

Promo - LEX



RETROSPECTIVE 2006

REPORT

HUMAN RIGHTS IN MOLDOVA

Chisinau 2007

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drepturilor omului în Republica Moldova au contribuit:**

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**Această publicație a apărut grație suportului financiar al Ambasadei Regale
a Olandei prin intermediul programului Matra KAP.**

*Punctele de vedere exprimate în Raport reflectă opinia și poziția autorilor,
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Acestea nu pot fi interpretate sub nici o formă ca reflectând opinia
Ambasadei Regale a Olandei.*

PREAMBLE

The extent to which human rights are respected in a society is an indicator of its level of development and democracy. During a long period of transition from a centralized to a democratic system Moldova knew both regressions and progresses. After 15 years of independence, Moldovan society and authorities are still trying to consolidate their efforts toward reaching an acceptable development level for a genuine constitutional state indeed.

The role of civil society in Moldova in the human rights monitoring, promotion and protection process is quite enormous and contributes most efficiently to society's development and democratization. In this sense, this is the second year in a row that Promo-Lex Association aims at performing a study of the situation in this field, as well as to publish a report on the situation of human rights in Moldova, which, thanks to the MATRA KAP Program of the Embassy of Netherlands in Kiev, became possible.

The first report of Promo-Lex Association focused on the analysis of cases from the practical activity and experience of non-governmental organizations, which is why it was highly appreciated by the public opinion. In comparison with year 2005, in 2006 Promo-Lex activities have been more diverse and numerous and, as consequence, the authors herein decided to use the same methods that were applied during the elaboration of the report on the situation of human rights for year 2005. At the same time, the authors consulted various experts taking also into account the identified problems, which contributed to an equidistant and impartial analysis of the situation from a practical rather than formal point of view. Therefore, this report included all phenomena, situations and cases that came to the knowledge of Promo-Lex experts during year 2006.

In this sense, Promo-Lex Association would like to thank all its partners and colleagues for their contribution with an advice or relevant materials to the elaboration of the report. Therefore, we would like to remark the contribution of the following persons:

Vlad Spinu, president of Moldova Foundation, Washington, USA;

Ionas Aurelian Rus, doctoral student at Rutgers University, New Brunswick, New Jersey, USA,

Igor Volnitchii, reporter, Infotag Agency,

Vasile Spinei, President of Acces Info Association;

Valentina Basiul, journalist, «Timpul» newspaper,

Valeriu Prohnițchi, chief executive of «Expert Grup»,

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Dana Cotici, consultant, «GenderDoc-M» Center

Andrei Brighidin, Association of Legal Clinics of Moldova

Maria Cioaric, SIEDO

Promo-Lex Association calls on the state authorities and civil society from Moldova to investigate the cases brought up in this report in order to avoid such situations in the future. We refer particularly to the numerous circumstances that lead to infringements of the rights of citizens residing in the Transnistrian region of the country. The authorities, especially, and the society, in general, ought to contribute to the minimalization of the discriminatory effects applied to hundreds of thousands of citizens.

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1. RIGHT TO LIFE, LIBERTY AND SECURITY

According to the provisions of international treaties and the national legislation, the Republic of Moldova is to secure the right to life, psychological and physical integrity to all persons under its jurisdiction. Given that this right is a complex one, we suggest its examination in the light of the following fields related to the

- observation of the right to life;
- prohibition of torture and inhuman or degrading treatment and punishment;
- prohibition of forced or compulsory labor;
- respect of right to liberty and security;
- respect of right to free movement.

1.1. Right to life

The Report on the Human Rights Situation in the Republic of Moldova, year 2005, focuses on certain moments, which, in our opinion, are nothing else but violations of norms and practices that secure the observance of the right to life.¹ Generally, these violations refer to the efficiency of investigation of certain dubious deaths that might eventually involve certain agents of the state. To our regret, such cases were also reported during year 2006.

Thus, in 2006 we had cases in which people deceased in uncertain circumstances, which naturally should lead to the initiation of operative and effective investigations by legal institutions and bodies for identifying the causes of death. Those cases include deaths occurring in medical institutions and penitentiaries. For instance, the death of Mrs. B.T. in Hospital no.1 of Chisinau² caused by a thromboembolism, which is a frequently encountered disease among pregnant women. The doctors could not diagnose it for more than 16 hours from her admission to hospital. It is to mention that during the said period of time the victim was not submitted to any treatment at all.

A similar case occurred in Ungheni town in December 2006.³ Citizen A.H. gave birth to a child in a local hospital. Due to some birth problems the child was sent by ambulance to the center of Mother and Child Care of Chisinau, his mother being forced to secure her trip to Chisinau on her own. Having arrived to Chisinau with an occasional car

1 http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

2 <http://garda.com.md/100/investigatii/>

3 <http://azi.md/news?ID=43265>

the victim was not awarded the necessary attention and medical care. As a result, she fainted and fell into a coma, and in approx. 45 days deceased without ever regaining consciousness.

The legal authorities initiated investigations in view of elucidating the death circumstances, but their results were not made public and, respectively, we cannot speak of their efficiency in relation to the attitude of the public opinion in such cases. Other similar cases, and namely cases of deaths occurring under dubious circumstances, were reported in penitentiaries as a result of the negligence of the institutions themselves and of the medical staff responsible for offering the necessary medical care.

Such is the case of citizen V.B.,⁴ who deceased in the detention cell of the Orhei Police Department. V.B. was an invalid of the 1st category and she was arrested without any consideration given to her state of health. During her detention, the women had an epileptic attack and deceased as a result. We have to note that at that moment of time there were no doctors in the department, and the ambulance car arrived in 20 minutes.

A really shocking case occurred on 25.01.2006 in the Pruncul penitentiary.⁵ One of the convicts applied several hammer strikes in the head to several of his fellow detainees. 3 of them died in the hospital as a result of the injuries caused in such a way. Penitentiary representatives tried to prevent this information from being made public. Moreover, they refused to receive representatives from the of Moldova Center for Human Rights (ombudsmen) and a monitoring visit to the penitentiary related to this case.⁶ Even though several investigations were initiated in view of elucidating the circumstances of the abovesaid cases, they were not brought to public knowledge and, thus, we cannot speak of their efficiency.

In 2006, as we noticed, new cases were reported, in which the inadequacy of the attitude and actions of state representatives caused sufferings to real people. Even though there were only few such cases, they all bear the print of indifference, irresponsibility or incompetence of state representatives. Thus the situation did not change from this point of view and it has evolved to become a serious problem.

As to the state of things in the Transnistrian region, that has been outside the control of constitutional authorities for over 15 years, we can note a substantial worsening during year 2006. For the first time after 1992 the region faced acts of terrorism that made victims among civilians. On 6 July 2006 8 people were killed and 20 severely injured as a result of an explosion that occurred in a public transportation in Tiraspol town. Shortly after (on 13 August 2006) new explosions took place in public transportation, causing the death of civilians, including children. Various versions of what had happened in both cases were given: «terrorist act», «accident», «action of revenge aiming at destabilizing the situation in the region», «action for «punishing Russia», etc.⁷

4 <http://api.org.md/cuvintul.html>

5 <http://azi.md/news?ID=37844>

6 http://www.ombudsman.md/Ses_avize/inv/61/

7 www.cip.nm.ru

However they assume that the authors of the said terrorist acts used explosives that was kept illegally from the war of 1992, which only proves the inefficiency of Moldovan-Russian structures in monitoring and redressing the situation in the Transnistrian area. It is to be said that local Tiraspol authorities, which are illegal structures from the viewpoint of international law, prevented Moldovan constitutional authorities from interfering in the investigation and documentation of the explosions from Tiraspol. They also refused to receive the blood donations and humanitarian aids from the right bank of Nistru river, while accepting all aid coming from the Russian Federation, which is a serious and grave problem for Moldovan authorities.⁸

It is namely the region situated under the control of the illegal regime of Tiraspol that cannot be viewed as a region in which human rights are observed, including the right to life. This allegation can be also confirmed by the increasing number of cases of custom murders. Only in 2006 certain journalists made several attempts to make public and relate a series of dubious deaths of high-ranking officials of the Tiraspol secessionist regime.⁹ As a continuation of the facts stated in the said article came the case of citizen W, one of the leaders of an ethnic organization from the region, who on 11.02.2006 disappeared and was found shot a few days after. Regretfully the constitutional authorities did not initiate any independent investigation in view of elucidating the circumstances of the above said cases, which is why we cannot speak of the observance of the right to life of the deceased and can state that this right was violated.

RECOMMENDATIONS:

1. To investigate effectively the cases of death of persons detained in state institutions and inform the public opinion on the progress and results;

8 The Moldovan authorities must insist to be admitted for investigations of incidents involving human lives losses. The fact that Russian FSB (Federal Security Agency) is involved in the investigation process and does not make public the information obtained, leads to the thought that extremely important information is being hidden, as well as the information on the origin of the explosives. Moreover, Moldova should request above information taking into account the recent participation of the Moldovan president at the informal summit of the CIS (Community of Independent States) member-states in Moscow. At the summit was insisted on the modernization of CIS, Russia noting on one of the main priorities of CIS – fighting terrorism. Thus, the Moldovan authorities should insist on unveiling the information on the act of terror in Transnistria and on the origin of explosives. The OSCE Mission to Moldova should insist for access to this information as well. www.e-democracy.md/comments/political/

9 Publishing house Foundation for the human rights and effective policy «Man and his Rights» published about the separatist leader the following: «...The I. Smirnov's book «For the Right to Live on our Earth» turned to be an apogee or something like that. I did not read it that is why I did not try to memorise the title of the book. Smirnov, by my opinion, didn't read it, as well. By that time Smirnov began to show more and more openly his true face: falsity, game, his mean, heartless and cruel insidiousness, veiled by feigned and benevolent smile in appearance. For example: the government session takes place and he, with his inherent smile, asks a Minister of State Security Ministry: «Comrade general or how are you called there? Mister or Domnul? Why did there appear so many banks in our small country? But on the whole, banks should submit to the President, isn't it? So, yesterday I was at Aliona Apina's concert, where the banker Bondarenco, the organiser of that concert, invited me with my wife, but I asked him without beating around the bush – can you pay the bills of such-and-such company? He refused, said that this is a very big sum of money and the bank does not have the right to cover such payments. This bank, it seems to me, belongs to «Gasprom», isn't it? Does the Director of Tirastransgas Mr. Piancov manage it? So, solve the problem with them and then together with other banks.» They began to sort out their relations. The next day Bondarenco and Piancov were arrested and beat unmercifully. Their activity check-up continued a long time, having not found any infringements they were set free. Bondarenco having become an invalid left for Moscow followed by Piancov. Two days before the wedding of his daughter, hanged in her own flat, the manager of «Agroprombank», Orlic, was found. The manager of «PRB Bank» Khvorostovsky dies suddenly. The banker Crutius is shot down right near his office. Not unknown by his prodigious machinations personal Smirnov's friend – Veacheslav Zagreudsky takes the management of all banks in Transnistria in his own hands. Problem decisions with banks came to an end. But mysterious assassinations of prominent workers of Transnistria continued.

