



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Mr Vladimir FILAT
Prime Minister of the Republic of Moldova

Strasbourg, 21 December 2011

Dear Prime Minister,

During my recent visit to Moldova from 19 to 22 October 2011, I had the opportunity to continue my discussions with the Moldovan authorities, the Parliamentary Advocates and civil society actors on different human rights issues.

In this context, I would like to share with you some of my findings and observations on non-discrimination as well as human rights issues related to the April 2009 events. They are contained in the appendices to this letter.

Yours sincerely,

Thomas Hammarberg

Appendix 1

Human rights issues related to the April 2009 events in Moldova Observations of the Commissioner for Human Rights

1. During his October 2011 visit to Moldova, the Council of Europe Commissioner for Human Rights discussed with the Moldovan authorities and other interlocutors certain human rights issues raised in his earlier report concerning the events of April 2009 in Moldova, which focused on the treatment of people detained in relation to the post-electoral demonstrations of that period.¹ Given the seriousness of his findings relating to ill-treatment by the police, the Commissioner recommended in his report that decisive action be taken to adopt and enforce a policy of “zero-tolerance” of ill-treatment throughout the criminal justice system. The Commissioner also recommended that a thorough and comprehensive inquiry be conducted into the events of 6-7 April, and provided assistance to the ad-hoc Parliamentary Inquiry Commission established for this purpose (Inquiry Commission).
2. The report of the Inquiry Commission which was presented to the Moldovan Parliament in May 2010 did not reflect the views of all the members of the Inquiry Commission, a group of whom submitted a dissenting opinion. The majority of the members of the Inquiry Commission found that coordination of the law enforcement forces had been inefficient, and that there had been abuses and excessive use of force by the police when apprehending and detaining people. The majority also referred to unlawful acts by prosecutors and judges who carried out trials in violation of the rights enshrined in Article 6 of the European Convention on Human Rights (ECHR).
3. In April 2010 the Moldovan Government established a “commission for identifying persons who suffered as a result of events on 7 April 2009”. Similar initiatives have been taken by the Chisinau local authorities to identify and compensate financially those who suffered physical or psychological harm during the April 2009 events. The Commissioner was informed by the Moldovan authorities that significant resources have been allocated for rehabilitation of victims of torture or ill-treatment or their families as well as to several employees of the Ministry of Interior who suffered injuries during the April 2009 events.²
4. During the Commissioner’s October 2011 visit to Moldova, several representatives of civil society and lawyers expressed their concerns about the progress of trials against law enforcement officials charged with ill-treatment and other violent crimes against protesters and persons deprived of their liberty in the context of the April 2009 events. According to the Commissioner’s interlocutors, those who committed acts of torture and ill-treatment have been treated with unjustifiable leniency, and trials have generally resulted in acquittals or light suspended sentences. Victims of torture and ill-treatment have not been allowed access to case files while policemen suspected of having committed such serious crimes continue to exercise their duties pending investigation. Due to the lack of a developed witness protection system, witnesses and victims of torture or ill-treatment can only receive protection from police staff, who might be colleagues of the very persons who are under investigation for such acts.
5. The case of *Pădureț v Moldova* (application no. 33134/03, judgment of 5 January 2010) highlights the problems of accountability in cases of ill-treatment by law enforcement officials. In that case, the European Court of Human Rights (ECtHR) noted with great concern the Government’s

¹ The report in question was published on 17 July 2009 (CommDH (2009) 27).

² In this context, reference could be made to the recommendations contained in “The United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law”.

assertion that torture in Moldova was considered as an “average-level crime”. The Court found such a position absolutely incompatible with the obligations resulting from Article 3 of the Convention, given the extreme seriousness of the crime of torture. The Court concluded that the legislation adopted to prevent and punish acts of ill-treatment was not given full preventive effect, and that the case constituted an example of virtually total impunity for ill-treatment by law-enforcement agencies.

