

Expert opinion to the draft Law amending
Law No. 52/2014 on the People's Advocate
(Ombudsman)
OF THE REPUBLIC OF MOLDOVA

Prepared on the basis of contributions by:
Marek Antoni Nowicki
George Tugushi

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Abbreviations

CoE – Council of Europe

CM – Committee of the Ministers of the Council of Europe

Council – Council for the Prevention of Torture of the Republic of Moldova

CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

GANHRI - Global Alliance of National Institutions for the Protection of Human Rights

MOJ – Ministry of Justice of Moldova

NGO – Non-governmental organisation

NHRIs – National Human Rights Institutions

NPM – National Preventive Mechanism (Council for the Prevention of Torture of the Republic of Moldova)

PA – People’s Advocate (Ombudsman of Moldova)

PACE – Parliamentary Assembly of the Council of Europe

PAO – People’s Advocate Office

PACR – People’s Advocate for Child’s Rights

OPCAT – Optional Protocol to the Convention against Torture

SCA - Sub-Committee on Accreditation

UN – United Nations

UN CAT – United Nations Committee against Torture

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Introduction

This opinion is designed to assist the authorities of Moldova in further improvement of the legal framework of the People's Advocate (Ombudsman) institution, in line with the recommendations issued by relevant international bodies and best applicable international practice. The opinion consists of analytical information and recommendations on further improvement of the analysed draft Law, as well as additional recommendations not yet covered in the document.

This document was prepared on the basis of the contributions of the Council of Europe consultants, Mr. Marek Antoni Nowicki - former member of the European Commission of Human Rights, former international Ombudsperson in Kosovo, and Mr. George Tugushi – former Public Defender (Ombudsman) of Georgia and Member of the CPT and Vice-Chair of UN CAT, within the framework of the Council of Europe continued assistance to the authorities of the Republic of Moldova under the Programme “Promoting a human rights compliant criminal justice system in the Republic of Moldova” funded by the Government of Norway.

This opinion is based on the English translations of the draft Law amending Law of the Republic of Moldova No 52 of 3 April 2014 on the People's Advocate (Ombudsperson), the Information Note and the draft Law amending Law No 52/2014 on the People's Advocate (Ombudsperson) presented by the Ministry of Justice of the Republic of Moldova, as well as the current version of the Law of the Republic of Moldova No 52 of 3 April 2014 on the People's Advocate (Ombudsperson), Regulation of 5 July 2016 on the Organisation and Functioning of the Torture Preventive Council, including opinions of the European Commission for Democracy through Law (Venice Commission)¹, the Opinion of the Directorate General of Human Rights and the Rule of Law of the Council of Europe on Chapter V "National Mechanism for the Prevention of Torture"², the recommendations of the Sub-Committee on Accreditation of the Global Alliance of National Institutions for the Protection of Human Rights (GANHRI)³ and other available documents on the subject-matter of the assignment.

This opinion is limited to issues that require critical comments or suggestions/solutions other than those proposed in the reviewed draft. The opinion also indicates important questions omitted in the draft, which in the light of the aim of the initiative to amend

¹Venice Commission, [Opinion on the Law on the People's Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015); Venice Commission, [Opinion on Proposed New Article 37 of the Law on the People's Advocate of Moldova](#), CDL-AD(2017)032, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

²DGI(2015) 25, 28 November, 2015

³GANHRI SCA, Report, May 2018, pages 25 – 28.

Law No 52 – to bring it fully into line with international standards – should be included in the proposed amendments.

The consultants express their gratitude to the Council of Europe Office in Chisinau for the assistance provided in the preparation of this report.

Executive Summary

In recent years, the Republic of Moldova has made tangible steps forward towards strengthening the People's Advocate (PA) and its Office. The related legal framework has been revised many times, the PA was designated together with the Council for the Prevention of Torture as National Preventive Mechanism against Torture (NPM); the staff of the PA with the assistance of donors has participated in numerous training and educational activities, both locally and abroad; relevant regulations and guidelines to ensure the smooth operation of the office were prepared and implemented into practice. The budget of the PAO with the designation of the NPM has been increased.

