter on the Statute for Judges](#) (1998), paragraph 1.8.

<sup>5</sup> See the Explanatory Memorandum to the [European Charter on the Statute for Judges](#) (1998), paragraph 6.1.

<sup>6</sup> See the Justice Sector Reform Strategy website in [Romanian](#) and [English](#).

bodies which perceive themselves to be disadvantaged by the opinions or decisions of a judge to put pressure on the judge.<sup>7</sup>

10. The rulings of the Constitutional Court, which regularly refer to the European Convention on Human Rights, have a significant impact on the system of protection of human rights. In a recent judgment, that court declared unconstitutional the restriction of the right to parental leave to military servicewomen which excluded military servicemen from the possibility to exercise that right.<sup>8</sup> On a procedure initiated by the Ombudsman, it found unconstitutional provisions in the Criminal Code (and Execution Code) in relation to the application of chemical castration (Decision No. 18 of 4 July 2013). The Court also pronounced itself against legislative provisions prohibiting the use of communist symbols (Decision No. 12 of 4 June 2013), finding that such a prohibition contravened inter alia Article 10 (freedom of expression) of the ECHR.<sup>9</sup>

## **2. The Superior Council of Magistrates**

11. The Superior Council of Magistrates (SCM) is the governing body of the judiciary with the main responsibility for the appointment, evaluation, and promotion of judges, as well as disciplinary matters. Its status is enshrined in the Constitution of the Republic of Moldova (Articles 122 and 123) and it functions in accordance with the Law on the Superior Council of Magistrates of 1996. In 2012, the Parliament passed legislative amendments (Law No. 153 of 5 July 2012) to certain provisions (on inviolability of judges) of Law No. 544-XIII of 20 July 1995 on the Status of Judges (hereinafter “the 2012 amendments”) aimed at changing the composition of the SCM, which now consists of twelve members: the President of the Supreme Court, the Minister of Justice, and the Prosecutor General, who are ex officio members; three law professors elected by the Parliament; and six full-time serving judges representing all levels of the judiciary elected by the General Assembly of Judges. Members are elected for a four-year renewable term, except for the law professors who cannot serve for two consecutive terms. The recent amendments have brought the legal provisions concerning the composition of the SCM in line with the Council of Europe’s standards, which provide that no less than half of the members of Judicial Councils should be judges chosen by their peers from all levels of the judiciary.<sup>10</sup> At the time of Commissioner’s visit, the SCM was actually composed of nine rather than twelve members: the President of the Supreme Court of Justice and the Acting Minister of Justice, both ex officio members, three law professors, and four judges elected by the General Assembly of Judges. This was due to vacancy of the position of Prosecutor General, the expiry of mandates of some members of the SCM and the election to public functions of others.
12. Four subordinate institutions were established under the authority of the SCM in 2012: the Selection and Career Board; the Judges’ Performance Evaluation Board; the Disciplinary Board and the Judicial Inspection. The SCM examines appeals against decisions issued by the first three bodies.

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<sup>7</sup> See Venice Commission Report on the composition of Constitutional Courts ([CDL-STD\(1997\)020](#)).

<sup>8</sup> See the judgment of the Constitutional Court regarding the constitutionality of Article 32, § (4), j) of the law on the Status of Military personnel (<http://www.constcourt.md/ccdocview.php?tip=hotariri&docid=429&l=en>), July 2012.

<sup>9</sup> The Constitutional Court has also examined provisions in the Code of Criminal Procedure whereby the prosecutor, with the authorisation of the investigating judge, may extend up to six months the possible period after which a suspect must be informed about charges against him; since then, changes were introduced to the law concerned, obviating the need for the court to pronounce itself on the issue.

<sup>10</sup> See the Council of Europe Committee of Ministers’ [Recommendation CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, paragraph 27, and Venice Commission, Report on the independence of the judicial system ([CDL-AD\(2010\)004](#)), paragraph 32.

13. The 2012 evaluation report of the European Commission for the Efficiency of Justice (CEPEJ) reveals that the public budget allocated to courts in the Republic of Moldova is the lowest among Council of Europe member states.<sup>11</sup> According to CEPEJ data, Moldovan courts are allocated with only 2.4 euros per capita, whereas the Council of Europe median is 44.5 euros per capita.<sup>12</sup>
14. The ambiguities in the current legislation appear to contribute to lack of proper institutional cooperation while negotiating the courts' budget.<sup>13</sup> While the Constitution is silent as to any budgetary competences of the SCM, the Law on the Superior Council of Magistrates provides that the SCM examines, confirms and proposes a draft budget of the courts. The members of the SCM informed the Commissioner that, in practice, the budgetary exercise is led by the Department of Judicial Administration acting under the authority of the Ministry of Justice which collects, analyses, and proposes the budgetary needs for the first and second instance courts.<sup>14</sup> Although the draft budgetary proposals are sent to the SCM for comments and proposals, these are usually rejected by the executive on the ground of Article 131 of the Constitution which states that "[a]ny legislative initiative or amendment which entails the increase or diminishing of the budgetary revenues or loans, as well as the increase or reduction of the budgetary expenditures shall be adopted following Government approval."
15. Moldovan judges have among the lowest salaries in Europe, amounting to ten times less than the European median salary. Whereas a Moldovan judge is paid a gross salary per year of 3220 euros at the beginning of career and 4756 euros at the end of career, the Council of Europe median is respectively 32 704 euros and 57 909 euros.<sup>15</sup> Even though the increase in judges' salaries is a key component of the Justice Sector Reform Strategy, the Commissioner's interlocutors from the SCM indicated that amendments to the state budget concerning judges' salaries had been postponed on several occasions.

### **3. Appointment, dismissal and disciplinary proceedings against judges**

16. In addition to possessing a law degree, candidates for the position of judge in the Republic of Moldova must attend an 18-month programme of studies at the National Institute of Justice (NIJ, see relevant section below) or practice certain legal professions for at least five years. A candidate who fulfils the required criteria for the position of judge is examined by the Selection and Career Board of the SCM. The SCM then submits recommendations for judges to be appointed, further to which District and Appeal court judges are appointed by the President of the Republic, while Supreme Court judges are appointed by Parliament.
17. The Constitution and the Law on the Status of Judges provide that judges are initially appointed for a five-year probationary period and, if that is successfully completed, they are appointed with permanent tenure, until the retirement age of 65. As a general principle, the Venice Commission has stated that probationary periods for judges in office are problematic from the point of view of their independence, and has recommended that ordinary judges be appointed permanently until retirement.<sup>16</sup> Moreover, the Working Group on independent judicial systems has recommended to the authorities of the Republic of Moldova that permanent appointment be considered as an extension of the first appointment where judges

<sup>11</sup> See the European Commission for the Efficiency of Justice (CEPEJ) 2012 [evaluation report](#), (page 27).