Former major party and soviet city figure, famous businessman, the president of the Transnistrian company, Victor Constantinov told one day: «Yesterday in broad daylight right in the center of the city my partner, Arab from Iran was murdered. I reported this to the President, but he told me smiling: Business – it's a risky affair and they say that you smuggle, the President of Custom Committee (that is Smirnov's elder son) told me about this. Knowing Constantinov for a long time as a decent, honest person, Maecenas, by the charity of whom «Child House» and many hospitals were supported, I alerted him: «By my opinion this is the

2. To introduce strict rules regarding the establishment of the identity and state of health of persons who are to be deprived of their liberty;
3. To review the method and amount of medical assistance granted to persons suffering from certain diseases and admitted to medical establishments for treatment;
4. Given that the constitutional authorities were not released from their positive obligation to defend the human rights in the region, they should make significant and efficient efforts in order to secure the rights of inhabitants of the Eastern part of the country.

1.2. Prohibition of torture, inhuman or degrading treatment or punishment

During year 2006, a series of violations of the provisions regarding the prohibition of torture, inhuman or degrading treatment or punishment were reported. These violations are still committed by law enforcement agents. Acts of torture are particularly committed by police officers for extracting confessions (of guilt) from the supposed suspects.¹⁰

A positive moment is that such cases were made public by law enforcement authorities on the official websites of the competent bodies, especially of the General Prosecutor's Office.¹¹ Such a state of things shall further increase transparency within the law enforcement authorities and improve their reputation.

We also note cases in which law enforcement agents do not react in an adequate manner to the complaints addressed by abused persons. The case of the 9 members

last warning for you to leave this business. I give you a piece of advice – engage in another affair – because you have just one life, after all.» Some days later after our conversation Constantinov was shot down by the tommy-gunners in masks near the village Caragas, which is in 10 kilometres from Tiraspol. Murders were not sought.

Saidakov Alexandr Efimovich – a famous figure in Transnistria - is a Minister, Igor Smirnov's best friend. It was him who went to Chisinau and Kiev to get him out of the captivity. At Saidakov's dacha, in Ternovca, which is in 3 kilometre's distance from Tiraspol, Smirnov with his royal suite on holidays organized drunken orgies which ended towards morning by shooting from the basic weapon at alive target – cats, dogs, and other living creatures. Alexandr Efimovich possessed an explosive, unrestrained character. Once during the Parliament session he accused the vice-premier V.G. Sinev in corruption. He declared that the Government of Transnistria steals the gas shamelessly through the secret bolt of the gas pipeline and that meeting the leader of LDPR V.V. Jirinovsky he would report him on this case and on the fact where the Transnistria nation's money paid-up for gas has disappeared. He suspected that it was transferred to England for the education of Sinev and Igor Smirnov's grandchildren.

Two days after the session at 2.00 p.m. two strangers entered the Saidakov's room introduced themselves as tax service workers and shooting at his head killed Saidakov exactly at his work place. Then quietly, without any bustle they retired silently past scared secretary. After some time under the mysterious circumstances one more person knowing the secret of gas pipeline bolt dies – government vice-premier V.G. Sinev, and after him a person who became an invalid after MGB (State Security Ministry) torture chambers – Valentin Piancov. The secret of gas pipeline bolt was buried together with him. But series of mysterious deaths continued. In the prime of life the director of the Republic Telephony Management, Valerii Efimets deceased unexpectedly having quarreled with the Family on the eve. The director of MREO, colonel Rogut being distinguished by excellent health, the man who knew a lot about the President's «autostable», the information which leaked out in press and caused Interpol's interest dies at work.

One day Antifeev's best friend and his subordinate Yurii Vislouh shared in a narrow circle a piece of information about the examination of the famous criminal cases. At that time he was the President's adviser as well. This MGB colonel of Transnistria belonged to the category of honest incorruptible officers and having reported to the Minister about the conclusion of the investigative work could take a long breath. He was glad that swindlers from the power highest echelons would be in prison. But there was nothing of the sort. Colonel Vislouh was shot down. Chief of the police of Bender city and lieutenant colonel of Tulus militia who had in hand a serious compromising material on the leaders of MIA (Ministry of Internal Affairs) of Transnistria were killed. Lately Vladimir Malahov intending to come forward as a candidate this year for the presidential elections in Transnistria deceased suddenly. ...». Alexandr Flencia, www.cip.nm.ru/2006/html/42/index42.htm.

10 www.procuratura.md/md/newslist/1211/1/2126/

11 www.procuratura.md/md/com/

and followers of the «Hyde Park» Association¹² who on 30.08.2006 were detained for administrative reasons and held in the detention cells of the Buiucani Police Department for more than 40 hours in inhuman conditions, being deprived of food, water and clean air, would be relevant. The 9 victims were visited by representatives of Prosecutor's Office, who found no violations, even though at the time of their visit the legal term for administrative detention (3 hours) had already expired (thus, the said persons were detained illegally).

The 9 persons were detained for taking part in an unauthorized meeting. As a matter of fact the protest had been authorized by the court. This was further proved by a new decision of the Chisinau Court of Appeal, which closed the cases regarding all the abovementioned persons due to the lack of incriminating administrative contraventions. It is also important that the persons guilty of the illegal arrest and detention of 9 persons remained unsanctioned (after release the 9 petitioners addressed complaints to the authorities aiming at imposing a sanction on those who were guilty of law infringement and of violating their rights). Chisinau Prosecutor's Office issued several resolutions of unnecessary criminal investigation arguing that the police officers acted according to legal procedures. The instruction judge responsible for examining the legitimacy of those resolutions did not initiate a criminal investigation either, and only limited himself to sending the resolutions for additional examinations. Here it is to mention that «Hyde Park» members had repeatedly been detained by police officers in similar situations, and law enforcement authorities had never found any violations from the part of the latter, even though detainee's innocence was always proved by court decisions.

Multiple cases of ill-treatment of persons who were forcedly enrolled in local paramilitary structures, the so-called Transnistrian «armed forces» were registered in the Eastern side of the country.¹³ In fact, ill-treatments commence exactly in the moment of enrollment of Moldovan citizens in these illegal structures.¹⁴ Promo-Lex registered many cases in which the relatives of young recruits described the real situation of the Transnistrian «army». Thus, those who do not wish to undergo «military service» in these structures are practically «hunted down» by militia agents and enrolled by force.¹⁵ Because the young respect the Moldovan legislation and refuse to be enrolled in the illegal paramilitary structures from the region, they are announced in general pursuit and cannot move freely within the region controlled by these illegal forces. The constitutional authorities did not make any attempts to secure the rights of its citizens from the region in the sense of the above. Because of state's attitude of indifference, frequently the victims have no other option but to accept the state of things in the region or to leave the area without receiving a well-defined statute.¹⁶ During over 15

12 Cases from the practice of Promo-Lex

13 Cases from the practice of Promo-Lex

14 Most inhabitants of the Transnistrian region are citizens with full rights of the Republic of Moldova.

15 The Criminal Code classifies (art.282) the enrollment of illegal paramilitary structures against public security and order. (The organization or leadership of a paramilitary structure unforeseen by the legislation of the Republic of Moldova, as well as the participation in such a structure, shall be sanctioned with imprisonment from 5 to 10 years).

16 Those who left the region in years 1991-1993 received the status of «internally displaced persons». Today, the authorities do not offer any support to victims of the Tiraspol regime.

years the constitutional authorities have not learned to react promptly to this situation and take actions in order to cease this phenomenon.¹⁷

The local public opinion believes it is necessary to institute a control mechanism of the civil society in order to see how human rights are respected in local penitentiaries. The situation is also severe in preventive detention cells of the Transnistrian militia. A young man was detained and cruelly beaten by militia officers who used their feet and «Kalaşnikov» guns while holding him in handcuffs arms behind his back and threatening him (holding a gun to his head). When he arrived home he could not further move and had to be hospitalized. Even though the victim handed in a complaint to the local prosecutor's office, those who applied torture and inhuman treatment against him were not convicted.¹⁸

It would be relevant to conclude this series of infringements with the case of citizen S.,¹⁹ who was detained by the Transnistrian militia and accused of committing a crime, even though he was outside the country at the time the crime was committed. Moreover, he was detained in the winter, underwent ill-treatment while detained and escorted to the militia headquarters without being allowed to put additional clothes on (in his pants and T-shirt only). Citizen S. was deprived of the right to inform his relatives of the fact of his detention and was denied the assistance of a lawyer, as well as the possibility to put on some warm clothes. Further, during his detention he underwent ill-treatment procedures meant to make him confess his guilt, otherwise being threatened with possible death in the penitentiary. Later on, while being held in the penitentiary he became infected with AIDS/HIV.

RECOMMENDATIONS:

1. To secure decent conditions according to international standards in detention centers (namely detention cells);
2. To prepare and train law enforcement agents on the necessity to observe the legal provisions requiring them to abstain from force and constraint methods on detained, suspected or condemned persons;
3. To adopt an efficient system and mechanism of defense of the fundamental rights and liberties of Transnistrian inhabitants, including the non-recognition of decisions issued by non-constitutional bodies and authorities from the region;
4. To develop and implement a national rehabilitation system for the victims of the illegal regime of Tiraspol.

17 The Moldovan-Russian Agreement of 21 July 1992 provides for common actions and efforts focused on returning the refugees to their homes. Consequently, this provision secures the civil, political and social rights of victims of the war of 1992. In fact, during this period of time Russia and Moldova did not take any steps in this direction. On the contrary, since Tighina city (Bender district) was declared to be an increased security zone of residence of the Unified Control Committee, it became the focus of severe problems and irregularities. Local administration was totally occupied and subordinated to the illegal regime from Tiraspol, including local education establishments. Locals had mostly become victims of the situation and of the illegal regime, and the activity of peace-keeping forces was practically reduced to zero by representatives of illegal structures, while the signing parties that are subjects of international law preferred to negotiate for years without ever reaching some positive result.

18 Cases from the practice of Promo-Lex

19 Cases from the practice of Promo-Lex

1.3. Prohibition of forced or compulsory labor

As we mentioned in the Report on Human Rights Violations of year 2005, Promo-Lex identified 2 phenomena at this chapter. These phenomena are partially related to

- human trafficking and the enforcement of victims to forced labor,
- enforcement of military men serving for a fixed period to render forced labor.