However, some issues, both of legal and practical nature, remained as impediments for the further strengthening of the PAO. The volatile political situation, lack of sufficient budgetary resources, lack of good quality office premises, internal disagreements between the PAO and the NGO members of the Council for the Prevention of Torture and other matters negatively affected the overall operation of the institution.

Legal Framework for PAO has been a matter for discussion number of times locally and internationally. International bodies like Directorate General Human Rights and Rule of Law (Directorate of Human Rights) of the Council of Europe, Venice Commission, Office of the UN High Commissioner for Human Rights, Global Alliance of National Human Rights Institutions (GANHRI) and its Sub-Committee on Accreditation (SCA) over the last few years have issued opinions and recommendations related to the further improvement of the PAO relevant legal framework and other related matters. The draft Law analysed in the present expert opinion and presented by the Ministry of Justice of Moldova aims at implementing the respective recommendations. More specifically the draft law proposes a revision of few articles of the law addressing the following issues:

- Status of the People's Advocate for Child's Rights within the PAO;
- Repealing the provisions of the Law related to the Deputy PA;
- Procedures related to the selection, appointment and dismissal of the PA;
- Matters related to the functional independence of the PA;
- Issues related to the processing of complaints by the PAO;
- Capacity building and awareness-raising capacities of the PAO;
- Amendments to the provisions of the Law on the NPM;
- Amendments to the Contravention Code of the Republic of Moldova;

- Amendment to the Regulation on the Organisation and Functioning of the PAO approved by Law No164/2015.

While most of the proposed amendments should be considered as a step into the right direction, some of them still deserve attention and should be revised to make the PA Law fully compliant with the international standards and best practices. As mentioned above, this opinion is limited to the sections of the Draft Law, which in the opinion of the consultants should be revised further. The opinion also covers particular matters, which are not covered by the current draft Law, thus should be considered to cover the gaps left out of the draft.

Legal Opinion

When analysing the presented draft Law, the consultants considered, in particular, the following international standards and related documents:

- The UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (“Paris Principles”)⁴.
- Venice Commission Compilation of Opinions Concerning the Ombudsman Institution⁵.
- “The Venice Principles” on the Protection and Promotion of the Ombudsman Institution⁶.
- Belgrade Principles of the Relationship between National Human Rights Institutions and Parliaments⁷.
- Parliamentary Assembly of the Council of Europe (PACE), Resolutions: 1959 (2013) on Strengthening the Institution of Ombudsman in Europe, 4 October 2013; 2301 (2019) on Ombudsman Institutions in Europe – The need for a set of common standards, 2 October 2019.
- Recommendation of the Committee of Ministers to member States on the development of the Ombudsman Institution⁸.

In the same process, the consultants also took into account the following reports concerning the operation of the People’s Advocate in the Republic of Moldova:

⁴Adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

⁵Venice Commission, Compilation of Venice Commission Opinions Concerning the Ombudsman Institution, CDL-PI(2016)001, 5 February 2016.

⁶ Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”) 3 May 2019, CDL-AD(2019)005.

⁷Adopted during the International Seminar on the Relationship between National Human Rights Institutions and Parliaments, Belgrade, 22–23 February 2012.

⁸Adopted on 16 October 2019, CM/Rec (2019)6.

- Opinion No 808/2015 of the Venice Commission on the Law on the People’s Advocate (Ombudsman) of the Republic of Moldova⁹.
- Opinion No 906/2017 of the Venice Commission on Proposed New Article 37 of the Law on the People’s Advocate Finance Provisions¹⁰.
- Opinion of the Directorate General Human Rights and Rule of Law (Directorate of Human Rights) of the Council of Europe on Law No 52 of 3 April 2014 the Law on the People’s Advocate (Ombudsman) of the Republic of Moldova, Chapter V, The National Mechanism for the Prevention of Torture¹¹.
- Global Alliance of National Human Rights Institutions (GANHRI) General Observations of the Sub-Committee on Accreditation (SCA) (2018)¹².