<sup>12</sup> The number are indicated per inhabitant and in relation to the GDP per capita (in %).

<sup>13</sup> See [Project Report on Enhancing Judicial Reform in the Eastern Partnership Countries](#), Working group on independent judicial systems, European Union and Council of Europe, September 2011, page 33.

<sup>14</sup> See the [Regulation of the Department of Judicial Administration](#) (in Romanian).

<sup>15</sup> See the European Commission for the Efficiency of Justice (CEPEJ) 2012 [evaluation report](#), (pages 261 and 266).

<sup>16</sup> See Venice Commission, Report on the independence of the judicial system ([CDL-AD\(2010\)004](#)), paragraph 38.

meet objective, transparent and pre-established criteria.<sup>17</sup> Although the review of the Constitutional provisions concerning the initial five-year appointment has been set as one of the objectives of the Justice Sector Reform Strategy for 2011-2016,<sup>18</sup> those provisions currently remain in force.

18. Some of the Commissioner's interlocutors from the judiciary and membership of the SCM expressed concerns regarding the power of the President to refuse the appointment of a judge on the ground of information provided by intelligence services. They considered that such a procedure lacks transparency and appears to be contrary to the principle of rule of law. In contrast, the Working Group on independent judicial systems has expressed the position that the judicial independence and decision-making power of the SCM is maintained by the fact that the President has to give reasons for any candidate's rejection and does not have any alternative but to appoint a candidate proposed for a second time by SCM,<sup>19</sup> since the Law on the Status of Judges explicitly states that the President can reject a candidate only once.<sup>20</sup>
19. A core question essential to judicial independence relates to the circumstances under which judges can be dismissed. Recommendation R (94) 12 of the Committee of Ministers on the independence, efficiency and role of judges states that permanent removal from office should be only for incapacity to perform judicial functions, commission of criminal offences or serious infringements of disciplinary rules.<sup>21</sup> The Law on the Status of Judges contains an exhaustive list of specific disciplinary offences (Section 22) which constitute grounds for dismissal.
20. According to the Constitution, disciplinary action is the responsibility of the SCM and of the Disciplinary Board, which operates under its authority. In 2012, the SCM examined 52 disciplinary proceedings and issued 19 sanction decisions, including one proposal for dismissal from office.<sup>22</sup> Reportedly, fifteen disciplinary complaints against judges were initiated by the Prosecutor General.<sup>23</sup> In this regard, the Commissioner's interlocutors representing the judiciary expressed concerns about the powers of the Minister of Justice and of the Prosecutor General as ex officio members of the SCM to initiate disciplinary proceedings against judges, considering this to be undue interference with judicial independence.
21. As to the issue of immunity of judges, before the 2012 legislative amendments, Moldovan law provided that administrative and criminal investigation and prosecution of judges could be initiated only by the Prosecutor General, with the consent of the SCM and of the President or the Parliament. These procedural constraints have now been repealed and the prosecution of judges in relation to two offences of corruption – passive corruption and trading in influence – is possible without the consent of the above-mentioned authorities. The consent by the SCM is also not required for the judges' apprehension, arrest, and search, in relation to the above-mentioned offences of corruption. Further, judges can be administratively sanctioned by a court without the consent of the SCM.

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<sup>17</sup> See [Project Report on Enhancing Judicial Reform in the Eastern Partnership Countries](#), Working group on independent judicial systems, European Union and Council of Europe, September 2011, page 56.

<sup>18</sup> See Justice Sector Reform Strategy, p. 1.1.6, page 16, available at:

[http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/srsj\\_pa\\_srsj/SRSJen.pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf).

<sup>19</sup> [Eastern Partnership. Enhancing Judicial Reform in the Eastern partnership Countries](#). EU and Council of Europe joint programme, Working group on independent judicial systems, March, 2013, page 47.

<sup>20</sup> Article 11 (5) of the Law on the Status of Judges provides that "Following a repeated proposal from the SCM, the President shall issue, within 30 days from the date of receiving the repeated proposal, a decision concerning the appointment of judge for a five-year period or nomination until the age of retirement."

<sup>21</sup> See the Council of Europe Committee of Ministers' [Recommendation No. R \(94\) 12](#) on the independence, efficiency and role of judges, Principle VI.

<sup>22</sup> See the Superior Council of Magistracy [activity report for 2012](#), 12 February 2013 (in Romanian).

<sup>23</sup> <http://www.zdg.md/editoriale/cine-pedepseste-judecatorii> (in Romanian).

22. In September 2012, the Constitutional Court was requested to assess the constitutionality of the 2012 amendments concerning judges' immunity. On 11 March 2013, upon the request of the Constitutional Court, the Venice Commission published an *Amicus Curiae* Brief<sup>24</sup> on the subject. The opinion of the Venice Commission was not intended to assess the constitutionality of the amendments regarding immunity – which is the competence of the Constitutional Court – but to examine whether the removal of immunity for offences of passive corruption and trafficking in influence contradicts European standards. Basing its opinion upon the relevant Committee of Ministers of the Council of Europe documents and Opinion of the Council of Europe's Consultative Council of European Judges (CCJE),<sup>25</sup> the Venice Commission concluded that judges should enjoy only functional immunity, i.e. immunity from prosecution only for lawful acts performed in carrying out their functions. The Venice Commission pointed out that the weak situation of the judiciary in some countries needs to be taken into consideration, especially in relation to the prosecution service. Potentially, false charges or even a threat of charges of passive corruption or trafficking of influence could be used as a tool to make judges compliant with the prosecutors' wishes. Nevertheless, the Venice Commission noted that there is no internationally recognised norm requiring criminal inviolability for judges, and that international standards support the principle that "when not exercising judicial functions judges are liable under civil, criminal and administrative law in the same way as any other citizen".<sup>26</sup> On 5 September 2013, the Constitutional Court issued a decision in which it recognised the constitutionality of the 2012 amendments limiting judges' immunity.

#### **4. National Institute of Justice and training of judges**

23. There is a significant correlation between public trust in the judicial system and perceptions about the competence of judges. From this perspective, continuous training of judges is of the utmost importance. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities provides that an independent authority should ensure that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.<sup>27</sup>
24. The Council of Europe has actively promoted the establishment of a National Institute of Justice (NIJ) in the Republic of Moldova since 2001. Relying on the Council of Europe's main recommendations in this field<sup>28</sup> and following a series of conferences, seminars and trainings, the NIJ was inaugurated in November 2007 with the purpose of providing initial training to candidates for the position of judge and prosecutor, as well as continuous education to judges and prosecutors in office.
25. The functioning of the NIJ is regulated by the Law on the National Institute of Justice of 2006. The administrative body (Council) of the NIJ comprises seven judge members appointed by the SCM, four prosecutors, one member appointed by the Ministry of Justice, and a law

<sup>24</sup> See Venice Commission *amicus curiae* brief on the immunity of judges for the Constitutional Court of Moldova ([CDL-AD\(2013\)008](#)).