According to the statistics shown in Prosecutor's Office Activity Report for year 2006²⁰ 248 cases of human trafficking (greater by 2 than in 2005) and 64 cases of child trafficking (greater by 5 than in 2005) were reported. Various sources show that Moldova is one of the top 10 countries in the world according to the number of victims of human trafficking.²¹ The problem is still relevant and has a significant impact on women's rights and on the rights of their children. At the same time, in the opinion of «La Strada» experts²² the number of trafficked women for sexual purposes decreased, although there is a growth tendency of the number of persons trafficked for forced labor and of trafficked children.

The military vice-prosecutor, Mr. Nicolae Dumitriev, declared in one of his statements that the phenomenon of involving fixed-term military men in unqualified labor for the benefit of certain economic agents is still pending.²³ Such cases of involvement of military men in forced labor were reported and handed in for examination to the court.²⁴ Moreover, according to Prosecutor's Office Activity Report we can note that in 2006 2 persons were condemned based on art.168 of the Penal Code of the Republic of Moldova - «Forced labor». The enforcement of fixed-term military men to perform some work for the benefit of certain economic agents or private persons is incompatible with their status. This phenomenon is still relevant nowadays.

Promo-Lex lawyers have also registered some other cases of forced labor in the Eastern side of the country (the Transnistrian region). Thus, speaking of the situation of the recruits we have to admit that the phenomenon of the involvement of «fixed-term military men» of the Transnistrian region in unqualified works is rather obvious.²⁵ Meanwhile, for a few years now 2 children from Camenca district, originating from a family with problems, are being exploited by a person. In exchange for food the children are forced to perform agricultural works. Their food comes from the account of a «public institution», while the land and cattle they are taking care of are assumed to be property of some local public officers. It is to be said that these children do not go to school for 3-4 years, and their parents agree to such a state of things arguing that their children «are earning their living».²⁶

RECOMMENDATIONS:

1. To intensify the controls in military units in order to identify and prevent cases of involvement of military men in forced labor;

20 <http://www.procuratura.md/file/RAPORT%20PUBLIC%202006%20Pentru%20Sait.pdf>

21 http://www.bbc.co.uk/romanian/news/story/2006/08/060823_moldova_traffic_critici.shtml

22 Local organization that focuses on the issues and prevention of human trafficking (www.lastrada.md)

23 <http://garda.com.md/105/investigatii/>

24 <http://www.procuratura.md/md/newslst/1211/1/2105/>

25 In fact, just like «dedovschyna», this phenomenon is still specific to all ex-soviet countries, with some exceptions or differences.

26 Case from the practice of Promo-Lex

2. To create complaint boards or a hotline for fixed-term military men;
3. To sanction the persons responsible for the involvement of military men in unqualified labor, as well as the beneficiaries of such services.

1.4. Right to liberty and security

In its report for year 2005²⁷ Promo-Lex already cited the phenomenon of formal execution of procedural documents regarding the seizure and detention of persons for certain administrative or criminal offenses. Even though certain progress was made, which was shown in the Note on court activity for year 2006 (legal statistics analysis),²⁸ the situation still requires further efforts. Thus, the number of acquitted persons increased by 37, and the number of closed criminal cases increased by 397. It is important to know that the number of criminal cases investigated in 2006 decreased by 1053 as compared to the previous period. It could seem that the number of closed cases or acquitted persons is not an indicator of the quality of criminal case investigation; still we tend to believe that they do reflect the real state of things, because during court sessions they take into account and verify all the evidence gathered by the criminal prosecution bodies. A relatively similar situation according to the same statistics occurred during the examination of petitions regarding preventive detention and extension of the detention term, as well as during the examination of cases of administrative contraventions.

In its previous report,²⁹ Promo-Lex suggested amending art.166 of the Code of Criminal Procedure; still, the suggestion remained unexamined although in 2006 the said Code underwent significant changes.

In 2006 several cases of arbitrary deprivation of liberty were registered. The case of the «Hyde Park» Association members and followers is particularly relevant, given that they were detained by police officers and deprived of their liberty for a period of time exceeding the legal norm. Detention reasons: unauthorized organization of public meetings, resisting detention and disrespectful attitude toward police officers. Each time the court found them innocent of what they were being charged with, and still their complaints did not awake the attention of prosecutors, who refused to initiate any criminal cases and establish the guilt of those who admitted, favored and committed legal infringements.³⁰

Once the situation regarding arbitrary detention in criminal cases had redressed, we could notice an increase of the number of persons detained in administrative cases,³¹ by 2907 cases. In such a way the police authorities initiate (make up) administrative cases against certain persons suspected for committing crimes or those who can provide information about the suspects, and afterwards solicit the court to apply measures of deprivation of liberty in order to intimidate the person and obtain the neces-

27 http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

28 Bulletin no. 2/2007 of the Supreme Court of Justice of the Republic of Moldova.

29 http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

30 Most of Hyde Park Association cases were assisted by lawyers and legal experts of Promo-Lex

31 Bulletin no. 2/2007 of the Supreme Court of Justice of the Republic of Moldova

sary information.³² This is how they get additional time during which they perform criminal prosecution actions with the violation of the right of defense.

The cases of illegal deprivation of liberty are numerous in the Eastern part of the country (Transnistria), and the situation is still severe. Those cases particularly refer to the abolition of any attempts to express a civic position contrary to the ideas and scope of the regime established by violence in 1991-1992 in the Transnistrian region of Moldova. Thus, in 2006 many cases, in which the participants of public manifestations or meetings, or even single manifestations against the existing regime were seized by «militia» agents and deprived of their liberty, were reported.³³ Another example of arbitrary deprivation of liberty would be the case of a legal expert of Chisinau, who was kidnapped, threatened and tortured.³⁴ Meanwhile the «Transnistrian militia» continued to detain and intimidate constitutional law enforcement agents.³⁵ The deprivation of liberty of police officers is an offense stipulated in the Penal Code,³⁶ however the constitutional authorities did not finish to solve the criminal cases announced after every incident.³⁷ Moreover, there was no explanation or reason for the sequester, intimidation and detention of the police officers,³⁸ and the incidents did not awake a clear and objective reaction from the part of peace-keeping forces that are controlled through an inefficient mechanism (for local inhabitants and constitutional authorities) by the military structures of the Russian Federation. It is to be said that the mechanism imposed by the Russian Federation in 1992 is efficient for the preservation of the situation, and does not contribute in any way to solving the problems which are still pending in this region.

RECOMMENDATIONS:

1. To apply the provisions of the existing legislation regarding illegal calling to account, as well as administrative procedures, i.e. prosecutor's self-seizure and the rehabilitation of illegally sanctioned persons;
2. To identify all the executors and initiators of crimes committed against law enforcement agents within the Transnistrian region of Moldova, to open criminal cases against them, to examine in an objective and complex manner the cases, to establish the culpability, to announce the pursuit (including international) and call to account the offenders;
3. To promote the consequent and constant intensification of official efforts and petitions in view of changing the staff of the peace-keeping forces dominated by the Russian Federation for over 15 years. The new staff must secure the non-discrimination of human fundamental rights and liberties in this region.

32 Case from Promo-Lex practice

33 Case from Promo-Lex practice

34 On 14 March 2006 the legal expert Maxim Belinski was kidnapped in the neighborhood of Tiraspol Court, where he was heading to for the investigation of a public file. The legal expert was forced into a vehicle by persons with covered faces and was transported to the right bank of Nistru river. Further he was subjected to torture and threats with death, should he ever dare to come back to «Transnistria».

35 Illegal structure operating on the territory of Transnistria since 1992

36 Art.166 of the Criminal Code of the Republic of Moldova «Illegal deprivation of liberty»

37 Promo-Lex believes that the tension in the region could be reduced by declaring the persons responsible for committing such offences in international retrieval.

38 <http://www.transnistria.md/ro/news/0/489/350>

1.5. Right to free movement

We believe that the right to free movement is generally observed on the territory controlled by constitutional authorities. However, there are certain problems in this field. Thus, in 2006 we registered certain infringements committed by people working for official structures as well as by representatives of illegal structures («customs», «customs officers», «security») from the Transnistrian region of Moldova.³⁹

Promo-Lex registered a higher number of violations of the right to free movement at internal customs posts dislocated by the constitutional authorities in the security area and on the routs that secure the access to/from localities under the control of the Tiraspol illegal regime. The internal customs posts are situated next to settlements within the jurisdiction of constitutional authorities, in which national agents, especially farmers, develop their activity. As we remarked the said internal customs posts control all transportation means of natural and, especially, legal persons. This conditioned a frequent problem and even a direct conflict between local inhabitants and the internal customs structures regarding this discriminatory procedure. Thus, the locals (in particular those from Dorotcaia, Parata, Pohrebea and Cosnita villages) are daily facing humiliating and discriminatory procedures unlike the inhabitants of other regions. Several times per day they are forced to pass a customs examination, as well as to fill in customs declarations when passing through the area (going to their work, land plot situated nearby, etc). On the other hand, they are also checked by the «customs» of the Tiraspol regime and face the same humiliating procedures.

In fact, during internal customs examinations the officers are allowed to make violations and abuses, such as the refuse to draw up customs documents as required by the law. In case if the verified person insists on the drawing up of the said acts, the police officers who perform their service together with the customs officers make up an administrative report on the contravention of non-observance of the legitimate requirements of the customs or police officers. Here we can cite the case of citizen H.,⁴⁰ who was seized at the internal customs post situated nearby Criuleni town. His legal demand to draw up a transport control protocol was rejected and, as a result, the person was escorted to the police department, where he had been detained for approx. 4 hours and finally awarded an administrative sanction by the court. However, the Chisinau Court of Appeal closed the case due to the lack of administrative contravention. Further, having filed by civil means a petition for moral compensation for the caused prejudice, citizen H. won the case and received an amount of 500 lei. Still, in revenge, he faces frequent harassments from the part of the officers who committed the said infringements. Thus, the case of citizen H. is a clear example that proves the illegal nature of procedures applied by customs agents and the police against local inhabitants, as well as the actions of revenge against those who dare ask for and defend their constitutional rights.

39 Criminal Code of the Republic of Moldova. Art.351 Accroachment of official qualities

1) Accroachment of official qualities accompanied by another offence committed on this bases, shall be punished with a penalty in the amount of up to 600 c.u. or unpaid community work from 180 to 240 hours, or imprisonment for up to 5 years.

2) The same action performed by 2 or more persons shall be punished with a penalty of 300 to 700 c.u. or imprisonment for 3 to 7 years.