Comments and recommendations on the draft provisions as proposed by the Ministry of Justice

PAO’s competences over private sector (Article 1 § 1)

The current wording of this provision gave the PAO an exceptionally broad competence, unknown to other similar institutions, to deal with cases concerning private entities. The proposed amendment, although in the right direction, does not solve, however, the entire problem indicated here. Therefore, the issue of the PA’s and the PACR’s competence over the private sector requires additional reflection, considering that one of the most important roles of the PAO is to provide independent supervision of activities of public administration at all levels as well as public enterprises and any other persons or entities when they are performing public services or achieving public goals. Such supervision can also encompass the activity of private entities even if they do not perform such functions but then the PAs and the PACR’s authority should be limited to the issues related to rights of a child or cases of alleged discrimination.

Relationship between the PA and the PACR (Article 1 § 3)

In the field of the protection of children’s rights by the Ombudsman, there are usually two options: either a separate specialized ombudsman or a special department in the general ombudsman institution with one of the deputy ombudsmen responsible for such matters.

⁹Adopted at its 103rd Plenary Session, 19 – 20 June 2015, CDL-AD (2015) 017.

¹⁰Adopted at its 113th Plenary Session, 8 – 9 December 2017, CDL-AD (2017)032.

¹¹The opinion of 28 November 2015, Ref: DGI (2015) 25

¹²Adopted by the GANHRI Bureau at its Meeting on 21 February 2018.

In this case, the legislator decided to take a different path and in Law No 52 introduced two ombudsmen in one institution “autonomous among them” (Article 5 § 1): the PA with general competence and the PACR with his/her competence limited only to the rights of a child. This concept from the outset caused serious ambiguities as to the mandate of the PACR, his/her relationship to the PA and his/her place in the structure of the PAO, institutional and financial independence. These ambiguities were raised by the Venice Commission in its 2015 opinion¹³ and they persist today.

The declared purpose of the currently proposed amendments in this area is to dispel any doubts that in the PAO are two ombudsmen with the same legal status. The Information Note prepared by the Ministry of Justice states clearly that *“it is proposed to operate amendments throughout the text of Law No 52/2014, from which it should result that within the meaning of this law, the notion of People’s Advocate (Ombudsman) means both People’s Advocates (...), and the autonomy of one in relation to the other refers to carrying out the duties for the purpose of fulfilling the mandate”*. As result of the proposed amendments all provisions of Law No 52 would extend both to the PA and the PACR.

Regardless of any pragmatic assessment of such a solution, it may raise serious doubts as to its compliance with Article 59-1 of the Constitution, which speaks only about “the People’s Advocate”, leaving no room for an interpretation, which would imply that there may be more than one “People’s Advocate” (see: constitutions of Georgia (Article 35), Poland (Article 208), Spain (Article 54)). This issue requires further serious reflection from the authors of the draft.

Scope of immunity (Article 4 § 1)

The proposed amendment is in the right direction, however the immunity provided for in this provision should also apply, at least, to the decision-making staff of the PAO for the activities performed by them in their official capacity in compliance with the law.

PA’s revocation (Article 14 § 4 a)

The Venice Commission recommended in its 2015 Opinion to better specify and narrowly interpret the existing § 4 a, stressing that the *“action incompatible with the PA’s status”*¹⁴ as a ground for the PA’s revocation is a very vague criterion. At this point,

¹³Venice Commission, *Opinion on the Law on the People’s Advocate (Ombudsman) of the Republic of Moldova*, CDL-AD(2015)017, 19-20 June 2015, § 43 – 44.

¹⁴Venice Commission, [Opinion on the Law on the People’s Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017, 19-20 June 2015, § 58.

it should be recalled Principle 11 of the Venice Commission Principles stating that *“the Ombudsman shall be removed from the Office only according to an exhaustive list of clear and reasonable conditions established by Law. These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of office”, “misbehaviour” or “misconduct”, which shall be narrowly interpreted”*¹⁵.

The criterion proposed in the new wording of §4a does not meet these conditions, opening up a wide field for arbitrary interpretation and abuse. There is also the question of who would assess whether such violation took place, as well as the “intent” and “gross negligence”. It would be difficult to expect that this role could be undertaken by any parliamentary body, as these are issues that by their nature should be dealt with by the courts.

