

**SUPPORT TO CRIMINAL JUSTICE REFORMS
IN THE REPUBLIC OF MOLDOVA**



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**Opinion of the Directorate General Human Rights and Rule of Law,
(Directorate of Human Rights) of the Council of Europe**

on the Law no. 52 of 3 April 2014

on the People's Advocate (Ombudsperson) of the Republic of Moldova

Chapter V, The National Mechanism for the Prevention of Torture

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A. Introduction

1. This Opinion contains a detailed analysis of the chapter of the Law of the Republic of Moldova no. 52 of 3 April 2014 on the People's Advocate (Ombudsperson) dealing with the National Preventive Mechanism (hereinafter - NPM) function of the Public Advocate. Arts. 30-33 of the Law (Chapter V) will be analysed in conjunction with various other provisions of the Law.
2. Hereinafter, this Opinion will refer to the said law as "the Law". This Opinion will refer to the People's Advocate as "the PA". The Opinion is complementary to the Opinion no.808/2015, CDL-AD2015)017, of the Venice Commission on the Law on the People's Advocate¹.
3. This Opinion has been prepared based on the contributions of the Council of Europe consultants Mr Jorgen Steen Sorensen, Parliamentary Ombudsperson of Denmark, and Mr George Tugushi, Member of the CPT, UN CAT, and former Ombudsperson of Georgia, under the auspices of the Council of Europe Project "Support to Criminal Justice Reforms in the Republic of Moldova", financed by the Danish Government.
4. This Opinion is based on the English translation of the Law, English translation of the Regulation on the Organisation and Functioning of the Ombudsperson's office, Opinion no.808/2015 of the Venice Commission on the Law on the People's Advocate (Ombudsperson of the Republic of Moldova), Concluding observations of 29 March 2010 of the Committee against Torture on the Republic of Moldova, Report of 9 January 2013 of the UN Subcommittee for the Prevention of Torture and Cruel, Inhuman, Degrading Treatment or Punishment for the National Preventive Mechanism and other relevant documents provided by the Council of Europe secretariat and obtained through other public sources.
5. The Opinion is also based on information obtained during a mission to Moldova on 1 and 2 October 2015. The consultants met with a number of stakeholders, including Parliamentary Committees, the PA's Office and various NGOs (see Annex 2).The consultants express their gratitude to the Council of Europe Office in Chisinau and the Council of Europe national short-term consultant, Ms Ana Racu, for a well organised visit and assistance in preparation of the Opinion.
6. The English translation of the Law may not always accurately reflect the original version on all points. Therefore, certain issues raised may be due to problems of translation.

¹See, Opinion of the Venice Commission no.808/2015, CDL-AD2015)017, para. 11
[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)017-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)017-e)

7. The consultants were not aware in detail about the political discussions in Moldova preceding the introduction of the Law in April 2014. The consultants are, however, (by way of Annex III to the report of 9 January 2013 of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) aware of the previous draft of NPM provisions. This Opinion will evaluate the provisions in the light of European and international standards. It relies on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (hereinafter – OPCAT), UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter - SPT) Guidelines on National Preventive Mechanisms, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT) Reports, the Principles relating to the Status of National Institutions (hereinafter – The Paris Principles) and other relevant standards and best practices.