40 Case from Promo-Lex practice

A similar situation was reported in Sanatauca village, Floresti district, where they have dislocated such an internal customs post. Unlike the post from Cosnita that checks only the vehicles that circulate on the right bank of Nistru river, the Sanatauca post registers and verifies both persons and vehicles circulating on both Nistru river banks. Respectively, the inhabitants of both Nistru river banks are facing a severe problem by having to pass authentic customs procedures. Thus, both local illegal authorities and the constitutional authorities create obvious and significant obstacles in the way of free movement on the territory of the state, especially for its citizens. Moreover, these unsuitable and humiliating procedures are daily applied on 100 children and teachers from Camenca district, who study and teach in the Sanatauca Lyceum.⁴¹

Still the most numerous and severest obstacles in the way of free movement in Moldova are set by representatives of the Transnistrian illegal regime. Thus, they conduct themselves by illegal norms and rules, impose taxes on and collect considerable amounts of money from those who pass through or visit the area and local inhabitants.

A very severe phenomenon is the one related to local inhabitants who own vehicles registered with Moldovan constitutional bodies (citizens of the Republic of Moldova). They are forced to give up the registration plates and driver's licenses issued by constitutional authorities and to receive «documents» issued by Transnistrian «authorities» instead. Those who oppose such procedures are forced to pay occasionally an amount of money for «provisory import» or to see how their vehicles are sequestered. Promo-Lex Association was informed of the multiple abuses committed against those persons. Here we can cite the case of Mr. P.C.,⁴² originating from Corjova village, Dubasari district, who was forced by separatist «customs» agents to fill in a customs declaration on his vehicle. This «document» has a period of validity of 60 days and supposes the payment of a «tax for provisory import», which varies in dependence of vehicle's value and/or «customs» agent's good will. Thus local inhabitants are simply robbed every 60 days by the illegal structures dislocated in the territory. The inaction of constitutional authorities with respect to protecting local inhabitants against such severe abuses and violations of human rights does not leave them any other option than to accept the situation and pay the illegal taxes out of their family budgets. Upon expiry of the «declaration» deadline (regardless of the reason for any such delay) the owner of the vehicle is to pay a penalty varying from 50 to 1000 USD, or his/her vehicle is sequestered and confiscated.

In the case of citizen P. C., the vehicle was arrested by the illegal authorities for 32 days, and the owner had to pay a penalty of 60 USD. At the said period of time P.C. suffered enormous material and moral damage. Such situations are very frequent, but due to certain factors (non-recognition of procedures, fear before the repressive Transnistrian authorities and lack of support from constitutional authorities) the phenomenon is growing and causes sufferings to local inhabitants, who are mostly citizens of the Republic of Moldova. Judging from the experience of monitored cases we can state that

41 There are not Moldovan educational establishments using Latin-script and the National Education Programme in Camenca. Children are therefore constrained to travel back and forth to the Sanatauca lyceum in order to secure their right to education, while constitutional authorities provide only means of transportation.

42 Case from Promo-Lex practice

the constitutional authorities avoid any kind of involvement and do not take the necessary steps toward ceasing such events. We have to add that in the abovementioned case Mr. P.C. managed to solve his problem partially – he received his vehicle back in exchange for a minimum amount of money due to the efforts of Promo-Lex legal experts, who appealed to the Parliamentary Committee for Human Rights⁴³ and the Ministry for Reintegration. However Mr. P.C. was subsequently threatened by representatives of secessionist authorities.

Another similar case is that of Mr. M. D. of Lunga village, Dubasari. In December 2006 his car was sequestered and the owner was forced to wait over 9 hours in the «customs» for the «head of militia» from Dubasari. At the initiative of Tiraspol representatives, who were also supported by the Russian delegation, the Unified Control Board responsible for incidents occurring in the security zone refused to present itself at the scene and to secure the free movement of this category of persons. At the same time Promo-Lex representative was forbidden to participate as attorney of the party, even though it was further proved that the Transnistrian «legislation» does not forbid such participation. The law expert from Promo-Lex was intimidated, photographed and filmed within the Dubasari «customs department» by unknown persons dressed as civilians. M.D. was deprived of his right of defense. This person was further harassed in the Dubasari «courts», which also attempted to force him to give up his Moldovan registration plate.⁴⁴ The problem is that local inhabitants, who are also citizens of the Republic of Moldova, know their rights and do not want to waive them. On the other hand, the documents issued by Transnistrian «authorities» are valid only on the territory of the Russian Federation, Ukraine and several other ex-Soviet states. Thus, car owners, respectively, accept to pay taxes or travel to the locations placed under the jurisdiction of constitutional authorities, where their cars are, on foot or by bicycle. It is to be said that the cases above are the most renowned cases examined by Promo-Lex, their real number being, of course, a lot higher.

Further on both M.D. and P.C. received threats of confiscation of their vehicles in case if they continue to drive on the territory situated under the control of the illegal regime from Tiraspol. For instance, M.D. was repeatedly threatened, including death threats, on the phone by unknown persons and lost his job as a result. As to P.C., he is being harassed and all his family members are being threatened. In both cases constitutional authorities limited themselves only to giving statements. Promo-Lex believes that the damages suffered by the victims of the illegal regime from Tiraspol must be compensated at the expense of the Government, which cannot secure their rights and interests. We notice a clear discrimination of Transnistrian inhabitants as compared to people residing in other parts of the country.

Another major problem that affects the right to free movement is still the «migration fee» collected by the illegal structures of the Transnistrian region from Moldovan citi-

43 During parliamentary sessions the President of the Parliamentary Committee for Human Rights, Mr. Stefan Secareanu, required the Government and law enforcement authorities to secure the protection of rights of P.C. and other local inhabitants

44 The situation of driving licences issued by constitutional authorities to inhabitants of the Transnistrian region is the same. There were cases when the Dubasari «militia chief», Mr. Fiodor Palicinskii, himself destroyed (tore up) the driving license of a local inhabitant, arguing that he did not recognize the documents issued by Moldova

zens who are residing on the right bank of Nistru river. This procedure is very revolting for all persons who visit or pass through the region. The situation is particularly unpleasant for people originating from this region, who are working or residing on the right bank of Nistru river for the moment and are forced to pay a fee of approx. 9 lei on a daily basis. Upon «leaving» the region the receipts are usually confiscated. It is to be said that Russian and Ukrainian citizens do not pay such «fees»,⁴⁵ while local citizens are forced to pay high amounts of money in order to move within their own country. At the same time, we have to note that even though this issue was stressed by Promo-Lex in its Report for year 2005,⁴⁶ constitutional authorities did not make any effort to stop the phenomenon or at least to eliminate the taxes for transiting the region.

In this context, we have to remember the Moldovan-Russian Agreement of 21 July 1992, which provides for the free circulation of commodities, goods and people. The authorities of the 2 signing states, Moldova and Russia, who are also responsible for the situation in this region, are ignoring the provisions of this Agreement.⁴⁷ Thus, the «posts» dislocated on the Nistru river are violating the fundamental rights and liberties of Moldovan citizens and inhabitants, especially those from Transnistrian region. At present, based on a «presidential ukaze (decree)» of 2003 (signed by Smirnov), all merchandise «imported» from the right bank of Nistru river is still imposed a customs duty of 100%. By this procedure the illegal regime of Tiraspol is practically trying to hinder any relation or economic cooperation between the two river banks. Transnistrian inhabitants are forced to pay enormous amounts of money in order to be able to bring home commodities bought on the right river bank. Promo-Lex has registered multiple complaints at this chapter, in which people referred to extortion, confiscation of or damage to goods, drawing up of protocols and applying «penalties». For instance, J.S. was demanded to pay an amount of 20 USD. He had only the equivalent of 15 USD and, in protest against such humiliating procedures, ripped the banknotes and threw them to the bin.⁴⁸ It is obvious that he had to go back the way he came without reaching his destination.

Another even more severe incident took place in January 2006, when the traffic on the Dubasari Power Dam⁴⁹ was blocked by 15 representatives of the Transnistrian «militia». We have to note that the involvement of Russian representatives in this case was more than obvious and that they took the side of Tiraspol illegal regime. Thus, V.Şanin (the Russian representative at the Joint Control Commission (JCC)) and A.Zverev (the head of the Russian peace troops) argued for the prohibition of pedestrian traffic on the Power Dam due to the need for repairs.⁵⁰ Under the pressure of local inhabitants, the

45 Russian and Ukrainian citizens, people invited by local «authorities», representatives of diplomatic missions and inhabitants of Parita, Cosnita, Pohrebea, Dorotcaia, Hagimus, Copanca, Vasilevca, Molovata Noua and Cocieri villages were exempted from the «migration tax» (www.cip.nm.ru)

46 http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

47 P.C. and M.D.'s demarches to Moldovan and Russian authorities did not awaken their attention. Moldovan authorities always argue that they «do not hold effective control over the territory occupied by the separatist regime», and the Moscow authorities declare that «Transnistria is a part of Moldova and the authorities of this particular state are the ones responsible for securing Your rights». Thus, victims become the center of a diplomatic game and are deprived of an effective legal remedy

48 Case from the practice of Promo-Lex

49 The dam secures a relatively free circulation between the two banks of Nistru river to inhabitants from both sides

50 In our opinion, local Russian officials in line with their neutral status are not entitled to offer explanations and arguments in the name or in favor of the Tiraspol regime. This situation can create the impression that such actions are being coordinated and managed together with Russian representatives dislocated in the region

public opinion and constitutional authorities the traffic was resumed, even though the metal bars that can close it at any time are still in place.

It is to note as well that the obstacles to the free movement of young Moldovans are not limited only to the ones stated above. The representatives of Tiraspol «authorities» are still harassing the young people residing on the right bank of Nistru river who are not registered for military service. On the other hand, those who have a document identifying their military status are frequently robbed and even ill-treated by representatives of Transnistrian «structures».⁵¹

RECOMMENDATIONS:

1. To establish strict rules (post files) for internal customs agents and police officers who work at those posts, as well as to put them for public notice at those customs posts;

2. To open penal cases for each abuse committed by the agents of Transnistrian illegal structures against persons who transit or visit the area. To initiate criminal proceedings in order to determine their degree of guilt, and once it is determined – to make them responsible and secure the execution of the sentence through all legal means (including by their announcement in international search);

3. To initiate negotiations with the Russian Government for observing the provisions of the Moldovan-Russian Agreement of 21.07.1992, especially those related to securing the free movement in the region;

4. To involve, inform and consult the civil society and national public opinion (from both sides of the Nistru river), as well as the international opinion for the solution of each case of ignorance or violation of human rights. To elaborate together with the civil society from both sides of Nistru river an efficient mechanism of human rights promotion and protection, especially concerning the inhabitants of the territory in question.