Ex-officio investigations

Article 16 c¹

The PA cannot be limited by the law in deciding to initiate ex officio investigations if its scope falls within the competence of the PAO. Such a decision should solely depend on PA’s belief in the need for such action. For this purpose, appropriate amendments to Article 11.g and Article 22 §1 should be introduced. This issue was also underlined by the Venice Commission in its 2015 opinion: *“the Moldovan Law sets an unusually high threshold for the power of the PA to act ex-officio, although own-initiative investigations would be relevant in many situations. It is recommended to reconsider this approach and to amend the Law accordingly”*¹⁶.

The proposed content of the new letter c¹ in Article 16 does not solve the specified problem.

Temporal competence

(Article 21 § 5 a)

The current possibility for the PA to extend the deadline for submitting the complaint for another year in exceptional circumstances, contrary to what is proposed in the draft amendments, should be maintained. There may be cases in which the complainant was not able, due to special circumstances, to file a complaint within the one year provided for in this provision. At the same time, the interest of protection of human rights would argue for its consideration by the PA.

The acceptance of such a complaint should be left to the decision of the PA. One can agree that there should be a certain time limit in this respect.

¹⁵Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”) 3 May 2019, CDL-AD(2019)005, p. 4. .

¹⁶Venice Commission, [Opinion on the Law on the People’s Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017, § 64.

A separate question that arises is how to calculate the beginning of the one-year time limit. In this respect, the provision should be sufficiently precise, enough to determine one of the formal conditions for the admissibility of the complaint, therefore there should be no room for discretion.

Functionality of the NPM (Article 30)

Since the entry into force of the OPCAT, the Member States to the Protocol either managed to establish/designate the NPM or are still in the process of designation¹⁷. Currently, there are three types of NPM models present in the world.

More specifically, most of the Member States have already designated existing NHRIs (Ombudsman Institution) as NPMs. Most NHRIs, designated as NPMs, were existing bodies granted additional powers and responsibilities to perform the NPM mandate¹⁸. Some of them have a legal obligation to cooperate with the civil society in implementing the NPM mandate (Ombudsman+), while some NPMs cooperate with NGOs without such obligation established by the Law. In a small number of countries, NHRIs have been designated as part of multiple body NPMs. In a few cases, they were established at the moment they received their NPM designation.

In some of the countries, where multiple body NPMs have been designated, they comprise only two institutions, while in others they are much bigger, comprising more than twenty institutions. The number of institutions and the type of institutions that are part of the multiple body NPM depends on each country (including the population and the size of the country and already existing institutions)¹⁹.

Only a few OPCAT Member States established new specialised institutions as NPMs with the sole aim of fulfilling the state's obligations under the OPCAT. In contrast to most other NPMs, such new institutions are not part of other oversight or monitoring bodies and do not have other major roles or powers beyond those set out in the OPCAT²⁰.

The Republic of Moldova ratified the OPCAT in 2006 and established its NPM in 2010. There was a lack of clarity about the nature of the NPM, as Moldova adopted a hybrid-type model: the National Centre for Human Rights was designated as the NPM, together with the Consultative Council.

¹⁷90 States Parties, of which 71 have designated their NPM, 12 States Signatories

¹⁸ Austria, Bulgaria, Greece, Azerbaijan, Estonia, Finland, Denmark, Serbia, Georgia, Armenia, North Macedonia, Sweden, Romania, Croatia, Ukraine, Lithuania, Poland, Czech Republic Montenegro, Albania, Spain, Portugal, Turkey, Mexico, etc.

¹⁹The UK

²⁰ France, Italy, Kirgizstan, Germany, Switzerland

In April 2014, a new Law No 52 on the PA was adopted²¹, including provisions on the NPM. The Law established the Council for the Prevention of Torture (NPM), composed of 7 members, including the PA, the PACR and 5 members proposed by the civil society. The Council is chaired by the PA. Despite amended legal framework, ambiguities and uncertainties remained, negatively affecting the effectiveness of the NPM and leaving room for different interpretations on the competences of the PA and the Council (NPM).