<sup>25</sup> See the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, [Resolution \(97\) 24](#) on the Twenty Guiding Principles for the Fight Against Corruption, [Opinion No. 3](#) of the the Council of Europe's Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.

<sup>26</sup> See the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, paragraph 71.

<sup>27</sup> See the Council of Europe Committee of Ministers' [Recommendation CM/Rec\(2010\)12](#) on judges: independence, efficiency and responsibilities, paragraph 57.

<sup>28</sup> See the Council of Europe Committee of Ministers' [Recommendation No. R \(94\) 12](#) on the independence, efficiency and role of judges and [Recommendation Rec\(2000\)19](#) on the role of prosecution in the criminal justice system, as well as [Opinion No. 4](#) of the Consultative Council of European Judges (CCJE) on appropriate initial and in-service training for judges at national and European levels.

professor appointed by the Senate of the State University. Both prospective judges and prosecutors have to study for 18 months at the NIJ, while serving judges are required to undergo 40 hours per year of continuous training. The curriculum includes theory and practice and provides knowledge of Moldovan civil and criminal law, as well as the case law of the European Court of Human Rights.

26. While visiting the NIJ, the Commissioner was informed that in 2012 it organised 38 activities (seminars, workshops and trainings) for the implementation of the National Human Rights Action Plan 2011-2014. A total number of 681 judges, 329 prosecutors and 242 other beneficiaries (lawyers, bailiffs, etc.) attended the courses. By the end of 2013, the NIJ plans to provide training to 341 judges, 580 prosecutors and policemen in various fields of human rights, i.e. data protection and access to information, prevention of torture, as well as the case-law of the Court on anti-discrimination.
27. The 2012 legislative amendments have extended the activities of the NIJ to providing initial and continuous training to heads of courts' secretariats, registry lawyers, and probation counsellors; this has constituted a major increase of the range of topics to be taught and the volume of work. While the premises of the NIJ are well-equipped, with conference and training rooms and a real-scale replica of a courtroom, the extension of its activities will require further investments, including video-conferencing equipment, and means to pay for accommodation for trainers and trainees attending workshops.

#### **5. Reform of the Prosecutor's Office**

28. One of the commitments undertaken by the Moldovan authorities in the July 2012 Action plan for honouring the obligations towards the Council of Europe is the reform of the Prosecutor's Office in line with Council of Europe standards. The key aims for reform of this institution are de-politicisation, independence, and clarification of areas of responsibilities and competences.
29. The Constitution of the Republic of Moldova defines the prosecution system as part of the judicial authority. This appears to have consequences on the independence of the prosecution from other state bodies, including courts. Recommendation 2000 (19) of the Committee of Ministers of the Council of Europe on the Role of Public Prosecution makes a clear distinction between the prosecution and judicial functions.<sup>29</sup> The Venice Commission stated in its opinion on the draft law on the Public Prosecutors' Service of the Republic of Moldova that the provisions concerning the independence of the prosecutors from the judiciary should be made explicit.<sup>30</sup>
30. At present, the Prosecutor General is appointed by the Parliament at the proposal of the Speaker of Parliament. Pursuant to an annex to the Constituting Agreement of the ex-ruling Alliance for the European Integration, the position of the Prosecutor General was distributed to one of the political parties.<sup>31</sup> The authorities of the Republic of Moldova have acknowledged in

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<sup>29</sup> See the Council of Europe Committee of Ministers' [Recommendation Rec\(2000\)19](#) on the role of prosecution in the criminal justice system.

<sup>30</sup> See Venice Commission Opinion on the draft law on the Public Prosecutors' Service in Moldova ([CDL-AD\(2008\)019](#)).

<sup>31</sup> See Justice Sector Reform Strategy, Chapter 2.2., available at: [http://www.justice.gov.md/public/files/file/reforma\\_sectorul\\_justitiei/srsj\\_pa\\_srsj/SRSJen.pdf](http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf). The image of the prosecutor's service was also tarnished by news, which emerged with a two-week delay, about a fatal accident that had occurred on 23 December 2012, during a boar hunt involving a group of persons including the Prosecutor General (who stepped down from his position shortly afterwards), district prosecutors, judges, politicians, and businessmen. A Special Parliamentary Investigation Commission was appointed to investigate the circumstances of the case, which found in its report that the incident and the apparent attempts to cover it up subsequently disclosed serious dysfunctions in the prosecutor's service with reference to the functional and institutional independence. See the Report of the Special Parliamentary

the Justice Sector Reform Strategy that this practice, which by its nature and in the local context is highly politicised, should be reviewed. Other shortcomings which need to be addressed are the lack of functional independence of prosecutors from hierarchically superior prosecutors, and the ineffective functioning of the Superior Council of Prosecutors.<sup>32</sup> The Annual Report on the implementation of the Justice Sector Reform Strategy disclosed that prosecution bodies have been resistant towards the reform initiatives.<sup>33</sup>

31. During discussions held at the Office of the Prosecutor General, the Commissioner's interlocutors stated that it was in the prosecutors' interest to reform the institution with a view to providing them with procedural and institutional independence, in particular by protecting them from undue political interference. Reportedly, the appointment of the Prosecutor General has always been a highly politicised issue and none of the six Prosecutors General who served between 1998 and 2012 completed their full mandates.
32. The Speaker of Parliament informed the Commissioner that the selection of candidates for the position of Prosecutor General was entrusted to a commission comprised of prosecutors, members of civil society, and lawyers. However, some of the Commissioner's interlocutors considered that members of the commission might face pressure from politicians.<sup>34</sup>
33. The Commissioner wishes to stress that, when the appointment of the Prosecutor General is highly politicised, this has negative consequences on the functioning of the prosecutor's office, as well as undermining public trust in and respect of the judiciary. In this regard, the Venice Commission has stated that the manner in which the Prosecutor General is appointed and recalled plays a significant role in the system guaranteeing the correct functioning of the prosecutor's office.<sup>35</sup> The method of selection of the Prosecutor General should be such as to gain the confidence of the public and the respect of the judiciary and the legal profession.