51 Case from the practice of Promo-Lex

2. RIGHT OF PROPERTY

The right to private property, as well as state bonds are secured.⁵² From this point of view the state is bound to respect and protect this fundamental right.

During year 2006 the same erroneous practices and mechanisms that prejudice citizens' right of property were observed in Moldova. These problems are due both to the legal framework and to the action/inaction of high-ranking officials from public authorities. First of all we refer to the victims of the Soviet regime, to the right of property in the security zone, to securing foreign investments as well as a complexity of problems from the Transnistrian region.

2.1. The problem of ex-deportees (victims of the Soviet regime)

Even though the problem of ex-deportees is constantly drawing the attention of the legislative for many years,⁵³ it seems that in 2006 things began to change starting with an amendment of the principal norm of the Law establishing state's obligation to return the confiscated, nationalized or otherwise seized assets. On 29.06.2006 the Parliament adopted Law no.186 on the amendment of art.12 of the Law no.1225-XII of 08.12.1992 regarding the rehabilitation of victims of political repressions.

However, in our opinion the new asset restitution or compensation mechanism is still imperfect, and will generate supplementary obstacles and impediments to the victims of the Soviet regime or their successors in the way of recuperating their assets or values. In the meantime, the new mechanism can be a real peril for the economic security of local budgets (can cause their bankruptcy) and, respectively, for the victims of the Soviet regime, who shall not be able to recuperate their assets or values. In conclusion, the situation of this category of people shall aggravate substantially. This mechanism was to be implemented from 1 January 2007.

According to art.12, para.1 of the Law regarding the rehabilitation of victims of political repressions, «*citizens who underwent political repression and were subsequently rehabilitated are to be restituted, upon their request or the request of their successors, all confiscated, nationalized or otherwise seized assets*». Thus, the state assumed without exception the entire responsibility for restituting the confiscated, nationalized or ot-

⁵² Article 46 of the Constitution of the Republic of Moldova

⁵³ For details see http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

herwise seized property to persons who underwent political repressions during 1917-1989. The important thing is that the state guarantees the restitution of properties that were seized in other ways than by confiscation or nationalization. In such a way we consider the restitution of goods that were in possession not only with the property title, as was formerly provided by the normative acts issued until the said amendments, to be a positive trend and intention.

Although the Parliament expressly provided for the obligation of restitution, by para.2, art.12 it impedes an effective realization of rights, by stating that «*land plots, woods, multiannual plantations, objects withdrawn from the civil circuit, and other confiscated, nationalized or otherwise seized assets for other reasons other than political repressions are not subject to restitution*». If we refer to the aspect related with the restitution of real estate, namely the restitution of land plots, we could mention that, unlike woods and ponds, agricultural land plots were not withdrawn from the civil circuit due to the mass nationalization of land carried out during the Soviet regime. Thus, unlike securities, real estates were included in the personal files of the deportees, so that theoretically there is a possibility of determining and assessing their price. After the famine that was artificially conditioned by soviet authorities in 1947 the land and multiannual crops were the single means of subsistence for the population, which is why we believe that by compensating the value of other assets other than land they will compensate only partially the entire material damage that was caused.

The term «*expropriated for reasons that are not causally related to repression*» introduced in the law is inutile and could be misinterpreted by the authorities, because in this case the petitioners shall be facing the double obligation, first, to prove they possessed some assets, and second, to prove the causal relation between confiscation and repression. Thus, the denial of restitution of the lands, woods and multiannual crops would come in conflict with the Constitution that guarantees the right of property, and with art. 1 of the Additional Protocol to the European Convention for Human Rights. The argument used by Moldovan authorities that invoke the lack of funds in the national budget is not plausible any more, because the receipts have registered an essential and sustainable increase lately. This is why we believe the Government must find optimal solutions for the retrocession of lands or compensation of their value, in case if restitution becomes impossible. Such an approach could save Moldova from any possible denunciations with the ECHR, especially since the said problem could not be effectively solved for 15 years, i.e. since the law was adopted.

Speaking of the amendments introduced in year 2006, we have to note that the restitution of assets or compensation of their value shall be done at the expense of local and municipal budgets, and the state budget as well, without expressly specifying the method or procedure. In our opinion this provision is rather confusing because it does not expressly specify the source of financing and the ratio between the amounts paid from local budgets and those paid from the national budget. We have to mention that Moldova was previously and repeatedly convicted by ECHR namely for the failure to execute court decisions on the compensation of damage caused by the confiscation, nationalization or seizure of assets of victims of political repressions. We believe that

laying the entire burden for compensating the assets of deportees on the local public authorities alone would lead to a similar situation. Beside the fact that the Government shall have to execute the final internal decision (which should be executed anyhow), the state shall be also prejudiced by the amounts that are to be paid as compensation of moral and material damage in case of a potential condemnation at Strasbourg.

We believe that due to the non-transparent nature of the damage assessment process they shall encounter problems in assessing the damages, or according to art. 12/1, para. 3 of the Law the committees shall identify the assets that are subject to restitution and shall determine their value based on the documents certifying their confiscation, nationalization or seizure. The real-estate price shall be calculated by territorial cadastral offices, and the price of securities shall be calculated based on the security market cost certificates. In such a way, the entire value assessment and determination process shall fall under the competence of the committees especially created for this purpose by local public authorities. We assume that the rehabilitation committee members, appointed by the local administration, shall probably be influenced by future debtors, i.e. the same local administration structures. Thus, the decisions adopted by such a structure shall probably be unable to satisfy the beneficiaries, taking into account the increased interest of authorities in diminishing the offered amounts or to tergiversate the process.

In our opinion, another legal problem is the method of determining the prescription term for restitution of the assets or paying its cost. Thus, the legislator provides for the submission of applications for the restitution of confiscated, nationalized or otherwise seized assets, or for the compensation of their value, within 3 years from the moment of notification of the person about his/her rehabilitation and shall be examined within 6 months from submission. It is to be said that most beneficiaries were notified of their rehabilitation during years 1989-1991 and received the relevant certificates.⁵⁴ Thus, we have the impression and the idea that the prescription term was intentionally omitted, given that it expired for most victims in 1993. In the light of the fact that the Parliament adopted the amendments to the Law with a delay of more than 7 years,⁵⁵ the creation of such conditions for the victims is immoral and illegal. At the same time, once the persons had been rehabilitated the prescription term cannot be established until the law comes into force, because otherwise it would be inequitable. The Parliament was to provide for the prescription term to start running once the law is issued; otherwise the persons will have to address to the court applications regarding the restoration of the prescription term. Even though the lawmaker set a one-year term following law's taking effect for this category of people, this term cannot be held sufficient.

Just as well, the lawmaker was to explain the notion of «compensation», because in our opinion offering compensation on the grounds of an act declared non-constitutional⁵⁶ cannot be regarded as an effective recompense. The lawmaker has intentionally stated this provision, by which it prohibited the payment of compensations to persons, who

54 Mass rehabilitation of victims of political repressions

55 See Constitutional Court Decision no.41 of 20.07.1999

56 Government Decision no.338 of 1995

have previously received certain refunds (thus aiming at decreasing the number of persons who can request for a real reimbursement). The special committees can also benefit from this situation in order to manipulate the victims of soviet repressions or their successors.

Thus, we can conclude that during year 2006 the disputes concerning the restitution of confiscated, nationalized or otherwise seized assets registered the same negative dynamics as during previous years. It is to be pointed out that due to the lack of a normative framework local public authorities were unable to decide regarding the applications of restitution of assets or compensation of their value, and the court interpreted the legislation in a different manner by adopting different decisions for the same category of files.⁵⁷

Another problem is the one related to the application of the law for the restitution of assets confiscated in regions, which are temporarily under the occupation of the separatist regime. Respectively, local citizens have equal rights and are to abide by the same legal provisions in order to recuperate the assets that had been illegally confiscated during the soviet regime. In fact, the situation is extremely unclear for victims of political repressions, who had properties in regions that are under the control of the illegal regime from Tiraspol for the moment. The victims of the Soviet regime, who are rehabilitated at present, do not effectively have a way of solving their applications regarding the restitution of assets or compensation of their value. The case of Ms. G.V. can serve as an example. Her parents were deported from Ribnita town and expropriated in 1938.⁵⁸ Today she cannot restitute the value of their assets for the reason that Ribnita town is under the control of the separatist regime, and constitutional authorities, i.e. the Government of the Republic of Moldova, the Ministry of Justice, the Presidency, etc. have sent to her address several answers specifying that this problem cannot be solved while the «Transnistrian conflict» is still unsolved. Thus, constitutional authorities limit themselves only to the fact that «once the European Convention for Human Rights was ratified the State declines its responsibility for the omissions and acts committed on the territory placed under the illegal control of the Tiraspol regime». We have to state that this is not the most correct and legal approach to solving the existing problems. The fact that constitutional authorities do not hold control over a part of country's territory does not allow them to deny and reject any effort of securing citizens' constitutional rights. Given such a state of things, we can again speak of a discrimination of the inhabitants or persons originating from the Transnistrian region in comparison with other categories of citizens.

2.2. Prohibition of sale of agricultural land plots to foreign investors

Another limitation of ownership is related to the prohibition of agricultural land procurement by legal persons with foreign capital, even if they are residents of the Repu-

57 Data offered by the Association of Former Deportees and Political Prisoners of Moldova, which includes over 1400 members

58 Case from Promo-Lex practice

blic of Moldova. For this purpose, on 20.04.2006 the Parliament passed the Law no.86, by which it amended the Law no.1308 of 25.07.1997 «on the normative price for and the sale-purchase procedure of the land», which changed the syntagma of «foreign persons» for «legal persons with foreign capital». These changes were severely criticized by investors associations, who decided to decrease the future amount of investments in the economy, especially in the agricultural sector. Meanwhile the situation of companies with foreign capital that owned agricultural land when the law was passed remains uncertain, because the lawmaker did not make any provisions in this respect together with adopting the said amendments.

2.3. Violations of the right of property in the Transnistrian region of Moldova

The right of property in the Eastern side of the country is still a sore problem for local inhabitants. The actions of representatives of the regime instated by an act of violence in 1992 only confirm that the motive and purpose of this conflict, beside the geopolitical interest followed by Russia, is of an economic nature. The inaction of constitutional authorities led to the illegal privatization of local important companies in exchange for minimum amounts of money.

We believe that the rights of all citizens were affected as a result of this privatization process, because this is their property. In fact, not even local inhabitants benefited from a transparent, equitable or correct mechanism of alienation of the economic potential in the region, that was illegally seized by a limited group of people (mostly local «officials» or their relatives. For instance, the Smirnov, Maracutsa family, etc.).