B. General Remarks

8. The Republic of Moldova ratified the OPCAT on 24 July 2006 and thereby assumed the responsibility to establish or designate the National Preventive Mechanism for the Prevention of Torture (NPM) within one year after the Protocol's entry into force.
9. The Republic of Moldova adopted certain laws to determine the modalities of the establishment and operation of the NPM. More specifically, the Parliament of the Republic of Moldova passed the Law no. 200-XVI on 26 July 2007 (hereinafter - Law 2007).
10. The Parliament of the Republic of Moldova also adopted the Decision amending the Regulation on the Centre for Human Rights (p. 7, Chapter V-1, p.35) no. 201-XVI on 26 July 2007, modifying the regulations of the Centre for Human Rights. On 8 February 2008, the Government of Moldova officially notified the SPT that the Center for Human Rights (predecessor of the Public Advocate's Office) in combination with the Consultative Council for the Prevention of Torture (hereinafter - Consultative Council) was designated as the NPM of Moldova.
11. Despite a generally acknowledged lack of clarity about the nature of the Moldovan NPM, it appeared to be a "hybrid type", unlike many other NPMs in the region. Most probably, the intention of the legislators was to create a so-called "Ombudsperson +" model with an explicit role for civil society in the mechanism. However, a lack of legal certainty and a number of provisions of the Law 2007 leaving room for different interpretations appeared to be one of the obstacles for the effective operation of the mechanism.
12. Since then, the issues related to the operation of the NPM in Moldova have been raised by numerous local and international actors, including the SPT and the CPT.

13. During its visit to the Republic of Moldova in 2009, the CPT noted a number of difficulties faced by the Moldovan NPM.
14. In particular, it found that the setting-up of the Consultative Council attached to the Centre for Human Rights had not been accompanied by the allocation of sufficient budgetary resources, that many seats were vacant and that there was no member with recognised medical expertise in the Consultative Council. The CPT also noted that there had been a number of problems of access to police stations and that members of the Consultative Council had been unable to conduct some of the interviews with persons deprived of their liberty in private.
15. In its report, the CPT recommended that measures be taken to ensure that the Consultative Council exercised its powers to the full, taking due account of the recommendations, observations and guidelines drawn up by the SPT concerning NPMs, and that detailed information on the mandate and powers of members of the Consultative Council should be distributed to the competent authorities and staff concerned².
16. At the time of the 2011 visit of the CPT, the membership of the Consultative Council was being reviewed. Its new composition was decided on 27 July 2011 by the Director of the Centre for Human Rights, following an opinion from the Parliamentary Committee on Human Rights and Inter-ethnic Relations³.
17. The UN Committee Against Torture (hereinafter - CAT) in its Concluding Observations of 2009 on the Second Periodic Report of the Republic of Moldova raised concerns that serious legislative and logistic constraints impeded the effective functioning of the NPM. The CAT was particularly concerned about the lack of clarity as to what constituted the NPM.
18. The CAT recommended the State authorities to clarify what constitutes the NPM, and therefore to make appropriate changes to the legislation in force, provide the NPM with adequate human and financial resources, enable it to function effectively and carry out unannounced visits to all places of the deprivation of liberty, as well as provide training to the members of the NPM, ensure that all officials in charge of the places of detention are aware of the mandate of the NPM, that representatives of the mechanism are granted unimpeded access to all places of detention without prior notice, that reports of the NPM are made public and that all persons cooperating with the NPM are protected from possible reprisals⁴.

² Report to the Moldovan Government on the Visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 1 to 10 June 2011, Para. 7, Page 8, <http://www.cpt.coe.int/documents/mda/2012-03-inf-eng.pdf>

³ Ibid, Para.9

⁴ Concluding observations of the Committee against Torture on Republic of Moldova, 29.03.2010, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMDA%2fCO%2f2&Lang=en, Para 13, Page 5.

19. Previous legislation of 2007, defining the set-up and the operation of the NPM, was criticised by the SPT during its NPM Advisory Visit to Moldova in October 2012 And in its report adopted in January 2013. More specifically, the report says:

“The ambiguous legal basis was identified as one of the main obstacles hindering the efficiency of the national preventive mechanism. Actually, there is a contradiction between Art. 232 of the Law on Ombudsmen and paragraph 41 of the Regulations of the Centre for Human Rights, which generates various interpretations on who fulfills the mandate of the NPM. In practice, the Subcommittee observed that this ambiguity jeopardizes significantly the collegial work and information sharing, and often results in conflicting positions of the Centre for Human Rights versus the Consultative Council.⁵

Accordingly, the Subcommittee recommends that the State party eliminate current legal ambiguity through the pertinent amendments of the Law on Parliamentary Advocates”.⁶