The issues related to the functionality of the NPM of Moldova have been a matter of concern since the day of its conception. The proposed changes to the legal framework are unlikely to solve all the problems accumulated over the years within the NPM. However, the proposed amendments to Law No 52 may contribute to the effectiveness and smoother operation of the NPM. While the Law should more clearly define the role of the PA in this mechanism, effective participation of the civil society members in the operation of the NPM should be maintained. The Law should define more clearly and coherently the legal framework for the chosen Ombudsman+ model of the NPM.

Article 30 § 1

It is recommended to reformulate the proposed §1 to provide that the NPM in line with the OPCAT is exercised by the PA in cooperation with the Council established for this purpose by the PA.

Article 30 § 2

The current version of § 2 provides that the PA ensures preventive and monitoring visits only by the members of the Council. Preferably, the Law should contain an obligation of the PA to ensure preventive visits to places of deprivation of liberty by all persons possibly involved in the NPM work. Therefore, § 2 should be revised accordingly.

Visiting detention places

Article 32 § 1

As to the proposed amendments to Article 32 paragraph 1, it creates the risk that if there is no mutual agreement in the Council (NPM), then visits to places of deprivation of liberty might be blocked. Preferably, the Law should provide that the Council members, PAO and experts selected for the NPM shall visit the detention places on regular and ad hoc basis. The visiting plan of the NPM should be annually approved by the Council. The Council should notify the PA (Ombudsman) about the ad hoc visit in advance. The Council members shall discuss with the stakeholders in confidential conditions.

²¹ Law of the Republic of Moldova No 52 of 3 April 2014 on the People's Advocate (Ombudsperson)

Financial independence (Article 37 § 1)

The amendments proposed to Article 37 § 1 are far from sufficient and do not meet the widely accepted basic requirements of the financial independence of such institutions and do not constitute an appropriate response to the critical comments and recommendations contained in the 2015 opinion of the Venice Commission²² and its 2017 opinion²³, which deals exclusively and exhaustively with issues relating to the proposed amendments to Article 37, which were later adopted and are currently in force.

The independence of every ombudsman institution in the budgetary domain consists, *inter alia*, in the fact that it is not the government that decides what financial resources are needed to ensure full, independent and effective discharge by the Institution of its responsibilities and functions in line with the Constitution. Principle 21 of the Venice Principles clearly requires that “*the ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year*”.

Therefore, instead of the proposed amendments, it would be necessary to return to the original text of Article 37 adopted in 2014, which generally met the required basic criteria, as confirmed by the Venice Commission in its 2015 and 2017 opinions.

Its text, however, should be supplemented by a provision from which it results that the adopted budget for the PAO shall not be less than for the previous budgetary year. The budget can be only reduced with the consent of the PA and the PACR. This important guarantee is not reflected in the draft.

Funds from external sources (Article 37 § 3)

Certain funds from external sources – domestic or foreign – even if not prohibited by the Law, may pose a serious threat to the financial independence of the ombudsman institution. As a result, the possibility of receiving them must be subject to the guarantees and conditions specified in the Law. Donor resources that are made available and accepted shall not affect the independence of the PAO or its entitlement to funds from the State budget. The proposed text of Article 37 § 3 (or any other

²²Venice Commission, *Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova*, CDL-AD(2015)017, §§ 73 - 75

²³Venice Commission, *Opinion on Proposed New Article 37 of the Law on the People's Advocate Finance Provisions*, CDL-AD (2017)032.

provision) does not provide such guarantees and it should therefore be amended accordingly.

Issues not covered by the draft provisions provided by the Ministry of Justice

Relationship between the PA and the judiciary

There is no separate provision in Law No 52 that would explicitly specify categories of cases concerning the judiciary in which the possibility of the PA's or the PACR's intervention is retained. However, the competence of the PA or the PACR relating to the judiciary shall be confined to ensuring the procedural efficiency and administrative propriety of the judicial system or cases of clear abuse of power.

