

FOLLOW-UP REPORT¹

TO THE RECOMMENDATIONS OF THE COMMISSIONER FOR HUMAN RIGHTS FOLLOWING HIS VISIT TO MOLDOVA FROM 16-20 OCTOBER 2000

The Commissioner for Human Rights visited Moldova (including Transnistria) in October 2000 on the invitation of the Government. The Commissioner would like to reiterate his gratitude to the Government of Moldova for their cooperation at the time of the visit and, again, on the occasion of a follow up visit effected by members of the Office from 5 to 8 March 2003. In his first report (CommDH (2000)4), the Commissioner identified a number of specific concerns regarding law and practise in Moldova with respect to human rights. It is the purpose of this report to assess the developments following to the Commissioner's findings and comments. The report is based on the written submissions of the Moldovan authorities and the conclusions of the second visit which included contacts in the Parliament, the Presidential administration, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Internal Affairs, visits to the Prosecutor General, the Parliamentary Advocates (Ombudsmen), the judges' association, the Moldovan bar, a meeting with NGOs and visits to the prison in Cricova and to the Provisional Detention Centre in Chisinau. The members of the Commissioner's Office² would like to express their gratitude for the assistance and openness of all those they met with during the course of their visit.

The Commissioner's first report focused on the following issues: the deterioration of social and economic rights; problems concerning linguistic rights; the situation in the region of Transnistria ; the behaviour of the police; the administration of justice; and prison conditions. The present report reviews the developments in these fields and the response of the Moldovan authorities to the points raised by the Commissioner.

The situation as regards linguistic rights has changed since the last elections in September 2001. The Commissioner finds that these issues are now debated in the context of Moldova's report to the Advisory Committee of the Framework Convention for the Protection of National Minorities and in the Committee of Ministers and that he need not take up this issue in the present report.

The issues concerning Transnistria and the human rights problems relating to poverty and the action taken by the Government in the field are considered in the general part of this report.

¹ Please note that this document is an excerpt from the 3rd Annual Report of the Commissioner for Human Rights (CommDH(2003)7)

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The administration of justice, the behaviour of the police and the prison conditions are topics that have drawn the Commissioner's specific attention and are dealt with separately below.

I. GENERAL SITUATION

A serious problem of poverty and the lack of control over a part of the countries' territory (the left bank of Dniestr) are the two major elements of social and political life of the country that necessarily characterize its human rights situation.

As regards the region of Transnistria, human rights concerns raised in the Commissioner's first report remain. In the meetings with Mr Andrei Neguta, President of the Parliamentary Commission for foreign policy, and with Mr Vitalie Slonovschi, Deputy Minister of Foreign Affairs, confirmed that important and serious activities are undertaken in order to set up a constitutional committee to draft a new constitution that will include Transnistria. The Moldovan authorities expressed the hope that interested neighbouring countries (Russia, Ukraine) and international organisations (Council of Europe and OSCE) will participate and will use their valuable influence to obtain the active participation of politicians from Transnistria.

As regards poverty, the Commissioner referred extensively, in his first report, to the deteriorating socio-economic situation and to the consequent violation of very basic social and economic rights such as the right to a decent standard of living, housing, medical care and basic social services. Most salaries and pensions would not cover more than 50 percent of minimal consumption needs and even these remained often unpaid. Corruption of public officials had become one of the most serious problems of the country, illegal immigration, trafficking of human beings – and of human organs – became a flourishing trade, alcoholism and drug dependency with all their consequences rose to extremely worrying rates.

Against this background, a new Government was elected in 2001 and a series of measures such as increasing salaries and pensions were adopted. In addition, a long-term national human rights action plan was set out, involving Government agencies and NGOs and partly financed by UNDP. The plan focuses on social and economic rights, proposing a series of gradual steps to combat unemployment, to face the increasing migration and to improve the situation of the most vulnerable (orphan children, women, homeless people and disabled persons).

It is quite clear that the new Government has set out the improvement of social conditions and the fight against corruption as its top priorities and that it has a certain will to involve in this project all parts of the society.

Having regard to the findings and conclusions of the Commissioner's first visit, such action must be welcome. Although the opposition has criticised some of the measures of the Government as being "populist", the Commissioner understands that measures such as the payment of pensions and salaries in a country so seriously affected by poverty were indispensable, as were also measures to increase them – albeit slightly. As repeatedly stated, the dramatic absence of the enjoyment of social and economic rights make it impossible for large parts of the population to enjoy civil and political rights such as, *inter alia*, the right to education and the right of access to justice.