20. In addition, the SPT criticised a number of legal and practical aspects having a direct impact on the operation of the Moldovan NPM. The absence of a permanent secretariat to support the work of the Consultative Council, general lack of adequate human and financial resources and no access to a separate budget, and inappropriate selection procedure of the Consultative Council Members appeared to be the key problematic issues raised by both the SPT and the CPT in the course of their country visits to Moldova in October 2012.
21. It is evident that since 2012, the authorities took certain steps to improve the legislation and address part of the recommendations of the SPT, CAT and CPT. The draft law presented to the SPT in 2012 at the end of its mission to Moldova and the Law adopted in April of 2014 should be considered as a step forward.
22. It is, however, to be mentioned that the current Law requires further revision in order to be fully in line with international standards and best practices and enable the NPM to function effectively.
23. The issues arising from the provisions of the current Law have more to do with some fundamental questions of content and structure of the actual provisions than with its overall compliance with international standards. This was confirmed during the fact-finding assessment mission to Moldova held on 1st and 2nd of October 2015 (hereinafter - FFM).
24. There are important elements preventing the creation and effective functioning of the new NPM in Moldova. Some of them are:

⁵Report on the Visit made by the SPT for the Purpose of providing advisory assistance to the National Preventive mechanism of Moldova, 9.01.2013, Para 11, page 4.

⁶*Ibid.* Para 12, Page 4.

- a. The People’s Advocate for the Rights of the Child (who is by default member of the Consultative Council, cf. Art. 31(3) of the Law) is not yet elected by the Parliament.
- b. The regulations on the organisation and operation of the Consultative Council are not prepared and approved by the PA, therefore the competition to select 5 members of the said Council has not been announced either.
- c. Above all, the ambiguous provisions of the Law still raise concerns both within the office of the PA and as concerns important stakeholders outside the office.

C. Assessment

Chapter V of the Law – overview and article by article analysis

25. Chapter V of the Law is titled “The National Mechanism for the Prevention of Torture” and contains 4 main provisions: Art. 30 (“Prevention of torture”), Art. 31 (“Organisation of the torture prevention activity”), Art. 32 (“Visits to places where are or can be people deprived of their freedom”) and Art. 33 (“The cease of the Council membership”).

Art. 30 – Prevention of torture

26. Art. 30(1) of the Law states that in order to protect individuals from torture and other punishment or cruel, inhuman or degrading treatment, beside the People’s Advocate Office, the Consultative Council is created as a national mechanism for the prevention of torture, in conformity with the OPCAT.
27. This provision raises a very fundamental question: who is the NPM of the Republic of Moldova? Is it the PA’s Office? Is it the Consultative Council? Is it both in cooperation? Is the Council an integral part of the PA’s office, or is it a separate entity having only certain institutional links with the PA’s Office?
28. This is not a question of formality, but an essential issue of legal clarity, responsibility and accountability. It is also crucial to a number of other issues under this part of the Law (see below). It reflects a weakness seen also in preceding legislation on the subject (see above).
29. Some provisions in the Law point to the Council as a separate legal entity to enjoy the mandate of the NPM:
 - a. For example, the above mentioned provision in Art. 30(1) appears to point to this solution. Under the letter of that provision, the Council is the NPM.

