

CENTRUL PENTRU DREPTURILE OMULUI DIN MOLDOVA



**ЦЕНТР ПО ПРАВАМ
ЧЕЛОВЕКА В
МОЛДОВЕ**

**THE CENTER FOR
HUMAN RIGHTS
OF MOLDOVA**



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**INDIVIDUAL NHRI MOLDOVA REPORT
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TO THE UNIVERSAL PERIODIC REVIEW OF MOLDOVA
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UNDER THE HUMAN RIGHTS COUNCIL**

This report is issued by the Centre for Human Rights of Moldova (CHRM) – the National Human Rights Institution. CHRM is an independent state institution, which ensures the activity of the parliamentary advocates (Ombudsmen). In Moldova the Parliament appoints four ombudsmen, having equal rights, one of them who is specialized in matters of child rights protection.

Following the ratification on March 30, 2006 by the Republic of Moldova of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsmen have been assigned the mandate of the National Torture Prevention Mechanism.

In 2009, CHRM has been accredited as a (B) status National Institution for the Protection of Human Rights.

The report contains information on the issues identified by the Ombudsmen and the ones which were approached before the national authorities.

Transnistria

1. Republic of Moldova does not exercise effective control over the territory of Transnistria, a fact which prevents the enforcement of human rights, in particular the right to physical and mental integrity, liberty and personal security, free movement, right to vote, right to health care and social protection, right to education. The lack of effective control on the Moldovan-Ukrainian border on the Transnistrian segment leads to the illegal flow of goods and illegal border crossing by citizens, including the illegal extortion of minor children from the country.

Access to justice

2. Annually, about 25% of the total number of complaints received by the Ombudsmen regards the failure to guarantee a fair trial¹. The most frequently raised issues are: the failure to examine cases within a reasonable time, limited access to a qualified lawyer, non-enforcement of court's decisions, violation of procedural rules by courts which guarantees the right to a fair trial. Institutional and administrative deficiencies such as insufficient funding of the judiciary, the excessive volume of work that goes to a judge, judges involved in carrying out technical work in the absence of the clerk unit in certain courts, the staff turnover that ensures courts activity etc., affects adversely the quality of justice.

3. Ombudsmen consider that the judges in their decisions do not allege enough international treaties to which Moldova is a party and the ECHR case-law.

4. The procedure for appointment of judges does not ensure their independence and irremovability. Thus, there was not revised the procedure for appointing judges to exclude the initial period (the trial term) for 5 years. In 2010 new grounds for disciplinary sanctioning of judges were introduced – the issuing of a decision which was later recognized by the European Court for Human Rights as a decision that had violated human rights and fundamental freedoms; interpretation or inconsistent application of legislation, intended or gross negligence, if this fact is not justified by the jurisprudence. Ombudsmen qualified these amendments as an attempt on the freedom of judges to resolve cases impartially, in accordance with the law and its own assessment of the facts, and supported the need for their constitutionality control.

5. The current composition of the Superior Council of Magistracy (administrative judiciary body), which was restructured in December 2008, does not fall, according to the Ombudsmen, under the international and regional standards and shall not ensure its independence from the executive and legislative. Thus, the composition of the Council shall be the President of the Supreme Court, the minister of justice, the general prosecutor (appointed or confirmed by the Parliament), four members elected by Parliament among the titleholder professors, and only five judges elected by secret ballot by the General Assembly of Judges.

¹ Report on human rights observance in Moldova in 2010, www.ombudsman.md

Non-discrimination

6. Presently there is no special legislative act in the Republic of Moldova which would regulate the exclusion of any form of discrimination, whilst the national legal framework contains provisions inserted in various legislative acts which prohibit discrimination based on different grounds, however in spite of their existence, there is no national law and the case-law in this field is nonexistent. On February 17, 2011 the Government considered the draft Law on preventing and combating discrimination and presented it to Parliament for adoption. The Ombudsmen welcome the notable progress in the Government's involvement in preventing and combating discrimination. Nevertheless, a part of society is reluctant to the provisions of this document, which prohibits discrimination against sexual minorities. Thus, under the influence of the public opinion, the Parliament might be reluctant in adopting the Law in the version proposed by the Government.

7. At the level of perception, most often are discriminated the persons with disabilities, the socially vulnerable persons, HIV-positive people, elderly people, sexual minorities, the Roma people and women. Acts of discrimination are registered in the employment, the workplace itself, in the educational institutions and in the medical institutions.

The Protection of National Minorities

8. The results of the 2004 population census provides data on the composition of the Moldovan population, but without a clear indication about their ethnicity and spoken language, lacking the systematic data collection on social inclusion, issues and cases relating to discrimination of national minorities. The 2004 census data does not include numerical information on the ethnicity in the districts of the left side of Nistru (Transnistria). It is necessary to improve the data collection system on the mentioned groups, so that it shall be possible to assess the situation regarding the different minority groups and to determine the extent of manifestations of racial discrimination and assess the effectiveness of integration policies, respecting the right of self-identification.