The Commissioner finds it however worrying that despite the stated political will to involve all parts of Moldovan society in the action plan for human rights and social cohesion, basic elements of democratic dialogue seem to suffer unnecessary restrictions.

Thus, freedom of the media seems affected by the lack of appropriate guarantees for the independence of national public broadcasting company (Teleradio Moldova). Moreover, freedom of political association is jeopardised by serious restrictions concerning the activities of political parties and by insufficient practical guarantees for parliamentary immunity. These points have been made in a series of reports and expert opinions of Council of Europe bodies and the Commissioner need not to reiterate these concerns.

Similarly, action against corruption appears necessary and it is quite encouraging that Council of Europe assistance and expertise has been sought and is actually provided. The fact that international financial institutions have re-established their aid to Moldova is also a positive sign. Here again however, it is worrying that the fight against corruption is coupled with a diminution of guarantees for judicial independence.

Generally speaking, the Commissioner is of the opinion that the present Government has taken or is about to take a series of measures that are both necessary and appropriate with a view to lead the country out of the deadlock created by social and economic degradation and its detrimental effects on human rights. These measures are however accompanied by a diminution of legal guarantees and by actions that risk to undermine freedom of political parties, judicial independence and freedom of electronic media. The Commissioner believes that these tendencies will shortly be reversed and that any shortcomings in the above areas will be addressed soon with the help of the Council of Europe. This is definitely in the interest of the Government as it will need the support of a well informed society to carry out its ambitious programme.

II. SPECIFIC ISSUES

1. Justice

The administration of justice is an area of intense legislative work since the adoption of the new Constitutions. Several amendments but also entirely new laws are being adopted. The Commissioner insisted on three issues that raise specific human rights concerns in respect to the right to a fair trial, within a reasonable time, by and independent and impartial court (Article 6 of ECHR):

- the length of proceedings;
- the execution of court judgments;
- the independence of the judiciary.

One of the issues raised in the first Commissioner's report is the **length of the proceedings**, in particular before criminal courts.

The root causes of the slow functioning of the judicial system are related to the poor material working conditions and to the heavy workload of judges. In 2000, 49.732 cases were introduced before first instance courts and this number rose to 53.172 in

2002. Judges also face a constantly increasing workload: a very important number of new regulations come into force and the competencies of judges increase, by virtue of the citizens' right to a court. At the same time, the material conditions are not appropriate: courts face a dramatic shortage of administrative staff and computer equipment. The provisional assessment of budgetary needs effected by the association of judges indicated that 34 million lei would be necessary for the functioning of the judiciary per year, whereas until 2003 the budget allocated did not exceed 16 million lei.

The Government has taken some steps to address the problem:

- the budget for the judiciary rose from 15,361 million lei in 2000 to 22,066 million lei in 2003;
- the number of judges passed from 247 in 2000 to 316 in 2003. It is to be noted that 68 posts of judges were still vacant in March 2003.

Moreover, in accordance with the new constitutional provisions, the previously existing four instances system will be simplified to comprise only three levels of jurisdiction (district courts, regional tribunals and the Supreme Court). The laws implementing the reform are at the final stage of consideration with the help of Council of Europe experts. The abolition of appeal courts will of course deprive the parties of an additional degree of jurisdiction but this might be balanced by the advantage of accelerating the proceedings.

As to the **execution of court judgments**, Mr Dolgheru, the newly appointed Minister of Justice, informed the Commissioner's Office that a special department for the execution of court judgments was about to be created and that the draft revised code of Civil procedure contained several provisions on execution, enabling, *inter alia*, the creditor through a bailiff to seize the debtor's property, to retain his/her salary, to sequester his/her bank account. The number of executions of court judgments is thus expected to increase substantially. A certain improvement can already be observed in terms of numbers of court judgments executed although the percentage of non-executed sentences remained the same:

- in 1991 out of 189,091 judgments, 35,031 remained non executed (19%);
- in 2002 out of 267,476 judgments, 51,230 remained non executed (19%).

The encouraging results obtained should be further pursued. Although, admittedly, an important part of non executed judgments concern insolvent debtors, some concern the State and it is of particular importance for the credibility of the judicial system that the State abides by court judgments and executes *bona fide* sentences against it.