6. The Moldovan authorities have initiated a comprehensive reform of the justice system with the proclaimed aims of strengthening the rule of law and respect for human rights. In addition, a special anti-torture unit has recently been established within the Prosecutor General’s Office to carry out investigations into cases of torture and ill-treatment committed by police officers.
7. The Commissioner strongly encourages efforts towards ensuring that the judiciary is independent and competent and that the right to liberty, security and to a fair trial are guaranteed. A thorough follow-up to the recommendations made by the ad-hoc Parliamentary Inquiry Commission is essential for an objective assessment of the current system when devising and implementing further reforms. Particular attention should be given to the reform of police in line with human rights principles, with a view to eradicating the phenomenon of police violence and abuse as well as to ensuring accountability for any officials who violate the prohibition against torture and ill-treatment. This also presupposes that great care is exercised in the recruitment and training of police officers, which should instill a culture of human rights within the law enforcement agencies. Police officers should not be left unprepared when encountering challenging situations such as demonstrations and should be provided with strict guidelines for the use of force.
8. Without an effective investigation of allegations of torture, the prohibition of ill-treatment would be rendered theoretical and illusory, thus allowing state authorities and their agents to act with impunity. Judges and prosecutors should react promptly and decisively whenever they become aware of information indicative of ill-treatment. For any investigations into ill-treatment to be effective, they should adhere to the major principles for effective investigations that the European Court of Human Rights has developed in its case-law. These principles are:
 - Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against, and there should be practical independence;
 - 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;
 - Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
 - Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
 - Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.
9. As the ECtHR has emphasised in *Pădureț v Moldova*, criminal proceedings initiated against law enforcement officers on grounds of torture and other forms of ill-treatment should not be time-barred and the granting of an amnesty or pardon should not be permissible in principle. Furthermore, a state agent charged with ill-treatment must be suspended from duty during the investigation and trial, and should be dismissed if convicted.
10. The National Preventive Mechanism under the Optional Protocol to the UN Convention Against Torture currently operates jointly with the Office of the Parliamentary Advocate. Steps should be taken to strengthen the independence and effectiveness of this mechanism, which should be entitled to have unlimited access to all places of detention.

11. The Commissioner strongly emphasises the importance of addressing the remaining human rights consequences of the April 2009 events in Moldova. Concrete and resolute action should be taken to bring to justice those responsible for illegal acts during that period, and reforms should be pursued with a view of preventing such large-scale violations from occurring in the future.

Appendix 2

Non-Discrimination: Legislation and Practice in Moldova Observations of the Commissioner for Human Rights

12. The issue of non-discrimination is an important element of human rights law, as reflected in various international instruments. Moldova has ratified most key treaties aimed at eliminating discrimination on various grounds,³ including the European Convention on Human Rights (ECHR), whose Article 14 establishes that the enjoyment of the rights and freedoms set forth in the Convention are to be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a minority, property, birth or other status. This is a non-exhaustive list of protected grounds, which the European Court of Human Rights (ECtHR) has more recently interpreted as encompassing disability, age and sexual orientation.
13. Protocol No. 12 to the ECHR, which has been signed but not yet ratified by Moldova,⁴ expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right, including rights under national law.
14. Other Council of Europe treaties which contain non-discrimination provisions include the revised European Social Charter (1996), which provides for the right to equal opportunities and equal treatment in matters of employment and occupation, protecting against discrimination on the grounds of sex. The principles of non-discrimination are also included in the Framework Convention for the Protection of National Minorities, the Convention on Action Against Trafficking in Human Beings and the new Convention on Preventing and Combating Violence Against Women and Domestic Violence.⁵
15. The equality provisions in the Moldovan Constitution⁶ contain a prohibition against discrimination on a list of specified grounds, which are more limited than those provided for by international law, and appear to limit equal treatment to citizens of Moldova. At the same time, the Constitution contains provisions which declare the priority of international regulations signed by Moldova in the field of human rights.

³ Moldova has ratified, inter alia, the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of Discrimination Against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

⁴ The National Report submitted to the UN Working Group on the Universal Periodic Review (A/HRC/WG.6/12/MDA/1 of 19 July 2011, § 87) and the Informative Note to the latest draft law on preventing and combating discrimination expressly state that the ratification of Protocol No. 12 to ECHR is a priority for the Moldovan authorities.

⁵ Moldova has signed and ratified all the treaties mentioned in this paragraph except the new Convention on preventing and combating violence against women and domestic violence. It has not accepted the collective complaints procedure under the Additional Protocol of 1995 to the European Social Charter.

⁶ 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.

16. Having regard to the recent debates on a draft law on preventing and combating discrimination in Moldova, the Commissioner's observations concerning different aspects of the issue of non-discrimination are set out below.

Persons with disabilities

17. According to the Ministry of Labour, Social Protection and Family, there are approximately 176 000 persons affected by various disabilities, including 16 000 children. This constitutes more than 5% of the population of Moldova.⁷ Civil society representatives dealing with disability issues in Moldova have reported that members of this vulnerable group face discrimination on a daily basis.
18. A Thematic Report issued in 2010 by one of the Parliamentary Advocates (Ombudspersons), Ms Aurelia Grigoriu, found that persons with disabilities experience discrimination in the field of employment, access to communication and information (persons with hearing and visual impairments), and access to public services, due to the widespread lack of adequate physical facilities in administrative buildings, educational and other public institutions, public transportation, etc. The impediments for disabled persons also affect their ability to exercise political choice, due to factors such as physically inaccessible polling stations and a lack of ballots printed in Braille.
19. Certain positive steps have been taken towards the deinstitutionalisation of children with disabilities, one of which is the adoption in July 2011 of the Government programme for the development of inclusive education 2011-2020. This programme aims to replace the policy of segregation of those with special educational needs with a policy which would ensure equal access to quality education to everyone – children and adults - at all stages of the educational process.
20. However, serious concerns remain in relation to the current legal provisions for the removal of legal capacity of adult persons with mental health or intellectual disabilities. Such a major interference with a person's rights is fraught with possibilities for abuse and therefore must be genuinely justified, tailor-made to the individual's needs, and be the result of rights-based procedures combined with effective safeguards, as foreseen by the UN Convention on the Rights of Persons with Disabilities. Mechanisms providing for full incapacitation and plenary guardianship must be abolished and the presumption of capacity for persons with intellectual or mental health disabilities should be formalised in Moldovan legislation.