Security of employment

One of the important safeguards contributing to the PA's or the PACR's independence should be a security of their employment on an objective basis after the end of their term. This issue is not dealt with neither in Law No 52 nor in the draft amendments. The lack of any solution in this regard was criticized by the Venice Commission in its 2015 Opinion: *"since the PA is neither a member of the judiciary nor an official of the executive power, there may be technical problems with offering him security of employment on an objective basis after the end of this term, and this is not dealt with the Law"*²⁴.

Amicus curiae actions

Currently, the opportunity to intervene in proceedings at all levels of the domestic and international judiciary systems, as a third party submitting amicus curiae briefs, should be seen as one of the main practical tools available to ombudsperson institutions. Law No 52 provides for such a possibility in Article 25 § 3 by stating that the PA *"may intervene in the trial for conclusions for the protection of the legitimate rights, freedoms and interests of the persons"*. That broad formula provides a legal basis for the PAO to intervene in practically every case raising issues regarding the protection of rights and freedoms according to international standards. It is worth emphasizing that national institutions for the protection of human rights, including the ombudsman, are increasingly using the option to act as a third party not only in proceedings pending before national courts but also international human rights bodies. Therefore, explicit provisions in Law No 52 should be considered to allow the PA or the PACR to also act as

²⁴Venice Commission, [Opinion on the Law on the People's Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017§45.

a third party before international human rights courts and other similar bodies in selected cases pending against the Republic of Moldova, as well as other countries where the issues involved are also of relevance for the Republic of Moldova's domestic human rights context.

Statutory deadline (Article 21 § 2)

The statutory deadline of 10 days in which the PA or the PACR shall notify the complainant of the decision concerning the admissibility of his/her complaint in many cases may be sufficient to decide whether the case is amenable for any further processing, but not in all cases. The PAO's practice shows that meeting these exceptionally short and unrealistic deadlines causes many difficulties and negatively affects the quality of complaint handling process. The decision should always be made in the interest of the complainant without undue delay, however the provision should not provide for such a rigid time limit – without exceptions – that would prevent the specific circumstances of a particular complaint from being considered. The drafted amendments should therefore be an occasion to consider an appropriate change to this provision, allowing exceptions, the existence of which should be left to the discretion of the PA or the PACR.

Inviolability of the PAO (Article 4)

Article 4 should be amended by adding a paragraph stating that *“the premises of the PAO shall be inviolable. The archives, files, documents, communications, property, funds and assets of the PAO, wherever located and by whomsoever held, shall be inviolable and immune from search, seizure, requisition, confiscation, expropriation or any other form of interference, whether by executive, administrative, judicial or legislative action”*.

Salary level of the PA and the PACR (Article 13 § 3)

The Principle 3 of the “Venice Principles” clearly states that: *“the Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman”*²⁵. There is no European standard in this area, however in the Council of Europe member states the salary level of the Ombudsman mostly reaches the

²⁵Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”) 3 May 2019, CDL-AD(2019)005, p. 3; see also: Venice Commission, [Opinion on the Law on the People's Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017 § 45.

level of salaries of judges of courts of highest instances or their presidents or heads of other high-ranking state institutions or offices²⁶.

Contrary to the original text of Article 13 § 2 of Law No 52, which stipulated that *“the social status and guarantees of the People’s Advocate are similar to those of the Supreme Court of Justice judges”*, its current Article 13 § 3 does not precisely and expressly define the level of salary of the PA and the PACR referring only to the legislation regarding the remuneration system in the budgetary sector.

Amendments to Law No 52 and the Regulation for the setup and operation of the PAO

Law No 52 should contain a special provision requiring open, transparent and meaningful consultation concerning any amendments to this Law, including with the PAO, at all stages of the law-making process²⁷.

The independence of the PAO requires also that the PA and the PACR, and not the government, be entrusted with the preparation of a draft of any amendments to the Regulation for the setup and operation of the People's Advocate Office. A recommendation in this direction was included in the 2015 Opinion of the Venice Commission²⁸. The draft amendments do not propose any solution that would be an appropriate response to this recommendation. Law No 52 should contain a provision stating that only the PA and the PACR prepare any proposed amendments to the applicable Rules of Procedure, which are then adopted by the Parliament.