- b. Also, under Art. 32(1), the Council members choose “independently” the places to be visited. This would point to the same.
- 30. Other provisions, however, point to the PA as the NPM:
 - a. Under Art. 30(2), in order to provide the protection of people against torture and other cruel, inhuman or degrading treatment or punishment, the PA “ensures preventive and monitoring visits of the members of the Council to places where could be people deprived of their freedom, placed there by the disposal of a state body or at its direction, or with its agreement or consent.” This points to the PA as the NPM.
 - b. And under Art. 24.2, “In his/her activity for the prevention of torture, the People’s Advocate presents to the authority or responsible official his/her recommendations in order to correct the behavior towards detainees, to improve the conditions of detention and to prevent torture.” This clearly points to the PA as the NPM.
- 31. This fundamental lack of legal clarity was well illustrated during the FFM to Moldova. Some of the stakeholders, met in the scope of the FFM, consider the Office of the PA to be the NPM, while others consider the Council to be the NPM, and there are also groups which consider that the PA is the NPM in (some sort of) conjunction with the Council.
- 32. It should be noted that the process leading to the adoption, in 2014, of the Law had not been inclusive, not leaving the opportunity to consider all relevant issues. This was confirmed during the reflections with the stakeholders within the scope of the FFM.
- 33. It follows from the above that the part of the Law regulating the set-up and operation of the NPM needs to be fundamentally clarified.
- 34. Which organisational structure to be adopted is a political decision to be made by the legislature. During the FFM to Moldova, the stakeholders were not very clear and did not have uniform opinions on this. The following points should be taken into consideration.
- 35. On the one hand, it is essential that an NPM works in very close cooperation with civil society, not least NGOs. This requires an atmosphere of mutual respect and a willingness on both sides to cooperate.
- 36. On the other hand, there are strong arguments against civil society representatives (NGOs) assuming formal responsibility for the execution of public functions.
- 37. As a matter of principle, this can be seen to fundamentally contradict the very nature of NGOs, and also to blur, more generally, the relationship between the PA as a state institution and the NGOs as important representatives of civil society. It also raises very difficult practical questions as to the decision making within the NPM. For example, who decides which institutions to visit, which issues to focus on and which recommendations to provide?

38. As said above, these are fundamentally decisions for the Moldovan legislature to make. However, it should be noted, that there are strong arguments in favour of formally establishing the PA's Office as the NPM of Moldova – but based on the principle of close and respectful cooperation with civil society.
39. If this direction is taken, it would require an amendment to Art. 30(1) stating that the PA's Office is the NPM of Moldova. It should then be added in the provision that the PA's Office must execute its functions in close cooperation with the Council and in accordance with subsequent provisions of the Law.
40. As said above, the answer to the fundamental question of organisation and structure is also crucial to a number of other issues of the Law.
41. The recommendation below is based on the presumption that the PA's Office (and not the Council) will be established as the NPM of Moldova. However, it should be reiterated that this is ultimately a decision for the Moldovan legislature to make.
42. Art. 30(3) provides certain immunities and protection for the NPM members and raises no particular concerns.
43. Art. 30(4) defines the notion of deprivation of liberty for the purposes of this Law and does not raise any concerns either.

Art. 31 – Organisation of the torture prevention activity

44. Art. 31(1) stipulates that the regulations for the organisation and operation of the Council are approved by the PA, with the notice of the Parliamentary Commission for Human Rights and Inter-ethnic Relations (hereinafter - Parliamentary Commission).
45. However, it is not certain what the benefit is of approving regulations of the Council with “the notice” to the Parliamentary Commission.
46. Meetings with the members of the Parliamentary Commission confirmed that this provision is not clear, and some members of the Commission interpret it as a tool for assessing the compliance of the draft regulations with relevant legislation.
47. However, the members of the Parliamentary Commission agreed that they do not have the right to order the PA to make compulsory changes to the regulations.
48. Therefore, it is recommended to remove this provision from the Law and allow the PA to issue (rather than approve) the regulations without the duty to notify the Parliamentary Commission (but in consultation with the Council).
49. Under Art. 31(2), the PA is by default chairing the Council. Under Art. 31(3), the Council is comprised of 7 members. The PA and the People's Advocate for the rights of the Child are ex officio members of the Council. The other members proposed by civil society are selected by a process organised by the People's Advocate Office and are appointed for a 5 year mandate, which cannot be renewed.
50. However, it is unclear who appoints the members of the Council. Under Art. 31(3), these members are, as said above, “proposed by civil society” and “selected upon a

selection procedure organised by the People’s Advocate Office.” Nothing is said as to who exactly appoints the members. Presumably, this is meant to be the PA, but this is not clear. It should be stated explicitly in the Law.