The population was denied the possibility to participate at the privatization process. The public opinion, as well as some experts, believes that the process of regulating the situation in the region is tergiversated by interested persons and groups of people until the process of redistribution and repartition of the economic potential of the region is finalized.⁵⁹ In 2006 this process was still pending. Here it is to be mentioned that the highest interest was shown by Russian «investors», who privatized most of the «sold» companies.

The lack of a direct telephone line between the 2 banks of Nistru river is another factor that affects the citizens' rights. Thus, as a result of the unilateral changes of the telecommunication system performed by the illegal regime of Tiraspol, citizens from both banks are forced to pay for local calls according to international tariffs. Constitutional authorities did not make any effort to interfere in this problem either.

59 Promo-Lex believes that the numerous incidents are organized by representatives of the illegal regime from Tiraspol for the purpose of distracting the national public opinion and international community from the offences related to the redivision of property in the region.

2.4. Violations of the right of property in the «security area»

2.4.1 The Varnita Harbor

On 21.04.2006 approx. 80 armed Transnistrian «militia officers» were occupied the Varnita Harbor.⁶⁰ At the same time they also confiscated 3 vessels belonging to an economic agent, who was doing business in this harbor. Moreover, the «militia» ceased the activity of the company. The civil society, constitutional authorities and representatives of international organizations in Moldova condemned the incident and qualified it as «a unilateral and perilous act of Transnistrian «authorities» in the «security area»», that could have resulted in a direct conflict between the Transnistrian «militia» and the police. The peace-keeping forces led by the Russian Federation took over the control over the harbor, and suspended its activity for an unlimited period of time. As a result, the companies registered enormous losses, which affected their economic stability and that of the entire region. Moreover, dozens of people lost their jobs and, respectively, any means of subsistence.

2.4.2 Confiscation of goods

Multiple cases of illegal confiscation of goods from natural persons by paramilitary structures subordinate to the Tiraspol illegal regime were reported in 2006 in the «security area».⁶¹ Moldovan citizens are detained and verified at the control posts illegally dislocated by the so-called customs authorities, and forced to pay various «customs duties» for merchandise «imports». Other times local inhabitants are forced to destroy the foodstuffs purchased on the right bank of Nistru river. For instance, on 28.03.2006 nearby Rascaieti settlement in Stefan Voda district 2 persons were forced to throw away hundreds of fresh eggs for the reason that they had been bought on the right bank of Nistru river. In such situations local inhabitants are depleted of any support or assistance and have to pay even up to 100% of the value of transported goods or destroy them.⁶² The «guilty» persons are usually asked to get out of the transportation (without compensating their travel expenses), stay in the «customs», where they are forced to undergo humiliating procedures, such as the destruction or confiscation of goods. The same «tax» is imposed on newspapers, books and magazines published on the right side of Nistru river.

It is to be said that it is mainly Moldovan citizens who are subject to such «special» measures.⁶³ We are already convinced that any good transported by natural or legal persons to the Transnistrian region (from foodstuffs to cars belonging to local inhabitants) can become the object of such «customs procedures». Thus, day by day Transnistrian inhabitants are robbed and fined by Transnistrian «customs officials» or forced to go back the way they came if they fail to obey their orders. Local small business expo-

60 A locality situated in the immediate vicinity of Tighina city (Bender). Varnita is placed in the security zone under the jurisdiction of constitutional authorities

61 Cases from Promo-Lex practice

62 www.cip.nm.ru

63 See the chapter on «Right to free movement» herein.

nents often become victims of such unlawful actions, having their merchandise confiscated; in order to avoid confiscation they are usually forced to pay unofficial taxes as bribe, which causes them substantial and important damage. Inhabitants of Corjova, Molovata Noua and Cocieri villages, situated on the left side of Nistru river and under the control of constitutional authorities, are the most affected by those illegal «procedures», because in the winter time they are forced to stay without any food supplies and other primary commodities.⁶⁴

2.4.3 «Migration tax»

Not even in 2006 the Moldovan Government succeeded in solving the issue of taxation of country's citizens by representatives of the illegal regime of Tiraspol. The number of persons affected by this «rule» is continuously and dramatically increasing. Moldovan citizens registered on the right side of Nistru river, who travel on the territory situated under the control of Tiraspol, including those transiting the area and traveling to Ukraine, are forced to pay illegally a tax amounting to 9 lei at this moment of time. This procedure violates the right of property of Moldovan citizens, especially those who have to transit the region on a daily basis.⁶⁵

Promo-Lex Association has repeatedly requested the authorities to intervene in the taxation issue. We believe the Government has to come up with a solution implying the compensation of all amounts of money paid for such purposes to the victims. In our opinion, the payers are not forced to bear any supplementary costs in case the authorities are unable to secure their constitutional rights.

2.4.4 The issue of agricultural land plots

The problems of Transnistrian farmers are only growing in number. They are mainly related to the rights of farmers (lawful owners) from Dubasari district situated under the jurisdiction of constitutional authorities to treat their agricultural land plots and transport their harvest to the warehouse. The problem of those agricultural land plots is suspended for the time being. The owners don't have any guarantees that the situation from years 2004-2005⁶⁶ shall not repeat itself. Even though an agreement was formally signed, binding the illegal authorities from the region to secure the right of property of the land plots situated on the Rabnita – Tiraspol route, this agreement is not totally kept. Farmers have to face unbearable conditions by having their agricultural equipment controlled, by paying fines or bribes for assumed illegal actions or violations. At the same time the farmers complained to Promo-Lex Association about the fact that during the interdiction period (2004-2005) the irrigation systems, admi-

64 If Nistru river freezes Cocieri and Molovata Noua remain isolated. Bac river is the only access way to the rest of Moldova for local inhabitants. Otherwise, the locals will be forced to pay an «import duty», and store owners shall be unable to purchase these commodities from Dubasari city (placed under the control of the illegal regime from Tiraspol) because the Tax Inspection of the Republic of Moldova does not recognize the invoices issued by companies operating in the region placed outside the control of constitutional authorities

65 See also the chapter on «Right to free movements» herein

66 http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf, pages 13-15

nistrative real-estates and production units displayed on the above said route had been robbed or destroyed.

Meanwhile, in 2006 Promo-Lex was informed of numerous cases related to the issue of agricultural land plots in localities situated under the control of the Tiraspol illegal regime. Once the privatization of the entire industrial sector and economic potential of the region was over, the agricultural land plots could not follow another course. Thus, the inhabitants of most localities received an «official» certificate, which certified the opportunity to make use of the right of property over some land. Subsequently, on the basis of this «document» the farmers were to become owners of an agricultural land plot. However, the land plots were never privatized because in April 2003 the local population did not show up at the «referendum» regarding the privatization of land. The inhabitants preferred to absent themselves from voting due to the fact that the «authorities» had not clearly explained the privatization conditions and procedure. Having no property titles, the farmers found themselves in the situation that their land had been rented for up to 99 years in a very massive and non-transparent way to renowned companies or natural persons, who were mostly loyal to the regime. As a rule, the renters are not experts of agriculture and follow only the interest of receiving profit. Thus, in a short period of time the land plots had visibly degraded,⁶⁷ and the material and technical basis of farms was destroyed. For instance, an ex-military man rented an agricultural land plot of approx.1000 ha in the South of the region and in only 2 years the farm became bankrupt (including the zootechnik complex). As a result, experts and farmers left the region, the irrigation systems were sold as scrap iron. Today most farmers are either working abroad or unemployed. Only as much as approx. 20 % (mostly pensioners) work on the respective farm and get paid in kind (wheat, corn, barley, pea, etc.). Finally, we could mention that farmers treat their own land without receiving remuneration, using their own means and equipment, while profits are exclusively realized by land agents. Local authorities do not devote any attention to those issues.

RECOMMENDATIONS:

1. To provide an immediate and equitable solution for the issues related to the restitution of goods confiscated from victims of the Soviet regime, including citizens from the Transnistrian region;
2. To review the legislation on the sale of agricultural land;
3. To actively involve the constitutional authorities in the protection of the right of property of natural or legal persons in the Transnistrian region, including the «security area»;
4. Constitutional authorities must make persistent and constant efforts for annulling all «taxes» collected by the «structures» of the illegal regime from Tiraspol, as well as for securing a continuous control of the privatization regime in the region.

67 The technical and scientific conditions, etc. for agricultural land treatment are not complied with.

3. RIGHT TO INFORMATION, FREEDOM OF SPEECH AND EXPRESSION

3.1. Right to information

In 2006 Moldova registered some positive results related to access to information. Still, this does not imply at all that all problems in this field have been solved. According to a report issued by the Independent Journalism Center (IJC), a positive factor would be the publication of the legislation on the website of the Ministry of Justice, thus securing its free access to the public, and the further publication of minutes of sessions of the Parliament on the Internet (the first minutes were published in 2005). Moreover, the Permanent Parliamentary Bureau approved a new Regulation of accreditation of journalists to the works of the Legislative, which set forth that accreditation certificates shall be issued for the entire period of mandate of the Parliament rather than 1 year, as before. They also continued the direct transmission of plenary sessions of the Parliament on the public channels of «Teleradio Moldova» Company. Here we have to add that the communist fraction of the Legislative insisted upon the suspension of such transmissions as inefficient, and pleaded for the creation of synthesis radio and TV transmissions that would offer a summary of parliamentary activity.⁶⁸

On the other hand, a study carried out by «Acces Info» center shows numerous problems related to the application of the legislation regulating the access to information by local public authorities and other public institutions. «Acces Info» monitored the activity of local public authorities in this field. During an experiment realized by «Acces Info» together with other partners, including Promo-Lex Association, they addressed 46 applications to central public authorities and institutions, 160 applications to Balti district and municipal institutions, district councils, territorial offices of the Government, courts of justice and of appeal, prosecutor's offices and police departments, 900 applications to mayor's offices, 35 applications to departments and services of Chisinau Mayor's Office, decentralized institutions of the Chisinau city, thus amounting to a total of 1141 applications.

The average answer rate during the first monitoring phase – that of elementary testing – at a central level was of 82,61% (of which 97,37 % of answers were in time, 2,63% - overdue), at a regional and municipal level – 51,88% (20,48% - overdue), at the level

68 2006 Annual Report. Freedom of Expression and Information in Moldova, CIJ

of Chisinau municipality (departments, services, decentralized institutions) – 62,86 % (13,64 - overdue); thus, the general average rate for this category of monitored authorities and institutions media amounted to 59,34% (17,69% - overdue).

Only 9,78% of mayor's offices offered an answer (26,14% - overdue), i.e., only 88 of 900 applications were answered.

The Presidency, Parliament and Government answered all the applications, the legal and control structures rejected 11,11% of the applications, agencies, bureaus and services – 18,18%, ministries – 20%, other central level institutions - 25%.