A further-reaching solution, which exists in many countries (e.g. in Poland: *“the tasks and organization of the Office shall be set forth by its statute to be conferred by the Commissioner”*) or in Austria, where the Standing Rules and the Allocation of Responsibilities and Duties are subject to resolutions of the Ombudsman Board, can also be considered. In such a case the PA and the PACR will jointly adopt the regulation for organisation and operation of the Office as an autonomous internal act of the PAO.

Concluding remarks

Our comments and suggestions concerning the proposed amendments show that the draft, as it has been presented for the review, requires much more in-depth work and reflection to be able to fully implement the declared objective – to amend some normative acts concerning the People’s Advocate in order to adjust them to international recommendations. This legislative initiative should also be used to

²⁶See, for example: Georgia, Czech Republic, Poland, Croatia, Norway, Sweden, Netherlands, Estonia, Slovenia, Romania, Finland.

²⁷see: Belgrade Principles of the Relationship between National Human Rights Institutions and Parliaments, § 4, §§27-28.

²⁸Venice Commission, [Opinion on the Law on the People’s Advocate \(Ombudsman\) of the Republic of Moldova](#), CDL-AD(2015)017, §§ 76 – 77.

comprehensively make all other necessary amendments to Law No 52, in particular those that we highlight in the present opinion.

More specifically, the drafters of legislative amendments should limit the competence of the PA and the PACR towards private entities to the cases related to the rights of the child or cases of alleged discrimination.

Further reflection is required on the compliance of the proposed amendments concerning the status of the PACR with the Constitution of the Republic of Moldova, which clearly speaks about one “People’s Advocate”.

As to the proposal to strengthen the immunity of the PA, while this is a step into the right direction, the immunity should be extended at least to the staff members of the PAO in decision-making staff positions.

As to the issues related to the revocation of the PA, the authors of the draft should reconsider Article 14 § 4a, as its proposed wording does not meet standards of clarity and foreseeability, opening up a wide field for arbitrary interpretation and abuse.

As to the PA’s or the PACR’s authority to initiate ex-officio investigations, they cannot be limited in such decisions if their scope falls within their competence.

The current possibility for the PA to extend the deadline for submitting the complaint for another year in exceptional circumstances should be maintained. The acceptance of such a complaint should be left to the decision of the PA or the PACR.

As to the functionality of the NPM, it goes without saying that the experience from recent years has revealed many practical and legal shortcomings in the operation of the mechanism. Despite several soft measures put in place and involvement of international consultants, problems remain. While the legal amendments might still not address all issues properly, they should still aim at improving the situation, via providing the PA more explicit status as a body designated as NPM, which has a clear obligation to implement this mandate in cooperation with civil society.

As to the financial independence of the PAO, the authors of the amendments should consider introducing additional safeguards. More specifically, the government cannot be entitled to decrease the budget of the PAO without the consent of the PA and PACR. Additionally, the Law should provide safeguards protecting the PAO from receiving external funding potentially damaging the independence of the institution.

As mentioned above, while the amendments address many important issues concerning the functioning of the PAO, some issues which also deserve attention seem to have been omitted. This legislative initiative should be used to address them.

It is for this purpose that the authors of the draft should:

- regulate more clearly the role of the PA and the PACR in relations with the judiciary and give the PA and PACR a wide mandate to intervene in court proceedings acting as a friend of the court (*amicus curiae*), both locally and internationally;
- provide adequate guarantees of employment of the PA and the PACR after the end of their term;
- provide the PA and the PACR with a wider discretion regarding the deadline for notifying the complainant of the decision on the admissibility of his/her complaint,
- provide legal safeguards for the inviolability of the PAO's premises and property;
- provide the PA and the PACR with solid legal safeguards regarding their remuneration; preferably it should equate their monthly salary with that of the head of other independent constitutional institution (President of the Constitutional Court, President of the Supreme Court, General Prosecutor, Speaker of the Parliament);
- include a special provision requiring open, transparent and meaningful consultation concerning any amendments to the Law on the PA.