51. In line with the presumption made in paragraph 41 above, the provision should make clear that the PA is authorised to appoint the members of the Council. It should also make clear, however, that appointment should be the result of a public and transparent competition.
52. Art. 31(4) stipulates that a member of the Council may be an individual corresponding to the following requirements:
 - a) has higher education in the area of law, health, psychology, pedagogy, social assistance or another area relevant for the mandate;
 - b) work experience of at least 3 years in the area of human rights;
 - c) no criminal records;
 - d) no public servant job, not member of the Parliament or member of a political party;
 - e) not employed by the law enforcement bodies.
53. The requirement of 3 years of human rights experience seems to be disproportionate and does not pursue a sufficiently legitimate aim, as it might be an obstacle to, for example, a forensic doctor, psychiatrist, nutritionist, or any other professional without particular human rights experience running for the membership of the Council.
54. It should be also made clear if the employment by the law enforcement authorities refers to present employment or also to past.
55. The meetings held during the FFM indicated that the membership of law enforcement officials in the NPM has been a matter of concern. Therefore, it is recommended that the Law sets a clear prohibition that current as well as former law enforcement officials should not be members of the Council.
56. Under Art. 31(5), the Council may involve specialists and experts from various areas including lawyers, doctors, and psychologists during preventive and monitoring visits. This article raises no particular concerns. It is recommended to add a provision granting the experts hired for the NPM, while working for the mechanism, the same rights and privileges as for the permanent members of the Council.
57. Arts. 31(5) and (6) state that the members of the Council are performing their duties based on principles of independence, impartiality, objectivity and confidentiality. These provisions raise no concerns.
58. Art. 31(7) sets the same guarantees for independence and inviolability for the members of the Council as for the PA. Provision of such a high level of immunity to the members of the Council is positive. Experts hired for the NPM could be added in

this provision to solve the issue raised in paragraph 51-56 of this Opinion.

59. Art. 31(8) stipulates that the resources necessary for the realisation of the Council's duties, and to contract specialists and experts, are included in a separate budget line as part of the budget of the People's Advocate Office.
60. The members of the Council, except ex officio members, have the right to remuneration amounting to 10% of the average monthly salary on the economy for each day they make preventive visits to places of detention or take part in the Council meetings.
61. It is a matter of concern that the members of the Council might receive higher remuneration than the staff members of the PA assisting the Council in its daily operation. It is advisable to consider aligning the income of the NPM staff members within the PA's Office with the members of the Council. This will likely promote a better working environment and improve the effectiveness of the NPM.
62. Under Art. 31(9), in its activity, the Council is assisted by a special sub-division from the PA's Office. In addition, Art. 7.6 of the Law nr.164 on approving the Regulation of organisation and functioning of the Ombudsperson's Office⁷ states that the Office, among its other main functions, shall provide organisational, legal, information and technical assistance to the Ombudsperson, the Ombudsperson for Children's rights and the Council for Prevention of Torture.
63. The SPT guidelines on National Preventive Mechanisms state that where the body designated as NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget⁸.
64. Provision of sufficient human resources has been a matter of concern since the establishment of the NPM in Moldova. It goes without saying that the operation and effectiveness of any local or international mechanism in charge of torture prevention largely depends on the operation of the permanent secretariat assisting the members and the experts of the visiting bodies. Issues raised in paragraph 63 of this Opinion, relating to the institutional setting of the Council, are closely interrelated with Art. 31(9) of the Law.

Art. 32 – Visits to places where are or can be people deprived of their freedom

65. Art. 32 of the Law regulates matters related to the visits to places where people are or can be deprived of their freedom.
66. Art. 32(1) states that the members of the Council choose independently the places which shall be visited and the people they are willing to communicate with.

⁷The Law nr.164 on approving the Regulation of organisation and functioning of the Ombudsman's Office entered into force at 02.10.2015, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=361146>

⁸SPT Guidelines on National Preventive Mechanisms, adopted on 09.12.2010, Para 32.