The average rate of refusals to examine the applications from the part of central public authorities and institutions constituted 17,39%. The same rate at a regional and municipal level amounted to 48,12%, in Chisinau – 37,14%, and the average rate for these 3 categories constituted 40,66%.

As to regional, municipal and territorial institutions, the courts of law and appeal ranked first in the «top list» of refusals with a rate of 60,47%, being followed by departments and services of Chisinau Mayor's Office - 54,17%, and regional and municipal prosecutor's offices and police departments – 51,28% each. The rate of refusals received from regional councils constituted 31,25%; as for territorial offices of the Government, this rate amounted to 14,29%. The decentralized institutions from Chisinau answered 100% of the applications.

Most answers that exceeded the deadline of 15 days were given by mayor's offices - 26,14%, followed by regional and municipal institutions – 20,48%. Institutions at the level of Chisinau municipality registered a result of 13,64%, and central authorities and institutions – 2,63%.

The answers differ a lot by their degree of relevance. Thus, most complete answers to the applications that had been sent were given by central public authorities and institutions – 63,04%, followed by departments and services of Chisinau Mayor's Office, decentralized institutions of the city – 40%, and by regional and municipal institutions – 26,87%; the average rate constituted 35,68%. The attitude of mayor's offices is beyond all critics – only 39 of the 900 applications were answered completely, which constitutes 4,34% of the total.

The Presidency, Parliament and Government offered complete answers to all filed applications (100%), the rate of complete answers given by legal and control institutions constituted 77,78%; «Other institutions» gave complete answers in a proportion of 75%, ministries – 53,33%, and agencies, bureaus and services – 45,45%.

As to regional, municipal and territorial institutions, the highest result in giving complete answers was registered by the decentralized public institutions of Chisinau city – 54,55%, followed by regional councils – 46,88% and departments, services of Chisinau Mayor's Office – 33,33%. The least complete answers were given by regional prosecutor's offices – 20,51%, regional police departments – 23,08%, and courts of law and of appeal – 25,58%.

In general, the rate of complete answers by region received from regional councils, mayor's offices, courts of law, prosecutor's offices and police departments varies between 10% (Briceni, Cahul, Cantemir, Donduseni, Floresti, Soldanesti and Riscani districts) and 13,79% (Criuleni-13,79%, Calarasi-12,9%, Falesti-10,81%, Singerei-10,34%); other regions did not even amount to 10%.⁶⁹

Thus, even though there is a well-determined framework, which secures access to information, and there should not be any obstacles in the way of free access, in reality public officers display an attitude of indifference and/or negligence toward their legal obligation to offer information of public interest to all interested persons.

Transnistrian inhabitants are not informed and familiar with the concept of access to information and with their right to request information of public interest from the authorities. Thus, we cannot even speak of access to information in this region. The majority of the population must be informed of their elementary rights and methods of defense, including the request of information from local public authorities.

3.2. Mass information of the public

The issue of discrimination of journalists by various public institutions is still relevant in Moldova. The authorities continue to ignore some mass-media institutions of the opposition, which bring constant critics to public structures and institutions. A relevant situation in this sense is the case of 2 publications: «Moldavskie vedomosti» and «Timpul de dimineata», who are systematically refused to participate at various manifestations.⁷⁰

Meanwhile, the local audiovisual system does not come up with sufficient interactive transmissions. There are very few educational and information shows for the public, and this fact only aggravates and situation in Moldova with respect to civil participation, information access and diversification, youth involvement, information and discussions on the most important social issues. Moldovan inhabitants, especially those from Transnistria, are mostly informed from foreign sources (retransmissions from abroad, especially from Russia). Moreover, in most parts of the Transnistrian territory local inhabitants do not have access to other alternative information sources that exist in other parts of Moldova. On the other hand, Tiraspol has a well-set system of disinformation and manipulation of the public through its own mass-media sources. Thus, Promo-Lex registered numerous cases, when Transnistrian inhabitants are revolted by the quality of shows and programmes broadcasted on radio and TV channels from the right bank of Nistru river, and spoke for the analysis and prevention of arguments used by the Tiraspol propaganda.

The public opinion in the region is manipulated mostly through the local press that is loyal to or financed by the illegal regime of Tiraspol and continues to ignore all ethical norms and rules. For instance, on 29 August 2006 the public local TV station transmi-

69 Access Info Center. Monitoring Report «Application of Law on access to information»

70 2006 Annual Report. Freedom of Expression and Information in Moldova, CIJ

tted a discrediting material about a leader of the opposition without consideration to any elementary norm of journalist ethics.

At the same time, we have to mention that local authorities have failed to eliminate all obstacles for representatives of Moldovan mass-media institutions, who wish to unfold their activity in the Transnistrian region of the country. Moldovan journalists are regarded as «foreigners» and are required to have accreditation, meaning that they have to submit an application to the «authorities», including the motive, place, purpose, etc. of their investigations or the nature of the future material.

Independent journalists of local opposition are also facing various obstacles in performing their activity, and the access to various public manifestations, including press conferences, for some of them is prohibited for different reasons.

Due to the inactivity of constitutional authorities, Ukraine offered itself in 2006 to secure all ethnic groups of the Transnistrian region of Moldova with information from alternative sources and to develop a Public Information and Education Program regarding European democratic norms, values and standards for the region.⁷¹

3.3. Disputes regarding access to information

Given the ignorance and, rather often, the incompetence of public officers, the access to an impartial court could be one way of disciplining the authorities and satisfying legal requirements. In this sense, we have to remark that, in our opinion, the number of files of this order is in a continuous increase. A particularly important case approved by the hierarchically superior court in 2006 is the decision of the Supreme Court of Justice with respect to the application filed by deputy Stefan Secareanu against the Court of Accounts and the Interdepartmental Committee for the protection of a state secret. In his application, Mr. Secareanu requested the court to declare the secrecy of certain decisions of the Court of Accounts to be illegal. In deputy's opinion, the information exposed in such decisions cannot prejudice state's security. The court declared the secrecy of decisions of the Court of Accounts regarding the control of the Parliament and Presidential Machinery to be illegal (Decision of the Court of Accounts no.55-s of 10.07.2003 regarding the results of the financial audit of the Parliament for year 2002 and Decision no.56-s of 11.07.2003 regarding the results of the financial audit of the Presidential Machinery of the Republic of Moldova for year 2002).

However, we have to note that certain courts of law are still unjustifiably limiting the right of access to information. This is also the case of a journalist, who was forbidden access to the public hearing of a case in Drochia Court. The judge did not allow the journalist to assist in more than one hearing, arguing that the press is entitled to assist only in the first hearing and when the sentence is pronounced (which is an erroneous interpretation of law).

71 Ukraine – NATO Action Plan (www.cip.nm.ru)

The situation in this sense did not register any progress in Transnistria. It is still the same because local inhabitants are not informed at all about this right, and those who are aware of it are afraid to do anything to secure it. Just as well, the lack of trust for local justice plays an important role in this context.

3.4. Freedom of speech and expression

Every citizen has the right to freedom of thought, speech, as well as public expression by words, images or any other possible means.⁷²

The events of 2006 proved that central and local authorities do not respect this provision at all. Severe violations of this right were reported both by journalists and by common citizens.

Meanwhile, year 2006 was also marked by several significant amendments of the legislation regulating this field. Article 16 of the Civil Code was amended⁷³ by expressly identifying the criteria that the courts must follow in taking decisions regarding the payment of damages. However, the legislative did not set forth an amount of compensation, which can be further become a tool in the hand of some structures for the harassment or liquidation of certain publications.⁷⁴

On 27.07.2006, the Audiovisual Code – a long-expected legislative act that could better regulate the activity of the mass-media, as well as the role of the Audiovisual Coordinating Board (ACB) – was adopted. Even under such circumstances, the experts registered negative results regarding the fate of public radio and TV stations of the municipality: «Antena C» and «Euro TV Chisinau».⁷⁵ Thus, based on a recommendation of the ACB, on 30.11.2006 the Chisinau Municipal Council (CMC) took the decision of reorganizing by alienation the municipal public broadcasters. In only 2 weeks, a decision of organizing an investment tender for the sale of the said stations was adopted. On the same day of 14.12.2006 the directors of the broadcasters in question had been destituted and replaced with no advice and notification. On 15.12.2006 the management of «Antena C» was abusively (forcedly) replaced by representatives of local public authorities and forces of law and order. On 16 December the transmission of «Antena C» was ceased.⁷⁶ The way and short time, in which those changes had been operated, only stirred up feelings of indignation among the civil society, given that representatives of relevant international organizations and other organizations headquartered in Moldova monitored the events.

Another legislative act, which, in the opinion of the civil society, can serve as an intimidation and control tool is the Law regarding the counteraction against extremist activities. The authorities used its provisions in order to avoid making public information

72 Constitution of the Republic of Moldova, art.32

73 In view of determining the criteria for assessing the quantum of the moral damage caused in case of disgrace brought to one's honour, dignity and professional reputation.

74 They can demand for the payment of fabulous amounts of money, for the sequestration of goods and, respectively, for blocking someone's activity

75 2006 Annual Report. Freedom of expression and information in Moldova, CIJ, www.ijc.md

76 Ibidem

that seems inconvenient to the government machinery. For instance, this is the case of «Hyde Park» association, dealing with the organization and performance of certain activities of promotion of the freedom of speech and right to information. The association received a notification, which specified that the bulletin «Curaj.net» includes information of an extremist nature. In particular, the Ministry of Justice stated without producing any proof that the bulletin includes information «promoting the inferiority of citizens by their nationality, which is a severe violation of art.I of the Law regarding the counteraction of extremist activities».⁷⁷ «Hyde Park» representatives believe that the bulletin does not urge people to be overtaken by hatred, xenophobia, racial discrimination etc. On the contrary, it includes freely expressed opinions of citizens, who wish to make public their point of view.

Another intimidation case is, this time, the case of sport journalist, Mr. Ion Robu, who was ill-treated by several persons. The victim believes the incident is related to the publication of the book called «Maratonul de la Atena (The marathon of Athens)», in which the journalist reported several infringements within the National Olympic Committee of Moldova.

Another journalist⁷⁸ was intimidated and forced to destroy her materials, which is an obstacle to the free exercise of profession. Subsequently, she was also forced to destroy the pictures taken with her camera before the building of the Government itself. The journalist was taking pictures of a group of workers, who were performing some improvement works nearby the public building, when several persons, who refused to identify themselves, forced her to take out the film from the camera and destroy it.