Freedom of religion

9. Adoption of the Law on religious communities and their components (2007) has not resolved the issues concerning the registration of the Muslim religious community in Moldova. This prevents the effective realization of their rights to express their religious affiliation and the establishment of institutions, organizations and religious associations².

Sexual Minorities

10. The problems faced by sexual minorities refer to the impossibility to change the identity documents by transgender people, the failure to achieve the right to freedom of assembly and association, the right to labor and health care, the right to personal security.

11. The legal framework in force does not allow the possibility to legally recognize the new gender identity of a transsexual exposed to surgeries, a state of affairs which creates numerous obstacles. In Moldova there is a lack, at the legislative level, of a changing mechanism in the identity documents of the letter indicating the gender/sex.

12. The Ombudsmen recommended national policy development on a new culture of tolerance.

The prevention of ill-treatments

13. Although there is a positive dynamic in the prevention of ill-treatment, the Ombudsmen note the failure of authorities to ensure adequate conditions of detention, torture and ill-treatment prevention, human dignity protection in and adequate quality of medical services.

² Case Masaev vs Moldova, 12 May 2009, the European Court for Human Rights

14. Despite the existing gaps in the legal and financial activity related to the National Preventive Mechanism (NPM), it succeeded in increasing the number of preventive visits / monitoring from 43 in 2008 to 126 in 2010. From the beginning of preventive mechanism activity, the authorities have been submitted 47 notices containing redressing recommendations and 36 requests on the initiation of criminal proceedings. In the course of the NPM's activity, the Ombudsmen have given attention to the issuing of recommendations for the administrations of the visited institutions, aimed at ensuring adequate conditions of detention and the right to physical and mental integrity. It was succeeded in raising awareness on the adequate conditions of detention, the most notable success being the allocation from the reserve fund of the Government of considerable financial resources to improve the conditions of detention, in special institutions of the Ministry of Internal Affairs and dialogue started by the authorities with CoE Development Bank on the funding of 8 houses of arrest.

15. On the Ombudsman's proposal, art. 10 of the Code of Criminal Procedure of the Republic of Moldova was completed, thus, the burden of proof on non-application of torture and other cruel, inhuman or degrading treatments, it is for the authority in whose custody the person is deprived of freedom, placed at the disposal of a state body or at his or her indication or tacit consent³.

Private life

16. According to the Ombudsmen's opinion, Moldova is still at the stage of propagation the meaning of the right to private life, which is not insured to the extent required by international standards. Most sensitive at this chapter are the lack of an effective mechanism of defending human rights within the interception of communications, legal and institutional issues in the insurance protection of personal data, overall on the chapters of health information privacy, granting meetings to prisoners with their relatives and other close persons.

Healthcare

17. Since 2007, the government health policy has evolved gradually. Continuous improvement of quality and safety of medical services was provided through the accreditation process, mandatory for all health care institutions and pharmaceutical companies. Also the first cycle of accreditation, which ended in 2007, highlighted the major system problems- violation of the rights of patients by medical staff (right to information, confidentiality and privacy), the unsatisfactory material and technical base and the institutional environment, the unattractive health care system for young professionals.

18. In 2004 it was implemented the mandatory health insurance system. Although, the World Health Organization qualified the health insurance system in Moldova as one of the best and recommended the implementation of it in all the developing countries⁴, in the opinion of the Ombudsmen, this system suffers gaps such as - the excessive cost of insurance policies linked to the small amount of services included in the Unique program of the mandatory health insurance, the imperfection of the law related to financing, allocated resources and the provided medical services.

19. The state has not taken effective measures to ensure public access to safe medicines, of a good quality and at an accessible price. In Moldova the price of medicines is much higher than in neighboring countries.

20. Mental health area is not provided with sufficient financial resources; the procedure of limiting exercise capacity or the declaration of incapacity, the mechanism of guardianship are defective and do not fully ensure the rights of persons with disabilities.

Education

³ The Law on supplementing of some legal acts No.13-XVI of 14.02.2008

⁴ The activity of the National Company of Health Insurances for 2009, www.cnam.md

21. The national legislation provides regulations which do not ensure the equal opportunity to access in higher education, due to the fact that some social groups detain privileges and facilities on admission.

22. Contrary to the provisions of the Law on education, the State does not provide sufficient number of free transportation units necessary for ensuring the access to education for the pupils from the rural areas; does not take effective measures to prevent the informal/illegal tax gathering in schools; the State has not provided mechanisms for detainees' access to higher education.

23. The state tolerates the involvement of the children in agricultural work during the study hours;

24. In the special education institutions have been recorded cases of child labor exploitation⁵.

The best interest of the child

25. In the Activity Program of the Government of the Republic of Moldova are not found priority actions on children's rights.

Social protection

26. In Moldova, the standard of living is not ensured according to the commitments assumed. The right to a decent living suffers essential encroachments. The average monthly pension covers the subsistence level of 72.2%.