67. This provision is very unclear. Does it mean that the Council as such (independently of the PA's Office) chooses places to visit? If so, under what rules? Or does it mean that each individual member of the Council has a right to choose? And how does it relate to the issue of whether it is the PA's Office or the Council (or both) that form the NPM (see above paragraphs 29-42 on Art. 30)?
68. Above (paragraph 41), the assumption is made that Art. 30 should be clarified to the effect that the PA's Office is the NPM. If so, it would fall within the competence of the PA, but in full and constructive consultation with the Council, to decide which places of deprivation of freedom to visit.
69. Art. 32(1) should then be amended to that effect.
70. It is noted that the Law contains practically no provisions on the internal procedures of the Council. This was not the case with the previous draft Law (cf. paragraph 7 above). It contained, for example, rules on remuneration, how often the Council meets, quorum, majority vote and procedures for submission of reports to the competent authorities, including deadlines.
71. The relevance and importance of the detailed regulation of these issues again depend on the fundamental organisational issue discussed above. If the Council is a formal decision making body, detailed regulation is very important. If the Council is an advisory body to the PA's Office, then less detailed regulation is needed.
72. Based on the assumption made in paragraph 41 above, the need for rules on, for example, majority voting appears to be less crucial. But rules on, for example, remuneration, quorum and procedures for drafting of reports are still very relevant. They should be adopted in the form of internal regulations on the operation and organisation of the NPM issued by the PA under Art. 31(1).
73. The regulations should be rather detailed and include all the matters listed above.
74. Beyond other activities of the NPM, the interviewing of persons deprived of their liberty plays one of the most important roles in the work of the NPM. The Law should (in Art. 32) clearly state that the NPM is free to choose the place where they want to interview the selected persons, that all interviews should be conducted in private and any type of surveillance should be strictly prohibited.
75. Art. 32(2) states that in order to make preventive and monitoring visits it is not necessary to give a prior notice, nor the permission of any authority is required. This provision raises no concerns.
76. Under Art. 32(3), during the preventive and monitoring visits it is allowed to use audio or video devices, with the consent of the individual to be recorded. This provision raises no concerns either.
77. Art. 32(4) stipulates that following each visit, a report is drawn up, including, if necessary, proposals and recommendations to improve the situation.
78. It is not, under the letter of the provision, clear whether the report is drawn in the

name of the PA or the Council. This is also related to the issue of institutional set-up raised above in this Opinion. Again, the report should be drawn in the name of the NPM (the PA's Office), but in full and constructive consultation with the Council. This should be clarified in the relevant provision.

79. Situations may arise where the PA cannot immediately agree with other members of the Council on the content of the report (for example which recommendations to provide).
80. In such cases, the parties should be under a clear obligation to attempt to reconcile their views into a unanimous report. In practice, members of the Council should be responsible for preparing notes from the visits and submitting them to the secretariat, which should be in charge of the report drafting.
81. If, however, agreement cannot be reached, it would follow from the concept that the PA has the ultimate decision to speak as the NPM. But in such situations it might be advisable to provide for other members of the Council to have their dissenting opinions published as part of the report (but in the name of the members and not the NPM).
82. This is a matter of policy, but should be considered. It could be added as a new Art. 32(5).
83. In this context, it should also be noted that under SPT Guidelines on National Preventive Mechanisms, NPMs should produce reports following their visits as well as produce an Annual Report and any other forms of the report, which it deems necessary⁹.
84. In addition, the requirement to prepare reports after each visit raises some concerns as well. Such matters should be dealt by the internal regulations rather than the Law.
85. Here, it should also be noted that under Art. 24(2) of the Law, the PA, in his/her activity for the prevention of torture, presents to the responsible authorities his/her recommendations in order to correct the behaviour towards detainees, to improve the conditions of detention and to prevent torture. Under Art. 29(1), the Annual Report submitted to Parliament shall contain, mandatorily, a chapter on the prevention of torture.
86. Thus, these issues appear to be well covered by other provisions of the Law.