#### **6. Measures to combat impunity in cases of ill-treatment and torture**

34. Public confidence in the law enforcement authorities is closely related to the latter's attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual, as enshrined in the European Convention on Human Rights.<sup>36</sup> The Commissioner strongly believes that it is essential for the authorities to ensure that all instances of abuse of trust or ill-treatment by law enforcement officials are firmly condemned, adequately investigated and sanctioned by the competent authorities, in order to prevent recurrence and enhance the key role played by law enforcement authorities in safeguarding the rule of law. As emphasised in the 2011 Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, states should combat impunity as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust

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Inquiry Commission for clarifying the way in which the investigation bodies dealt with the incident of 23 December 2012, which took place in the "Pădurea Domnească" Nature Reserve <http://www.scribd.com/doc/125611057/raportul-comisiei-de-anchet%C4%83-pe-cazul-incidentului-din-p%C4%83durea-domneasc%C4%83>

<sup>32</sup> <http://unimedia.info/stiri/ghimpu-a-dat-publicitatii-anexele-acordului-aie-nu-e-scris-nimic-de-presedintia-csj-41257.html>.

<sup>33</sup> See the 2012 Annual Report on the implementation of the Justice Sector Reform Strategy, available at: [http://www.justice.gov.md/public/files/RAPORT\\_implementare\\_PAI\\_SRSJ\\_eng\\_red.04.03.13.pdf](http://www.justice.gov.md/public/files/RAPORT_implementare_PAI_SRSJ_eng_red.04.03.13.pdf).

<sup>34</sup> While finalising the drafting of this report, the Commissioner learned that the candidate proposed by the commission was rejected by the Speaker. On 18 April 2013, the Parliament appointed the chairman of the commission in charge with the selection of candidates as Prosecutor General. The parliament annulled its own decision two weeks later.

<sup>35</sup> Venice Commission on European Standards as regards the independence of the judicial system: Part II – The Prosecution Service, paragraph 34, [CDL-AD\(2010\)040](http://www.venicecommission.org/CDL-AD(2010)040).

<sup>36</sup> See Council of Europe Committee of Ministers [Recommendation Rec \(2001\) 10](http://www.coe.int/t/e/treaties/Recommendation_Rec(2001)_10) on the European Code of Police Ethics.

in the justice system. The Guidelines further note that impunity is caused or facilitated by the lack of diligent reaction by institutions or state agents to serious human rights violations and that when this occurs, faults might be observed at each stage of the judicial or administrative proceedings.<sup>37</sup>

35. The analytical report on the Execution of judgments of the European Court of Human Rights by the Republic of Moldova shows that between 1997 and 2011 69 judgments were delivered finding a violation of Article 3 of the European Convention on Human Rights (ECHR).<sup>38</sup> The key factors generating the high count of violations of Article 3 of ECHR, as identified in the report, are the following: ineffective (e.g. lacking thoroughness, promptness, and/or victim involvement) investigation of cases of death and torture or ill-treatment; procedural shortcomings; lack of independence and impartiality of prosecutors; and lenient punishment for ill-treatment. In 2012 and in the first three months of 2013, the Court delivered six judgments finding a violation of Articles 2 and 3 of ECHR;<sup>39</sup> in all cases violations were found on account of inadequate investigations of death and ill-treatment in addition to substantive violations found in some of the cases.
36. The Commissioner's predecessor raised concerns about ill-treatment and impunity for serious crimes committed by law-enforcement officials in the Republic of Moldova, in particular in relation to the April 2009 events.<sup>40</sup> In this connection, he recommended to the authorities that: decisive action must be taken to adopt and enforce a policy of "zero-tolerance" of ill-treatment throughout the criminal justice system; criminal proceedings initiated against law enforcement officers on grounds of torture or ill-treatment should not be time-barred and the granting of an amnesty or pardon should not be permissible in principle; and any state agent charged with ill-treatment must be suspended from duty during the investigation and trial, and dismissed if convicted.
37. In 2012, Parliament passed amendments to the Criminal Code which abolished provisions concerning the statute of limitations for torture and prohibited granting of amnesty to persons sentenced for torture. The severity of sanction for torture has also been increased rendering inapplicable the provisions concerning the suspension of sentences. However, the provisions concerning the suspension of sentences for inhuman and degrading treatment remained in the law.
38. In May 2010, a Section for combating torture within the Prosecutor General's Office was created and territorial prosecution offices were ordered to assign a prosecutor in charge of investigating cases of ill-treatment. The functioning of the Section was examined by a

<sup>37</sup> [Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations](#), 30 March 2011.

<sup>38</sup> See Execution of judgments of the European Court of Human Rights by the Republic of Moldova 1997-2012, Legal Resource Centre of Moldova, December 2012, page 67, available at: [http://crjm.org/app/webroot/uploaded/Execution\\_of\\_Judgments\\_of\\_the\\_ECHR\\_by\\_the\\_Republic\\_of\\_Moldov\\_a\\_1997-2012.pdf](http://crjm.org/app/webroot/uploaded/Execution_of_Judgments_of_the_ECHR_by_the_Republic_of_Moldov_a_1997-2012.pdf).

<sup>39</sup> *Ghimp and others v. the Republic of Moldova* (no. 32520/09, judgment of 30 October 2012), in which the ECtHR found a substantive violation of Article 2 of the Convention (the applicant was beaten up while in police custody and died shortly after his release because of wounds inflicted), as well as procedural violation of Article 2 (ineffective investigation). In 2012 the Court also found a violation of Article 3 of the Convention under substantive and procedural limbs in the case *Struc v. the Republic of Moldova*, no. 40131/09, judgment of 4 December 2012, and *Gasanov v. the Republic of Moldova*, no. 39441/09, judgment of 18 December 2012. In 2013 the Court found a substantive and procedural violation of Article 3 and procedural violations of Articles 2 and 3 of the Convention in *Ipati v. the Republic of Moldova*, no. 55408/07, judgment of 5 February 2013, *Eduard Popa v. the Republic of Moldova*, no. 17008/07, judgment of 12 February 2013, and *Iurcu v. the Republic of Moldova*, no. 33759/10, judgment of 9 April 2013, respectively.

<sup>40</sup> See the Report by the Council of Europe Commissioner for Human Rights following his visit to Moldova from 25 to 28 April 2009, [CommDH\(2009\)27](#), and Letter to Prime Minister of the Republic of Moldova, Mr Vlad Filat, concerning Human rights issues related to the April 2009 events in Moldova - Observations of the Commissioner for Human Rights, [CommDH\(2012\)3](#).

delegation of the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) in a visit carried out to the Republic of Moldova in June 2011. The CPT found that the Section had neither consultants nor specialised independent operative agents as compared to prosecutors dealing with other types of cases, nor did it have a secretariat to assist them in daily duties. Moreover, investigation of complaints against ill-treatment committed by police was based on the information provided by police officers.<sup>41</sup>

39. During his meeting with the Commissioner, the Acting Minister of Interior indicated that a number of steps have been taken to address the problem of ill-treatment by police officers, which include enhancing training on how to communicate with citizens, developing a curriculum focused on human rights, promoting cooperation of the police service with civil society and NGOs, strengthening the capacity of the Department for Internal Security, and installing CCTV in police sections.<sup>42</sup>
40. The Commissioner was informed that the Moldovan courts examined 60 cases of ill-treatment during January 2011-June 2012. The courts issued 35 conviction sentences, but suspended their execution. As regards torture and ill-treatment inflicted by police officers during April 2009 events, the Commissioner was seriously concerned to note that all conviction sentences have been suspended by courts.