Roma

21. According to various reports from international organisations and civil society, Roma in Moldova continue to face discrimination and exclusion in various fields including employment, education, housing and healthcare, their political representation remains minimal,⁸ and they run a high risk of being marginalised by state authorities as well as by non-state actors.
22. In Resolution CM/Res(2010)6 on the implementation of the Framework Convention for the Protection of National Minorities by Moldova, the Council of Europe Committee of Ministers recommended that the Moldovan authorities take more resolute measures to ensure that the implementation of the Government's Action Plan on Roma results in substantial and lasting improvement in the situation of the Roma in all areas, including by allocating adequate resources to its implementation. The authorities were also called upon to take steps to promote a better representation of Roma at all levels. In July 2011 the Government adopted a new Roma Action Plan for the period 2011-2015. However, concerns have once again been raised as to the

⁷ Excluding the population from the region of Transnistria.

⁸ SOROS Foundation-Moldova, Survey "Perceptions of population of Moldova on the phenomenon of discrimination", p.6, <http://soros.md/files/publications/documents/Studiu%20Sociologic.pdf>

provision of adequate resources for this plan, as well as mechanisms and indicators for the monitoring of its implementation.

23. During his October 2011 visit to Moldova, the Commissioner was informed about pilot projects for creating the institution of Roma community mediators to serve as an interface with public authorities, employers, health providers, etc. This promising initiative has the potential to encourage inclusion and integration and should receive further support. In this regard, it is important to bear in mind that Roma themselves must be key partners in the designing, implementation and monitoring of any policies affecting them at local and national level.
24. The Ministry of Education plans to introduce a new class on History and Culture of Roma in the school curricula in 2012. The Commissioner considers it important to provide factual, informative education on Roma history and culture, and to raise awareness about the nefarious effects of prejudices and stereotypes against Roma (e.g. through the Council of Europe campaign Dosta!). In order to be most effective, such education and awareness-raising should start in the early stages of the education system.
25. Anti-Roma rhetoric has been used by certain politicians in Moldova, and has apparently been broadcast on TV channels without any editorial criticism, distance or placement in an appropriate context. The use of such rhetoric and the lack of subsequent condemnation can undoubtedly exacerbate the existing marginalisation of Roma persons. Leading politicians and other opinion makers should instead take a stance in favour of principles of non-discrimination, tolerance and respect for people from different backgrounds.⁹ Media outlets and journalists should also abstain from spreading and perpetuating anti-Roma stereotypes in the context of reporting on social problems or crimes.

Religious minorities

26. Since its accession to ECHR, Moldova has been found responsible for breaching Article 9 of ECHR (freedom of thought, conscience and religion) in three cases.¹⁰ According to the UN Special Rapporteur on freedom of religion or belief, the Orthodox Christian Church has a privileged status among other religious groups. Various reports have highlighted different manifestations of intolerance against other religious groups, including hate speech, interference during religious ceremonies, and cases of vandalism.
27. The registration of the Islamic League as a religious association in March 2011 is indicative of a willingness of the Moldovan authorities to uphold international human rights standards and commitments in the area of freedom of thought, conscience and religion, despite Islamophobic rhetoric used by some politicians and leaders of certain groups. It is important that everyone is able to exercise this right, in accordance with the principles established in the case-law of the ECtHR.¹¹
28. The Commissioner has noted the recent amendments to the school curricula relating to education on religion, which have included the introduction in September 2010 of two optional curriculums prepared by representatives of various Orthodox Christian denominations joined by the Roman Catholic Church and by representatives of the Baptist, Adventist and Pentecostal Churches. According to the Ministry of Education, this curriculum replaces the previous course of history of religion and, together with the mandatory curriculum of "Civic education" and a pilot project of

⁹ Useful information and insights may be drawn from a study and declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse published in 2005 by the European Commission against Racism and Intolerance (ECRI).