The independence of the judiciary in Moldova is a serious worry.

The Constitution of Moldova guarantees judicial independence. Appointments are made by the President upon proposal by the Supreme Judicial Council. Judges are appointed for an initial probation period and subsequently confirmed for life appointment. Worries expressed refer to the fact that the President does not follow the proposals made by the Supreme Judicial Council but has, on several occasions, vetoed re-appointment of judges after the expiry of the initial probation period, notwithstanding a positive proposal by the Council. The situation is even more complex as apparently the Judicial Council proposed, in some occasions, several candidates for one post, leaving the decision on judicial appointment to the entire discretion of the President. The fact that the President has such discretionary power and can even dismiss a judge doing away with the opinion of the Council is of course a serious interference with the independence of the judiciary.

It was confirmed in the Presidential administration that the President has indeed refused re-appointment of judges that had been presumably involved in corruption. This is again problematic: Although it is perfectly understandable that corrupt judges should be dismissed and even criminally prosecuted, this cannot occur without the guarantees of the rule of law. The Commissioner's Office delegation has sought in vain to establish what guarantees apply in the procedure leading to the non re-appointment of judges. Thus, although it was asserted, in the Ministry of Justice, that the President makes his decision on the basis of elements contained in the file submitted by the Supreme Judicial Council, it became clear in the discussions with members of the Presidential administration that the President can - and actually does - take into consideration "other relevant information" on the judge concerned. Moreover, it remained unclear whether the President gives reasons for his decision not to re-appoint a judge and whether such decision can be challenged before courts. The representative of the association of judges indicated that no reasons are given whatsoever. Appeals were indeed introduced before ordinary courts but, quite naturally, they were declared inadmissible, as ordinary courts have no competence to decide on issues of appointment of judges. The only limitation to the Presidential discretion in this field is that he cannot initiate on his own the dismissal procedure but should rather wait for a proposal to be made by the Supreme Judicial Council.

It follows that the present Presidential practice on appointment and re-appointment of judges does not provide sufficient rule of law guarantees and seems therefore arbitrary. It is even more so because appropriate procedures for the dismissal of corrupt judges actually do exist in the domestic legal order and have been successfully applied on some occasions by the Supreme Judicial Council. It is thus urgent that the Presidential practice be revised in order to safeguard judicial independence and the rule of law, and in accordance the European Charter of Judges and with international obligations resulting from Article 6 of the ECHR. In this respect, cooperation with Council of Europe experts should be thoroughly pursued.

2. Police

During the Commissioner's visit in Moldova in 2000, NGOs complained about "flagrant human rights violations by police officers", including imposition of arbitrary fines, use of violence, arbitrary detention, ill treatment and even torture. Police faced a serious problem of corruption, policemen salaries covering less than 50% of the official subsistence level per person per month.

The fight against **corruption** has been one of major objectives of the Government since then. According to information received by the Government, the average police salary has been raised by 2,5 times and, in addition, housing is provided to police officers by distribution of apartments.

The functioning of the “Internal Security Department” of the Ministry of Interior (a body competent to investigate cases of criminal activity by the police) has improved. The staff of the Department increased from 14 to 20 and the budget rose from 337,344 lei to 481,920 lei in 2001 and 451,788 in 2002. The activity of this Department, that reached its peak in 2001, covers economic crime and corruption as well as abuse of power, physical violence, protectionism, arbitrary detention and bribery. In 2000, 387 cases were investigated, leading to 74 disciplinary sentences; in 2001 the respective numbers were 445 and 109. 198 of the cases dealt with related to allegations of ill treatment and 58 to allegations of corruption of police officers. In 2002, 238 cases were investigated of which 79 related to ill treatment and 18 to suspicion for corruption; 29 disciplinary sanctions were imposed.

Over the same period (2000 – 2002) the Prosecutor General initiated 314 criminal proceedings against police officers, 48 of which concerned cases of corruption. The courts issued 103 decisions declaring police officers guilty of the offences they were accused of.

The Government believes that although corruption phenomena have diminished since 2001 it is still necessary to improve the institutional and legal framework of action against corruption.

Normative action has also been taken to provide guarantees against arbitrary detention and ill treatment in police custody.