#### **7. Non-enforcement or delayed enforcement of court judgments**

41. The Commissioner wishes to recall that the non-enforcement of court judgments by the authorities constitutes a breach of the right to a fair trial as defined in Article 6 of the European Convention on Human Rights. In its judgment in the case of *Hornsby v. Greece*, the Strasbourg Court affirmed that the “right to a court [...] would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party”.<sup>43</sup>
42. In the pilot judgment *Olaru and others v. Moldova*<sup>44</sup>, the European Court of Human Rights noted that the non-enforcement of final judgments is Moldova’s prime problem in terms of numbers of applications pending before the Court. Approximately 300 such applications were registered before the Court in 2009. The Moldovan authorities were obliged to set up, within six months from the date on which the *Olaru* judgment became final, an effective domestic remedy securing adequate and sufficient redress for non-enforcement or delayed enforcement of final domestic judgments concerning social housing in line with the Convention principles as established in the Court’s case-law. The Court also held that such redress must be granted to all victims of non-enforcement or unreasonably delayed enforcement of social housing final judgments in cases lodged with the ECtHR before the delivery of the *Olaru* judgment.
43. The Commissioner also became aware that more than 50 cases in respect of the Republic of Moldova concerning failure or substantial delay by the administration or state companies to abide by final domestic judgments were pending under the enhanced supervision before the Committee of Ministers of the Council of Europe.<sup>45</sup>

<sup>41</sup> See the CPT Report following its visit to Moldova from 1 to 10 June 2011 ([CPT/Inf \(2012\) 3](#)).

<sup>42</sup> In addition, the Supreme Court has issued two decisions (dated 20 October 2009 and 24 December 2012) relating to the application of Article 3 of the ECHR.

<sup>43</sup> See *Hornsby v. Greece*, no. 18357/91, judgment of 19 March 1997, § 40.

<sup>44</sup> See *Olaru and others v. Moldova*, nos. 476/07, 22539/05, 17911/08 and 13136/07, judgment 28 July 2009.

<sup>45</sup> See the Department for the execution of the judgments of the European Court of Human Rights, lead case [Luntre and others v Moldova](#), no. 2916/02, judgment of 15 June 2004.

44. In order to comply with the *Olaru and others* judgment, in April 2011 the Parliament passed the “Law on the redress by the state of damages caused by the breach of the right to trial within a reasonable time or of the right to enforcement of a judicial decision within a reasonable time” (The Redress Law). That Law, which took effect on 1 July 2011, provides that every individual or legal entity is entitled to apply to a court for the acknowledgment of a breach of the right to have a case examined or a final judgment enforced within a reasonable time and for compensation. The procedure under the new law before the first-instance court is limited in time to three months and no court fees are required for such proceedings. The Redress Law also simplifies the procedure of enforcement of judgments adopted under this law so that no further applications or formalities are required from applicants. Furthermore, amendments were introduced to the Code of Civil Procedure which provide that the proceedings under the Redress Law will only take place before the district courts and the Courts of Appeal, thus reducing the number of appeals to one, and that the appeal instances shall not have the right to send back for re-trial the judgments issued by the district courts. However, on 1 December 2012 the Moldovan Parliament revoked the foregoing provisions of the Code of Civil Procedure concerning the proceedings instituted in accordance with the Redress Law, and introduced a second appeal in the proceedings. Moreover, the appeal instance can order that the case be re-tried by the district courts, without specifying how many times a re-trial can be ordered.
45. The Commissioner further took note of the decision by the Court in the case *Balan v. Moldova*<sup>46</sup> in which the Court accepted, *prima facie*, that the remedy introduced by the Redress Law is effective. The Court found that the new remedy allowed for a speedy and cost-free redress to be granted at the domestic level and indicated that applicants who had submitted similar applications to the Court should avail themselves of the new domestic remedy through proceedings under the Redress Law before national courts. However, the Court emphasised that its position may be subject to review in the future, depending on the domestic courts’ capacity to process such cases in a manner consistent with the requirements of the ECHR.
46. Two publications have been issued by the Moldovan authorities regarding the application of the Redress Law and the amount of compensation to be awarded by the domestic courts. These are the Guidebook on the application of the jurisprudence of the European Court of Human Rights in cases of non-enforcement of judicial decisions and excessive length of proceedings, published on 25 May 2012 by the Government Agent Division of the Ministry of Justice of the Republic of Moldova,<sup>47</sup> and the joint opinion of the President of the Supreme Court of Justice and of the Deputy to the Head of the Government Agent Division of the Ministry of Justice on the just satisfaction to be awarded for the violation of the ECHR of 23 July 2012.<sup>48</sup>

*Conclusions and recommendations on the administration of justice*

47. The Commissioner underlines that a strong and well-functioning judicial system, fully integrating the respect for human rights, is an indispensable component of the rule of law, which in turn constitutes the basis of a genuine democracy. He welcomes the on-going efforts to reform the justice sector, in particular the recent legislative amendments concerning the self-governing body of the judiciary – the Superior Council of Magistracy – which brought provisions concerning its composition in line with European standards.

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<sup>46</sup> See *Balan v. Moldova*, no. 44746/08, decision of 24 January 2012.

<sup>47</sup> Available at: [http://www.justice.gov.md/public/files/file/GHID\\_PRACTIC\\_DAG\\_MJ\\_mai\\_2012.pdf](http://www.justice.gov.md/public/files/file/GHID_PRACTIC_DAG_MJ_mai_2012.pdf) (in Romanian).

<sup>48</sup> Available at: <http://csj.md/admin/public/uploads/Opinie%20privind%20satisfac%C5%A3ia%20echitabil%C4%83.doc> (in Romanian).