¹⁰ *Metropolitan Church of Bessarabia and others v. Moldova*, no. 45701/99, judgment of 13 December 2001, *Biserica Adevarat Ortodoxa din Moldova v. Moldova*, no. 952/03, judgment of 27 February 2007 and *Masaev v. Moldova*, no. 6303/05, judgment of 12 May 2009;

¹¹ Cf. also the Guidelines for legislative reviews of laws affecting religion or belief prepared by OSCE/ODIHR experts in consultation with the Venice Commission (CDL-AD (2004)028).

optional teaching of “Education of Human Rights”, promotes moral education, tolerance, respect for oneself and for others.

29. The Commissioner recommends that steps be taken to ensure that curricula in schools and higher education, especially in the field of history teaching, present factual information about religious and cultural history with a view to promoting tolerance, mutual respect and diversity. Religious education should not be mandatory.

Lesbian, gay, bisexual and transgender (LGBT) persons

30. The European Court of Human Rights has in its case law of the past two decades recognised sexual orientation and transsexuality as prohibited grounds of discrimination under the European Convention on Human Rights. The ECtHR has issued several landmark judgments concerning discrimination on grounds of sexual orientation in which Article 14 has been invoked in conjunction with substantive articles of the Convention.
31. The Commissioner published in June 2011 a report on Discrimination on grounds of sexual orientation and gender identity in Europe, which shows that homophobia remains a serious problem in many Council of Europe member states, including Moldova. In recent years, the right to freedom of association and assembly has been denied to LGBT persons in Moldova. The legislative framework of the Republic of Moldova does not define discrimination on the grounds of sexual orientation and gender identity nor does it provides mechanisms for redressing discrimination on such grounds.
32. The Committee of Ministers in its Recommendation CM/Rec(2010)5 and the Parliamentary Assembly of the Council of Europe in its Report of 23 March 2010 have recommended the implementation of effective policies to address sexual orientation and gender identity discrimination in all member states of the Council of Europe. The newly created *LGBT issues unit* in the Council of Europe’s Directorate General of Democracy (DG2) has started to implement a “LGBT assistance project”, which aims at cooperating with up to ten Council of Europe member states to implement the Recommendations of the Committee of Ministers. Activities in the project, which has already been joined by some member states, may include awareness-raising campaigns, trainings for civil servants and police, and assistance in drafting or reviewing current legislation. Joining this project could encourage a more constructive approach to the rights of LGBT persons in order to ensure that they have the same access to human rights and fundamental freedoms as any other members of the society.
33. The Commissioner was informed by civil society actors about the recent withdrawal of outdated references to homosexuality from textbooks used at the State University of Medicine. This is a positive development; teaching materials should exclude biased and retrograde descriptions of LGBT persons.¹²

Conclusions and general recommendations

34. The Commissioner encourages the prompt ratification by Moldova of Protocol No. 12 to the European Convention on Human Rights and the acceptance of the collective complaints procedure under the European Social Charter.
35. The essence of equal treatment and non-discrimination is to allow all individuals to have an equal and fair prospect of accessing opportunities available in a society. Specific equal treatment or anti-discrimination legislation at national level can be an important tool for providing actionable

¹² Homosexuality was removed from the International Statistical Classification of Diseases and Related Health Problems (ICD) in 1990 by the World Health Organization (WHO).

rights to people who have been wronged because of discrimination on various prohibited grounds. In order to be effective, such legislation should have a clear scope and provide for accessible and effective mechanisms and resources for its implementation, as well as sufficiently dissuasive sanctions against any violations. The Commissioner recommends that the government propose such a legislation to be adopted by the Moldovan parliament.

36. People or groups subjected to discrimination should have access to functional anti-discrimination bodies. In this context, reference might usefully be made to the recommendations set out in the Commissioner's opinion on national structures for promoting equality.¹³
37. The shift in official policy towards deinstitutionalisation of children with disabilities and providing inclusive education has to be translated into concrete measures, having regard inter alia to the guidelines contained in the Council of Europe Committee of Ministers' Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities. In addition, steps should be taken to give full effect to the provisions of the UN Convention on the Rights of Persons with Disabilities, as well as to the Council of Europe Disability Action Plan 2006-2015.
38. The authorities should ensure that adequate resources are allocated to the implementation of the Action Plan on Roma, and that there is effective monitoring of its impact, including through the publication of regular evaluation reports. In this context, the authorities should also give full effect to the Council of Europe Committee of Ministers' Recommendation CM/Rec(2008)5 on Policies for Roma and/or Travellers in Europe.
39. Awareness-raising is essential for the success of any strategy to promote the principles of equality and non-discrimination. The Commissioner therefore strongly supports measures aimed at promoting tolerance and respect for everyone's human rights, as well as increasing public awareness of the situation of groups which are subjected to discrimination. Such measures should begin in the educational system, and school curricula should include education about the diverse groups in society with a view to countering ignorance and intolerance. Media outlets and journalists can also contribute to a fairer and more tolerant society by practicing ethical and responsible journalism.

¹³ CommDH (2011)2 Opinion of the Commissioner for Human Rights on national structures for promoting equality.