Thus, in accordance with new legislation, **police custody** may not exceed 72 hours. In addition, any person arrested has the right to be assisted by a lawyer of his/her choice or by a State appointed advocate from the very moment of the arrest. Persons arrested have the right to ring their lawyers or relatives. In case of arrest of minors, their parents are informed. The general prosecutor receives ex officio a copy of the “procès verbal” of the arrest and may order the detained to be released at any time and, in particular, whenever the maximum time limits of police detention have been reached.

After the expiry of the 72 hours maximal time limit, a prolongation of detention is only possible through a warrant of arrest to be issued by a magistrate. This **detention on remand** cannot exceed 30 days but can be prolonged several times up to one year. Decisions to place the accused in detention on remand are likely to be challenged before the court.

It is expected that, through these regulations, cases of arbitrary detention and ill treatment in police custody will at least diminish.

However, worries still remain as to the effective implementation of these regulations. The Ombudsman of Moldova referred to cases where persons have been interrogated without their lawyer being present and cases of ill treatment are still reported. Actually, even after the judicial decision allowing for detention on remand, the accused remain most of the time in police detention centres (police “isolators”) for several months. In many cases the accused are only transferred to provisional detention

centres of the ministry of justice (judicial “isolators”) after their conviction by a first instance court. Obviously, for detainees that spend long periods in the excessively overpopulated police isolators, the fact that the legal basis of their detention is a warrant of arrest issued by a magistrate offers a merely theoretical guarantee against abuse. The risk of ill treatment as long as the investigation continues in the hands of the police is high. On several occasions Council of Europe bodies (CPT) and experts (DG I) have confirmed that conditions of detention in police isolators are extremely poor and that the combined effect of overpopulation and of the excessive length of detention may amount to inhuman or degrading treatment. Many detainees that had just been transferred from police isolators to judicial detention centres indicated to the delegation of the Commissioner’s Office that ill treatment in police isolators was not exceptional.

In this respect, efforts are still needed to

- reduce overpopulation in police isolators;
- reduce the time the accused spend in these isolators,
- effectively guarantee the presence of lawyers in interrogations;
- improve the investigation means of the police (so that confession is no longer used as the main evidence against the accused).

The Ministry of Interior is fully aware that the situation needs urgent improvement but indicated that the necessary budgetary means are lacking.

Since the entry into force, in July 2001, of legislation prohibiting **trafficking of human beings** and setting severe penalties (10 to 15 years imprisonment and up to 25 years in cases of trafficking of minors, pregnant women, or in cases of trafficking through kidnapping or abuse or with use of violence), the police – together with the General Prosecutor – are particularly active in this field and more than 60 cases of trafficking have been introduced before courts. Government agencies also started to co-operate with NGOs to develop assistance programmes for victims. These developments are to be welcome as they attempt to address one of the most dramatic problems of Moldovan society and they should continue with a view to setting out a comprehensive framework for the protection of victims and witnesses of trafficking. It is obvious that trafficking of human beings cannot be fought in domestic level only and that increased co-operation between countries of origin and between these countries and the countries of destination is highly needed. Moldova has entered into agreements with some Council of Europe member states in this field and the Commissioner can only encourage this practice. Although ultimately the root causes of trafficking will have to be addressed (insecurity, unemployment, poverty) the suffering caused by trafficking makes it necessary to take immediate action in this field.

3. Prison conditions

At the time of the Commissioner’s visit in 2000, Moldova had a very high prison population (270 per 100,000) and the Ministry of Justice was seriously underfunded. Prison conditions were, as a result, very poor.

Measures of deprivation of liberty for rather lengthy periods seem to be frequent in Moldova. Thus, prolonged police detention in the so-called “isolators” appears to be a means to obtain information during criminal investigations; provisional detention is a

rather usual measure to guarantee the presence of the accused in trial hearings and can be used even though the accused is not likely to flee; finally, prison sentences are unusually lengthy. The Moldovan authorities are aware of this situation and serious efforts have been made to diminish the number of prisoners that passed indeed from 11,830 in 2000 to 10,690 in the beginning of 2003 (3,850 in pre-trial detention in “isolators” depending from the ministry of Justice, 2,385 in strict regime, 1,790 in special regime, 1,207 in prison colonies and about 1,480 in other penitentiary institutions). Although the overpopulation in prisons is lower than that in “isolators” of the police, it remains that there are more prisoners in Moldova than beds available in prisons (10,376 beds for 10,690 prisoners).