48. The Commissioner urges the Moldovan parliamentarians to abstain from any acts which might be perceived as putting undue pressure on judges of the Constitutional Court.
49. Judges should be appropriately qualified and be persons of integrity and professional competence. Appointments and promotions of judges must be based on clear and objective criteria such as individual merit, qualifications, integrity and efficiency.
50. The Commissioner considers that the five-year initial probationary period for judges should be revoked in the interest of preserving judicial independence. Permanent appointment should be considered as an extension of the first appointment where judges meet objective transparent and pre-established criteria.
51. Decisions on the allocations of funds to courts must be taken with the strictest respect for judicial independence. The SCM should be involved in the preparation of the courts' budgets. The authorities are strongly encouraged to review the current legislation with a view to ensuring proper institutional cooperation and providing the SCM the dominant role in the decisions concerning the allocation of resources to courts.
52. The Commissioner further urges the authorities to address the issue of judges' salaries as a matter of priority and to ensure that judges benefit from the provision of the necessary social and economic guarantees.
53. In view of the high number of disciplinary cases initiated by the Prosecutor General's Office in 2012, the Commissioner recommends that officials from other branches of government should refrain from any actions which may be viewed as an instrument of applying pressure on the work of judicial institutions or casting doubts as to their ability to exercise their duties effectively. Judges should not have reasons to fear dismissal or disciplinary proceedings against them because of the decisions they take.<sup>49</sup> The Commissioner's opinion is that the Minister of Justice and the Prosecutor General, as ex officio members of the SCM, should not have the power to initiate disciplinary proceedings against judges as this might constitute interference or create the appearance of interference with judicial independence.
54. The Commissioner recommends that the authorities take resolute action to reform of the Prosecutor's Office in line with the Council of Europe's standards. In particular, he urges the Moldovan authorities to set in place procedures for selection of candidates for the position of Prosecutor General that are based on clear criteria and protected from political interference.
55. The Commissioner commends the steps taken to establish a National Institute of Justice and to provide initial and continuous training to actors involved in the judiciary. The extension of activities of the NIJ will require the allocation of additional resources to ensure that beneficiaries receive adequate training.
56. Impunity for ill-treatment and torture by law enforcement officials remains a serious problem in the Republic of Moldova. The Commissioner draws the authorities' attention to the Council of Europe Committee of Ministers [Guidelines on eradicating impunity for serious human rights violations](#) (2011) and to the [section on "Combating impunity" of the CPT's 14<sup>th</sup> general report](#) and stresses the need for all states to elaborate policies and practice to prevent and combat any institutional culture within or outside of law enforcement authorities which promotes impunity. Measures in this context should include a policy, adhered to by all law enforcement authorities, of zero-tolerance towards serious human rights violations, the introduction of anti-corruption policies and the establishment or reinforcement of appropriate training and control mechanisms. The authorities are urged to undertake measures to raise awareness among

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<sup>49</sup> See in this regard the Report by the Council of Europe Commissioner for Human Rights following his visit to Ukraine from 19 to 26 November 2011, paragraph 47, [CommDH\(2012\)10](#).

judges and prosecutors of their duty to thoroughly investigate all allegations of ill-treatment by law enforcement officials, in line with the case law of the European Court of Human Rights.

57. The Commissioner wishes to recall that, for an investigation into possible ill-treatment to be effective, it should comply with the five following principles: (a) *independence*: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) *adequacy*: the investigation should be capable of gathering evidence to determine whether the police behaviour complained of was unlawful and to identify and punish those responsible; (c) *promptness*: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) *public scrutiny*: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) *victim involvement*: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.
58. The imposition of light sentences or suspended sentences for torture or ill-treatment can only engender impunity. Such offences should always be prosecuted, including ex officio, and punished by appropriate penalties which take into account their grave nature.
59. The Commissioner recalls that “One of the aims of the pilot judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system. [...] The object of the pilot judgment procedure is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention rights in question in the national legal order.”<sup>50</sup>
60. The Commissioner encourages the authorities to take further steps to provide adequate and effective redress to those whose right to have a case examined or a final judgment enforced within a reasonable time had been breached. Particular attention should be paid to the applicants who had submitted applications to the Court prior to the adoption of the Redress Law and had to initiate another set of judicial proceedings following the delivery of the decision in the case *Balan v. Moldova*.
61. The Commissioner has noted the steps taken by the authorities of the Republic of Moldova to address the systemic problem of non-enforcement or delayed enforcement of court judgments. He would like to receive detailed information on the implementation of the Redress Law, namely the statistics on the number of final judgments issued by the domestic courts, average length of proceedings, and amount of compensations granted to the applicants. The Commissioner would also like to receive information as to the impact of the December 2012 amendments to the Code of Civil Procedure on the process of providing redress for non-enforcement or unreasonably delayed enforcement of final judgments.

## **II. Systematic work for implementing human rights and National Human Rights Institutions**

### **1. National Human Rights Action Plan**

62. In October 2003, the Parliament of the Republic of Moldova adopted the first National Human Rights Action Plan for 2004-2008. Following changes on the Moldovan political arena in 2009,<sup>51</sup> the Government announced its Activity Programme for 2011-2014 which specifically

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<sup>50</sup> See *Olaru and others v. Moldova*, cited above, §§ 50-51.

<sup>51</sup> After the July 2009 legislative elections, the Alliance for European Integration - a coalition constituted by the Liberal Democratic Party, Liberal Party, Democratic Party, and “Our Moldova” Alliance – came to power. “Our Moldova” Alliance did not pass the threshold to accede to the parliament during the November 2010

indicated as priority action the creation of a national inter-ministerial mechanism for supervising and coordinating, with active participation of civil society, the implementation of conclusions and recommendations on human rights provided by the specialised international bodies of the UN and Council of Europe.<sup>52</sup> As a result, in May 2011, the Parliament approved the National Human Rights Action Plan for 2011-2014 (NHRAP) and the Government established the National Commission responsible for the implementation of NHRAP (National Commission).

63. The current NHRAP outlines seven major objectives: acceding to international human rights instruments; adjusting national legislation to international human rights standards; ensuring free access to justice; improving national human rights protection mechanisms; ensuring effective protection of political, civil, economic, social and cultural rights; strengthening the protection of national minorities and ethnic groups, as well as of several categories of persons in need (including minors, prisoners, and migrants); and increasing the level of citizens' awareness in the field of human rights. The table attached to the NHRAP is structured around 16 major thematic areas of human rights relevance and contains 242 actions the Government intends to carry out in 2011-2014. NHRAP also sets deadlines to fulfil the objectives, specifies financial resources for certain actions, and indicates authorities/institutions responsible for implementation.
64. Monitoring and evaluation of implementation is coordinated by the National Commission – a consultative body composed of 13 members, representatives of public authorities and civil society – with the technical support from the State Chancellery and Ministry of Justice, as well as from the parliamentary committee for human rights and interethnic relations. The National Commission also coordinates and supervises the review process of the NHRAP. Each year, the information on the progress of implementation of actions is submitted by the authorities or institutions concerned to the Ministry of Justice, which compiles data and presents it to the State Chancellery for evaluation and discussion within the National Commission. The Government publishes, before 1 April of each year, the annual consolidated progress report which should be debated in the parliament.
65. Several representatives of civil society in the National Commission whom the Commissioner met during his visit pointed out deficiencies in the implementation of NHRAP. Firstly, most of the actions outlined in the NHRAP are not sustained with appropriate funding, i.e. only 26% of the actions for the year 2011 were allocated with a budget, mostly coming from international donors. This resulted in low rate of implementation or partial implementation of actions in the NHRAP. Secondly, they considered that prioritisation was necessary to optimise the process in view of financial constraints. Thirdly, they felt that they had been insufficiently involved in the process of monitoring implementation of actions. Fourthly, the authorities (Ministries or agencies) responsible for implementation at times failed to submit progress reports to the National Commission. Lastly, the Commissioner's interlocutors underscored the need to reform the Ombudsman institution, which has a role in monitoring implementation of NHRAP. The Commissioner himself observed that the NHRAP, for which there is no dedicated website, has been insufficiently communicated to the public.
66. The implementation of action plans should be reviewed in a regular way, both among the authorities reporting back to the government and within the government itself.<sup>53</sup> In this regard,