27. Currently there is no legislative basis for determining the minimum of subsistence, an amount which is taken as the basis for calculating the minimum wage, minimum pension and the social payments. The Ombudsmen repeatedly recommended the adoption of the legal framework to determine and use the minimum of subsistence.

28. A sensitive field is the system of social security pensions, which is imperfect and doesn't provide equal conditions to establish the pensions. At legislative level it is not regulated the system of private pensions.

29. The current legal framework which regulates the provision of housing for citizens it's obsolete and does not correspond to the actual rigors.

30. The process of reforming the residential system by implementing the alternative care services (Houses of Family Type, professional parental care, etc.), it is slow because the state does not adequately stimulate their development and does not provide adequate financial support.

31. There are no effective levers regarding the execution of the court decisions on collection of maintenance of the child in the cases when he lives separately from the parents.

32. There are recorded deficiencies in determining and paying the allowance for guardianship/trusteeship because of inefficiency of the local public authorities, responsible for this field and of the austerity of the local budgets.

33. In Republic of Moldova there are no precise figures regarding the number of the unsupervised children as result of parent's labor migration. The authorities estimate their number at about 100.000 children. The current policies and legal framework do not provide adequate protection for them.

⁵The Report on human rights observance in the Republic of Moldova in 2010, www.ombudsman.md

Juvenile Justice

34. In Republic of Moldova there is no separate system of juvenile justice. The number of criminal offences committed by the minors or with their participation is increasing.

35. In 2010, on the Ombudsman's recommendation, the only boarding institution in the country for the children with behavioral deviations, was closed, due to the non-compliance of the children's reeducation conditions. The state has not undertaken any measures to propose alternative solutions.

Domestic Violence

36. Although, beginning with 2007, the Law on Prevention and Combating Violence in Family was adopted, unfortunately, its provisions are implemented undue, especially by the social workers and the employee of the Ministry of Internal Affairs.

37. On the one hand, it is established the inefficiency of the system on prevention the violence against children and the post-factum intervention of the social workers and district inspectors (police officers), on the other hand.

Gender equality

38. The main issues consist in the low rate of participation of women in the economical and political areas and the violence against women. The legal framework on the gender equality remains, mostly, a declarative one, inclusively due to the existing customs and the perception of the role of women in the society. There is a lack of an efficient mechanism on the implementation of the Law on ensuring equality between women and men (2006). A series of actions included in the National Plan⁶ were not achieved or achieved partially. Nevertheless, the Ombudsmen appreciate the government actions on implementing the international standards in the national legislation on ensuring equality between women and men.

The persons with disabilities

39. Current legislation requires public authorities to create necessary conditions for persons with disabilities' access to the physical environment, public transport, the environment of communication, etc. The Ombudsmen's investigations⁷ show that only 46% of the monitored public buildings respond to the needs of people with disabilities. At the same time, there is a lack of suitable public transport and infrastructure for this category of persons. The lack of unique standards for environmental adaptation, lack of effective control by the state over the existing legislation, budgetary austerity, are the main factors affecting the realization of the rights of persons with disabilities, including the right to vote and be elected, to education, justice, participation to the political and public life.

40. The persons with disabilities have limited access to labor market. The current methodology for establishing the disability is based on the medical model, which does not encourage the social inclusion.

The Right to Work

41. Although wage developments - the main source of livelihood of most people- is in progress, the issue on linking wages to the cost of vital human needs, is not resolved. There is a fundamental difference of the co-reporting wages depending on the scope of activity. The existing problems on the labor market relate to the inadequate and unattractive remuneration for the able-working population, the high rate of unemployment, wage arrears.

⁶ The Report of Gender-Centru on monitoring the implementation of the Law on ensuring equality between women and men and the National Plan "The Promotion of gender equality in society for 2006-2009"

⁷ The Thematic Report of the CHRM on the access of the persons with special needs to the infrastructure

42. The national structures responsible for integration of population into the labor market do not have sufficient capacity to achieve national employment policies.

The National Human Rights Institution

43. The ICC Sub-Committee on Accreditation found that "the lack of adequate funding is a structural problem of the CHRM. Despite the significant efforts made by the institution, inadequate funding undermines the capacity of the CHRM to hire staff, make use of equipped premises and carry out activities". The lack of adequate funding and of a proper premise affects significantly the carrying out of basic activities and the image of the institution.

44. The procedure for allocation of finances, through the Government, the lack of adequate funding, overall lack of legislative measures and the regulatory gaps of the Ombudsman in the Constitution affects the independence of the CHRM.

45. By virtue of the political crisis, the deputies of the Parliament have not heard in plenary sessions the Reports on human rights observance in Moldova in 2008 and 2009, which were submitted by the Ombudsmen as required by law. This state of affairs requires the conclusion that human rights are not a priority for the state, to the extent as the Ombudsmen would like it to be. CHRM aims to take all necessary measures to ensure, in the possible shortest terms, the enforcement of the requirements for "A" status accreditation submission, and relies on the support from the legislative and the executive, including the promotion of the proposals to amend the legislation that ensures the activity of the Ombudsmen, developed by CHRM.