Art. 33 – The cessation of Council membership

87. Art. 33 of the Law regulates issues related to the cessation of the Council membership.

⁹Ibid. Para 36.

88. Under Art. 33(1) of the Law, membership of the Council “ceases” under certain conditions, such as expiry of the mandate, in case of dismissal, revocation, death or in the case of non-compliance with the conditions provided by Art. 31(4) (b) and (d).
89. Under Art. 33(2), Council membership may be revoked by the PA (with the notice of the Parliamentary Commission) in the case of non-performance of the conditions provided by Art. 31(4), in the case of impossibility to perform his/her mandate or, at the request of the Council, the failure or improper performance of duties.
90. Under Art. 33(3), in the case of vacancy of a member of the Council, the People’s Advocate Office organises the selection process for candidates, complying with the provisions of Art. 31(3) and (4). The chosen member of the Council is appointed for a new mandate.
91. There seems to be an uncertainty between Art. 33(1) and 33(2). There is an overlap in the listing of reasons for revocation, and in Art. 33(1), there is no indication as to which authority decides on dismissal.
92. Thus, the provisions on dismissal/revocation should be clarified.
93. In consequence of the assumption (paragraph 41 above) that the PA’s Office is the NPM, with the Council as an advisory body, it would be natural for the PA to have the power to decide on this.

D. Conclusions

94. The Law should be considered as a step forward in the process of establishing a well-functioning NPM in Moldova.
95. However, the Law requires further revision in order to be in line with international standards and best practices to enable the NPM to function effectively.
96. Essential elements in such a revision are the following:
 - a. It must be clarified who is the NPM of Moldova (the PA, the Council, or both?). This is fundamentally a decision for the legislature of Moldova. However, it should be noted that, there are strong arguments in favour of formally establishing the PA’s Office as the NPM of Moldova, but based on a principle of close and respectful cooperation with civil society. See paragraphs 28-46 of this Opinion.
 - b. It must be clarified who appoints the members of the Council. If the advice stated above in paragraph 96a) is followed, the competence to appoint should lie with the PA – but as a result of a public and transparent competition. See paragraphs 51-52 of this Opinion.
 - c. It must be clarified who decides which institutions for the NPM to visit. If the advice stated above in paragraph 96a) is followed, the competence to

decide should lie with the PA – but in full and constructive consultation with the Council. See paragraphs 66-68 of this Opinion.

- d. It must be clarified who ultimately decides on the content of NPM reports. If the advice stated above in paragraph 96a) is followed, the competence to decide should lie with the PA – but in full and constructive consultation with the Council. Various mechanisms are suggested to deal with disagreements between the PA and the Council. See paragraphs 78-82 of this Opinion.
- e. It must be clarified who decides on dismissal of members of the Council. If the advice stated above in paragraph 96a) is followed, the competence to decide should lie with the PA. See paragraphs 87-92 of this Opinion.

97. Also, a number of other issues should be clarified/corrected (as proposed throughout this Opinion).

ANNEX

List of visited institutions and meetings during the Fact Findings Mission in Moldova 1-2 October 2015

1. **Meeting at the Council of Europe Office in Chisinau**, meeting with Deputy Head of Office and Project manager "Support to Criminal Justice Reforms in Moldova"
2. **Visit to United Nations Development Program Moldova and Office of High Commissioner of Human Rights**, meeting with representatives of Human rights and Justice team
3. **Visit to Parliament of Republic of Moldova: meetings with** former Ombudsperson, Head of Parliamentary Legal Committee and representatives of the Parliamentary Human Rights Committee
4. **Visit to Office of the People's Advocate**, meeting with PA's representatives, responsible for the NPM activity
5. Meeting with **Human Rights NGOs**: representatives of Amnesty International Moldova, RCTV "Memoria", "Promo-Lex"
6. Meeting with the former members of **NPM**