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legislative elections; however, the remaining parties, which obtained a majority of the legislative seats, signed a new coalition agreement and vested a Government chaired by the leader of the Liberal Democratic Party in January 2011. Following the departure of the Liberal Democratic Party on 13 February 2013, the Alliance for European Integration ceased to exist.

<sup>52</sup> See Activity Programme of the Government of the Republic of Moldova for 2011-2014, European Integration: Freedom, Democracy, Welfare, page 8, available at: <http://www.gov.md/doc.php?l=en&idc=445&id=3729>.

<sup>53</sup> Council of Europe Commissioner for Human Rights, Recommendation on systematic work for implementing human rights at the national level [CommDH\(2009\)3](#).

the Commissioner was informed by his official interlocutors that NHRAP was reviewed in 2012 following the Universal Periodic Review (UPR) carried out by the UN Human Rights Council. The revised NHRAP was approved by the Parliament in December 2012 and was made public in March 2013.<sup>54</sup>

## **2. Ombudsman institution**

67. The Ombudsman institution in the Republic of Moldova is the Centre for Human Rights (CHR), established in 1998 by the Law on Parliamentary Advocates. The CHR has four Parliamentary advocates, including one Ombudsman for Children, assisted by a secretariat, as well as four territorial subdivisions in Bălți, Cahul, Varnița, and Comrat (the Territorial-Autonomous Unit Gagauz-Yeri). Parliamentary Advocates are appointed by the Parliament for a five-year mandate, renewable once. The mandate of the CHR is to favour the balance between the public authorities and society, contribute to the protection of human rights by preventing their violation, improve the legislation in the field of human rights, and promote awareness of human rights among the population. The CHR also has the right to examine individual complaints.
68. Following the signature and ratification by the Republic of Moldova of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment (OPCAT) in 2006, the CHR together with a Consultative Board have assumed the role of national mechanism for preventing torture (NPM).
69. In 2009, the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights accredited CHR with “B” status, stating that the institution complies partially with the Paris Principles.<sup>55</sup> The SCA found that the selection and appointment process of Parliamentary Advocates does not ensure all necessary guarantees of a transparent, consultative and pluralist process, and that the lack of adequate funding is a structural problem of the CHR undermining its capacity to hire staff, have the use of adequately-equipped premises and carry out activities.
70. A number of other reports have referred to the institutional deficiencies of the CHR. Thus, in his Assessment Report on the current problems of the Ombudsman institution,<sup>56</sup> Marek Antoni Nowicki, the former International Ombudsperson in Kosovo, recommended the following: that the status of the Ombudsman institution be enshrined in the Constitution in view of its importance and the role it has to play in protecting the constitutional rights of individuals; the appointment of a single ombudsman instead of several ombudsmen in order to avoid different opinions or fundamental conflict in respect of the institution’s operational strategy, programmes, and policy towards authorities; de-politicisation of the process of election of the ombudsman by ensuring equal opportunities, and a public and transparent candidate selection process; a single, though suitably long, term of office; guarantee of the largest possible autonomy in shaping the internal organisation and the staff recruitment process; immunity for the ombudsman (from legal process in respect of words spoken or written and acts performed in an official capacity) and adequate salary.

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<sup>54</sup> Available at the website of the Parliament: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346972> (in Romanian).

<sup>55</sup> See the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, November 2009, available at: [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2009\\_November%20SCA%20REPORT.pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/2009_November%20SCA%20REPORT.pdf).

<sup>56</sup> [Assessment report on the current problems of the Ombudsman institution in Moldova](#), by Mr Marek Antoni Nowicki, the former international Ombudsperson in Kosovo.

71. Further, the Assessment of Rule of Law and Administration of Justice Report highlights that the financial situation of the institution is dire, regional offices are in a deplorable state, and salaries of staff are among the lowest in the public sector.<sup>57</sup>
72. The Commissioner took note of the recent approval (4 September 2013) by the Government of the draft law “on People’s Advocate” which had earlier been posted on the web-site of the Ministry of Justice for public consultations.<sup>58</sup> The draft law provides for a new title to the institution – “People’s Advocate” (instead of the current “Centre for Human Rights”) to be headed by a single ombudsman whose candidacy should be selected through a public selection procedure with the involvement of civil society; the extension of the ombudsman’s mandate from five to seven years; functional immunity in respect of words spoken or written and acts performed in their official capacity; and strengthening the capacity of the NPM. As regards the financing of the institution, the draft law provides that the Parliament shall approve its budget as part of the state budget while the NPM should dispose of its own budgetary line, in line with OPCAT recommendations.

### **3. Council on Preventing and Combating Discrimination and Ensuring Equality**

73. The equality provisions in the Moldovan Constitution<sup>59</sup> contain a prohibition against discrimination on a list of specified grounds, which are more limited than those provided for by international law. The Republic of Moldova has signed but not yet ratified Protocol No. 12 to the European Convention on Human Rights (ECHR) which expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right, including rights under national law.
74. In his letter to Prime Minister of the Republic of Moldova concerning Non-Discrimination,<sup>60</sup> the Commissioner’s predecessor recommended the adoption of specific equal-treatment or anti-discrimination legislation at national level, and that people or groups subjected to discrimination have access to functional anti-discrimination bodies.
75. Following extensive debates and in a difficult political context, the Moldovan Parliament adopted the Law on Ensuring Equality (Equality Law) on 25 May 2012, which entered into force on 1 January 2013. The Equality Law is aimed at protection against discrimination of persons on the following grounds: race, colour, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria. However, sexual orientation is not explicitly mentioned in the list of prohibited grounds of discrimination except in relation to discrimination in the workplace (Article 7). The law also establishes the institutional framework for the protection and combating discrimination which shall comprise the Council on Preventing and Combating Discrimination and Ensuring Equality (Equality Council), public authorities, and judicial courts. In addition, the Parliament passed amendments to the Criminal Code and Code of Administrative Offences which introduced new articles containing the prohibited grounds of discrimination listed in the Equality Law, as well as set out the mandate of the Equality Council.<sup>61</sup>

<sup>57</sup> [Assessment of Rule of Law and Administration of Justice for Sector-Wide Programming](#), September 2011, page 70.