However, overpopulation is only one of the aspects of the situation in prisons, a situation that the authorities themselves qualify as “lamentable”.

Despite the fact that the budgetary appropriations for the penitentiary system rose from 46,4 (in 2000) to 71,75 Million Lei (in 2003), the material conditions in prisons remain extremely difficult. For example, the buildings of the Cricova prison complex are heavily dilapidated and there is no visible improvement of the installations and facilities since the Commissioners’ visit in 2000. Prisoners placed in the lighter regime (most of them serving sentences up to 8 years) live in large rooms of more than 60 beds and are allowed to move in and out into a small yard, while those of the stricter regime (serving sentences of more than 15 years) are in smaller - and literally dark - cells containing 5 to 7 beds and are only allowed to a short one hour walk per day; after having served two thirds of their sentences, strict regime prisoners can expect to be placed in larger cells and to be allowed to walk in the yard and back during the day.

The recent budgetary increase allowed electricity to be provided for almost one hour per day (which is an improvement compared to the total absence of electricity in 2000) but this is still insufficient. Besides, there is still a shortage of adequate clothing, food and drinking water. Prisoners receive limited portions of bread and sugar and cereals’ soup but, apparently, they have not received any meat in the last five or six years and most of them rely on their families and relatives or on NGOs to get some additional food and clothes. Heating is also a serious problem. Not only it is insufficient during winter but in addition heating installations are often built by the prisoners themselves in the cells and are both unhealthy and dangerous.

In these conditions it is not surprising that many prisoners suffer from illness. Many (950, i.e. 9% of the prison population, according to information provided by the People’s Advocate Ms Ianucenko) are affected by tuberculosis and 211 prisoners are affected by AIDS. There is a dramatic shortage of medical supplies as only an average of 10% of the real needs in medicines is covered by the prisons’ budget. Despite the serious efforts of the medical personnel in Cricova, the situation does not seem to have improved but rather deteriorated as medical facilities and equipment are outdated and have not been replaced since 1989. Due to the lack of space, many patients are treated in cells and not in the prison’s medical centre; the latter are overcrowded merely by older prisoners, unable to take care of themselves in their cells.

The “isolator” in Chisinau is also old and overcrowded. Detainees, including women and minors are placed by 5 or 6 in cells of 2,5 x 5,5 meters. It is not rare that people spend several months or even years in the isolator. Despite the advanced stage of

dilapidation, the lack of electricity and the absence of any recreational activities, detainees claimed they were satisfied they had left the isolator of the police where conditions were even harsher. In these circumstances it is rather worrying that the Government has considered transferring the responsibility for running the prisons from the Ministry of Justice back to the Ministry of Interior as an option to improve living conditions. Such a measure, if it were to be put into practise, would certainly have detrimental effects as detainees will entirely depend for very long periods on police authorities and could be exposed to a greater risk of ill treatment.

The problems of overpopulation can be best addressed by a wiser policy on penalties and a more rational use of provisional detention measures. It is expected that the new Penal Code will enable judges to make a more flexible use of prison sentences and a rational use of alternative penalties. Provisional detention should also cease to be the rule and remain an exceptional measure.

What is mostly worrying is the combined effect of overpopulation with the dramatic shortage of food, clothing, heating and medicines that makes the living conditions degrading and intolerable. It is not surprising that these sinister conditions and the lack of security create tensions that can easily turn to violent incidents. The day after the visit of the Commissioner's team in Cricova, a riot took place in the prison resulting into one person being killed and several wounded. Two years after the Commissioner's visit in Moldova and despite the alarming reports issued by the Parliamentary Assembly, the Committee for the prevention of torture (CPT) and the Directorate General of Legal Affairs of the Council of Europe (cf. GD-Mold (2001)1) the situation has deteriorated.

Whilst the existence of administrative practises tolerating inhuman and degrading conditions of detention at this scale affects the credibility of Moldova and ultimately of the Council of Europe, the efforts undertaken by the domestic authorities appear insufficient to redress the situation.

Consequently, there is an urgent need that the Moldovan authorities together with the Council of Europe's competent bodies specifically and precisely consider in the coming months the situation in the prisons and evaluate the concrete material needs with a view to elaborating a short term plan for the improvement of the living conditions in prisons, in particular as regards medical care.

The Commissioner would consider this operation to be of the highest priority.