<sup>58</sup> Available in Romanian at: <http://www.justice.gov.md/pageview.php?l=ro&idc=192> (as of 15 April 2013).

<sup>59</sup> Article 16. Equality of rights

(1) It is the foremost duty of the State to respect and protect the human being.

(2) All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin.

<sup>60</sup> See Letter to Prime Minister of the Republic of Moldova, Mr Vlad Filat, concerning Non-Discrimination: Legislation and Practice in Moldova - Observations of the Commissioner for Human Rights, [CommDH\(2012\)3](#).

<sup>61</sup> See the [Law No. 306 of 26 December 2012](#) (available in Romanian), which amended Article 176 of the Criminal Code – Violation of equality rights of citizens, and introduced new articles to the Code of

76. The Equality Council<sup>62</sup> is charged with reviewing complaints of discrimination and making recommendations, issuing advisory opinions on the draft laws in the field of non-discrimination, monitoring the implementation of relevant legislation, and awareness-raising. It also has the right to intervene with requests for initiation of disciplinary proceedings in respect of officials who committed acts of discrimination, register Administrative Offences and/or refer cases of discrimination with elements of a criminal offence to criminal prosecution bodies. The Equality Council does not itself have sanctioning powers.
77. The Equality Council is composed of five members, including three representatives of civil society, who are appointed by the Parliament for a five-year mandate. Selection of candidates for the position of members in the Equality Council is in the competence of a specially appointed parliamentary Commission<sup>63</sup>. Whereas the Equality Council should have been operational on the entry into force of the Equality Law on 1 January 2013, the appointment of all its members was completed only on 6 June 2013.

*Conclusions and recommendations on systematic human rights implementation and National Human Rights Institutions*

78. The Commissioner welcomes the steps taken by the authorities of the Republic of Moldova towards systematic human rights implementation through the adoption of the national Human Rights Action Plan for 2011-2014. However, the lack of resources allocated to the NHRAP has reportedly affected implementation of many of the proposed actions. In order to secure sufficient funding for the measures envisaged, human rights planning should be coordinated with the budgetary process. It would be useful to review budget proposals from a human rights perspective to inform politicians of the consequences of their decisions on the effective enjoyment of basic rights.
79. To have a better impact of the NHRAP, the authorities need to define priority areas, focusing on human rights of most vulnerable groups based on reliable data. In the interest of coherence and sustainability of the policies concerned, there should be better coordination with sector-specific plans and with the on-going justice sector reform. Preferably, the NHRAP should serve as an “umbrella”, with the individual sector plans developed in a logical and consistent way. If coordinated in substance and timing, the plans can reinforce each other rather than overlap.
80. As regards involvement of NGOs, the Commissioner reiterates that an active involvement of the civil society which scrutinises, criticises, and stimulates public debate on human rights problems is indispensable for the protection of human rights. Given the expertise of civil society on human rights matters and existing violations, a genuine dialogue between the government and civil society should be central to all human rights strategies. Collecting information from civil society is also useful for cross-checking the information provided by the public administration. In addition, this sector has a role to play during the implementation and evaluation phases as well. The business sector should also be involved, particularly regarding issues on labour rights, discrimination and corporate social responsibility.

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Administrative Offences: Article 54<sup>2</sup> – Infringement of equality rights in the field of employment, Article 65<sup>1</sup> – Discrimination in the educational system, Article 71<sup>1</sup> – Discrimination while accessing public goods and services, Article 71<sup>2</sup> – Hindrance of the Equality Council’s activities, and Article 423<sup>5</sup> – Competencies of the Equality Council.

<sup>62</sup> See also [Law on the activity of the Equality Council](#) (available in Romanian). The Parliament passed the law on 21 December 2012.

<sup>63</sup> See Parliament Decision of 29 November 2012, concerning the establishment of the Special Commission for organising and holding the public completion for selecting the candidates for the position of member of the Council on Preventing and Combating Discrimination and Ensuring Equality, available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=345735> (available in Romanian).

81. The authorities need to develop an effective internal and external communication strategy of the NHRAP and improve coordination between various authorities responsible for the implementation of actions. The authorities should enhance their efforts directed at the general public to raise awareness of their rights, and thus empower them to make use of and safeguard their rights.
82. While pursuing their objectives to systematise the implementation of human rights, the authorities of the Republic of Moldova may usefully draw upon the Commissioner's 2009 Recommendation on systematic work for implementing human rights at the national level,<sup>64</sup> as well as upon the Council of Europe's expertise in this domain.
83. Independent and effective National Human Rights Institutions play an important role in systematising human rights work. Their reports and recommendations give valuable information for identifying problems and setting priorities.
84. The Commissioner notes the assessments made by the UN bodies and international experts which highlight the need for an effective Ombudsman institution, which at present suffers from institutional deficiencies and insufficient funding. There is an urgent need to enhance the efforts for reforming the Centre for Human Rights in line with the Paris Principles and existing recommendations. The draft law on the Ombudsman approved by the Government on 4 September 2013 is a very important step in the efforts to reform this institution. The Commissioner calls upon the authorities to finalise the reform process in line with the provisions and spirit reflected in above-mentioned draft law.
85. The Commissioner has noted that a developed legal framework on non-discrimination is now in place in the Republic of Moldova and an Equality Council has been established, which are important steps towards combating discrimination and promoting equality at national level. The Commissioner would like to encourage the authorities to amend the anti-discrimination legislation in due course, with a view to strengthening its safeguards against discrimination on the ground of sexual orientation.
86. The Commissioner further underlines that the level of funding of the Ombudsman institution and the Equality Council is essential for their independence and effectiveness. When given proper mandates and adequate funding to ensure their independence, such national human rights structures have proven competent to monitor continuously how national policies and administrative practices comply with international standards.
87. The authorities are strongly encouraged to ratify Protocol No. 12 to the European Convention on Human Rights and accept the collective complaints procedure under the European Social Charter.
88. The Commissioner further invites the Moldovan authorities to make full use of the Opinion of the Commissioner for human rights on national structures for promoting equality.<sup>65</sup>

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<sup>64</sup> Council of Europe Commissioner for Human Rights, Recommendation on systematic work for implementing human rights at the national level [CommDH\(2009\)3](#).

<sup>65</sup> Opinion of the Commissioner for human rights on national structures for promoting equality [CommDH\(2011\)2](#) (in Romanian).