Concomitantly, several mass-media structures reported that the governing party intimidated them for opinions expressed in their publications. Such intimidations are only possible due to the administrative power the party holds. Thus, in June 2006, representatives of Chisinau Municipal Council, dominated by the governing party,⁷⁹ made aggressive statements against the municipal broadcasters «Antena C» and «Euro TV Chisinau» and the publication «Timpul de dimineata», for expressing their opinion about certain events from the Soviet period. The statements of counselors were aggressive as journalists' opinions came in contrast with their viewpoint and that of the respective political party.

On the other hand, several efforts to undermine the economic activity of some independent mass-media. The public opinion was informed about the fact that 6 years ago the newspaper «Moldavskie vedomosti» risked to lose its privatized headquarters, because the Court of Appeal requested the annulment of the privatization of its head office, and «Jurnal de Chişinău» was accused of nonpayment of the VAT in an amount of over 500.000 lei, whose payment would lead to bankruptcy. On 1.08.2006 the Balti police officers prohibited the journalists to film the monument of Stefan cel Mare that had been profaned by unknown persons. It had been sprinkled with paint and had an

77 www.curaj.net

78 Anastasia Nani, «Ziarul de Gardă» (The Guarding Paper)

79 Communist Party of the Republic of Moldova

inscription in Russian on it. Representatives of forces of law and order displayed unjustified aggressiveness toward the journalists who were trying to make pictures.

In October 2006 the Center of Journalist Investigations announced that the website www.investigatii.md, including over 100 reporter surveys in Romanian and English performed during the previous 3 years, as well as documents and photos made by the journalists during the investigation process, was attacked and put out of function. Because of the attack the database was destroyed, as well as the investigation, commentary archive etc. The Center declared that it does not exclude the possibility that the website was intentionally hacked for destroying the database.⁸⁰

In the Transnistrian region, the freedom of speech and expression is also provided in the local «constitution». In fact the existing situation is characteristic for the Soviet period. Most of local inhabitants tend to freely express their opinion in certain circumstances, or «in the kitchen» as people say. The critical opinions of inhabitants are persecuted by repressive structures. There still are several local publications, such as «Человек и его права» (Man and his rights) and «Новая газета» (New newspaper), which make public few of the critical opinions regarding the local regime. The circulation of these publications is still low (4400 and 2300, respectively) for a population of approx. 555.000 inhabitants.⁸¹

The freedom of speech and expression in the region is reduced by the activity of secret police structures. The population is afraid of repressions of the local KGB, called the MGB. For instance, readers of independent newspapers declared that they did not trust the local post office for addressing letters to the editorial office.⁸² Meanwhile, the editorial offices themselves are harassed in courts; some cases of burglaries accompanied by the disappearance of computer hard disks from their head offices were also reported. Recently, one of the local journalists, who had been fired from an «official» publication, admitted that not even the journalists or head editors have the right to freedom of speech and expression.⁸³

80 IJC 2006 Annual Report. Freedom of expression and information in the Republic of Moldova

81 Results of the last population census held in the region, 2004

82 www.cip.nm.ru

83 Idem

4. RIGHT OF ASSEMBLY, ASSOCIATION AND FREEDOM OF CONSCIENCE

Everyone has the right to free protest meetings, demonstrations, manifestations, processions and any other types of assembly that are to be held in a peaceful manner, without the use of munition.⁸⁴ Even though the provisions of the Constitution are limited to assemblies of 2 kinds (if the manifestation is not peaceful or if there is a risk related to the use of weapons), the authorities often fail to accept applications for holding such assemblies based on unsubstantiated arguments.

In 2006, Chisinau Mayor's Office received 148 preliminary applications (in 2004 – 78, 2005 – 190 statements), Balti Mayor's Office received 15 such applications, Comrat Mayor's Office – 11 applications, and Cahul Mayor's Office – 3 applications.

According to data provided by the Ministry of Internal Affairs, in 2006 the number of manifestations held on the entire territory of Moldova exceeded 890. However, local public authorities refuse to authorize such assemblies. Thus, 40 of the 148 applications addressed in year 2006 were refused in Chisinau. In Comrat, 5 of the 11 applications were rejected. In Cahul 2 of the 3 preliminary applications were authorized in the requested location, and the third one was authorized in another place. In Balti 1 of the 15 applications was rejected.

A recent study shows that the approval of an application depends upon certain circumstances, such as the subject of the preliminary application and the place or location of the assembly. Thus, in Balti most preliminary applications had been filed by politicians - 70 % (assemblies with electors); by public associations - 15% and economic agents - 15%; 2 applications coming from 2 political parties and one application filed by an economic agent had been rejected.

In Cahul the preliminary applications filed by certain public associations had been examined. For instance, local authorities argued their refusal to authorize the assembly in the center of the city with the fact that a) the assembly was to be held in a working day, which shall disturb the normal use of public roads and the well functioning of economic agents; b) pupils from the nearby lyceum could have become involved; and c) the requested location is designed for cultural activities in the framework of state holidays.

84 Constitution of the Republic of Moldova, art.40

In Comrat, the citizens filed preliminary applications for protest actions; 60% of them were filed personally, 30% - by public associations and 10 % - by political parties. 70% of the applications filed by citizens were rejected (some authorizations had been issued based on a court decision); 75% of the applications filed by political parties were rejected as well. Public associations received no refusals only because their applications regarded the organization of cultural and entertainment activities.

The situation in Chisinau municipality is as follows: most refusals were received by public associations (18 in 2005, 21 in 2006), followed by common citizens (4 in 2005, 13 in 2006), political parties and social-political movements (2 in 2005, 5 in 2006) and economic agents (3 in 2005, 1 in 2006).⁸⁵

An analysis of these figures proves that the civil society became more active in expressing its opinions through public manifestations, even though their number is still too small in comparison with the number of organizations and society's problems. On the other hand, we can note that the observance of this right is often left at the discretion of local public authorities. Authorities' ingerence is due to the imperfect legislation that determined the manner of holding assemblies and offers excessive rights to local public authorities. Even though the freedom of assembly is a right that can be limited only when the manifestation is not peaceful or there is a risk related to the use of weapons, the authorities refuse to authorize such assemblies by invoking invented arguments that are unproportional and incompatible with democratic norms. We believe that the Special law regulating the organization of assemblies comes in contrast with constitutional provisions. As the law provides for a procedure of authorization, the public authority is enabled to reject the organization of an assembly by bringing sometimes aberrant arguments in its favor.⁸⁶

The illegal refusal of the authorities determines the petitioners to bring them before court. In fact, legal procedures take some time, and citizens cannot freely express their opinion through assemblies. The situation is also aggravated by the fact that the refusals issued by mayor's offices show a tendential attitude of public officers toward certain phenomena and situations in the society. For instance, the Movement of Transnistrian Refugees received repeated refusals for holding assemblies (applications of 22.02.06, 24.08.06, and 13.10.06). Just as well, «GenderDoc-M» Center, which promotes the rights of sexual minorities, is not authorized to hold assemblies because «...the invoked requirements come in contrast with the legislation», «...various applications have been filed by religious organizations and citizens about the organization of protest counter-manifestations...», etc. Here we can also mention the case of «Hyde Park» Association, whose applications for the authorization of assemblies on 11.01.06, 10.02.06, 09.03.06, 15.03.06, 10.08.06, 13.09.06 etc. were rejected for various reasons, such as «the problem

85 «Freedom of assembly in the Republic of Moldova», Parliamentary Councillor Iurie Perevoznic www.ombudsman.md

86 In 2006, for instance, Chisinau Mayor's Office refused to issue an authorization for the following reasons – 7 potential acts of breaking the public order (without invoking evidence); 5 failures to comply with the registration term of pre-trial declarations; 4 the purpose of holding such an assembly is not substantiated; 3 the declaration was filled in incorrectly; 3 lack of authorizations for the participants from the organizer of the event; 3 the mayor opines that the assembly is inopportune; 3 Mayor's Office believes that there is a possibility for counter-demonstrations to occur; 3 there are several authorization applications for one and the same day (accordingly, none was authorized); 3 cultural manifestations are planned for the same period of time; 2 the creation of certain boards for solutioning the said problem; 2 the distance of 25 m from the office of the institution cannot be secured; 1 an official delegation is due to come on the requested date; 1 assembly's objective is to defame the state.

is overdue and cannot serve as grounds for such assembly» or «state authorities shall hold other manifestations in the same time period».

Given the ignorance of local public authorities, court decisions tend to give back the hope and faith that this right shall be secured and observed. A relevant example is the decision of the Chisinau Court of Appeal, which annulled Mayor's decision to reject the application filed by «Hyde Park» Association for holding an assembly during 1-30 August 2006. The decision of the Chisinau Court of Appeal, which is binding for the authorities, authorized the organization of the assembly in the central park of «Stefan cel Mare si Sfint» during 29-31 August 2006. Based on this court decision the persons could exercise their right of assembly. However, the majority of the participants was arrested by the police and received a protocol for committing an administrative contravention. In spite of the provisions of the existing legislation the participants were illegally detained for approx. 40 hours. We are certain that their detention was directly related to the use of their right to freedom of speech. Subsequently, the detained persons were recognized innocent for participating in the respective public assembly. Promo-Lex experts secured the legal support of those persons.⁸⁷

A similar situation was reported on 4.10.2006, when the interim Mayor of Chisinau municipality failed to authorize a protest meeting held by Amnesty International Moldova. Mayor's decision was disputed in court, and the Supreme Court of Justice declared it illegal on 15.11.2006.

The right of assembly is also violated in the Transnistrian region of Moldova. Even though the local «legislation» secures the right of assembly or protest meeting to all inhabitants, the population is in fact rather passive from this point of view because of the constant persecutions and control imposed by structures of the secret police. The opposition did not hold any political protest actions in the region. Only social assemblies or protest actions organized by «authority» followers have yet been held.

Absurd refusals of the local administration of Tiraspol town were registered in 2006, followed by visits of the «militia» to the places of residence of the organizers and potential participants to protest actions. Just as well, Transnistrian «militia» agents created obstacles for assembly participants by intimidating the organizers and by preventing them from making public the final declaration, with their further detention. The detained persons were treated inadequately, regardless of their invalidity or age.

The right of association is still significantly affected. First, Transnistrian trade unions are still headed by persons who are loyal to the «authorities». They are not able to secure employees' rights for various reasons, including the reason of gerontocracy.⁸⁸

Most of public associations are not free to perform their statutory activities. Some NGOs and political parties were established by persons loyal to and relatives of those, who usurped the power in the region and have been holding it under their control

87 In 2006 Promo-Lex experts participated in the investigation of 5 such cases in national courts and forwarded 3 cases to the ECtHR.

88 The administration of the trade union movement is composed of elderly people only. This situation has not changed during the last 15 years

for over 15 years.⁸⁹ In 2006 Promo-Lex Association registered cases, in which the local «authorities» refused to register non-governmental organizations. Meanwhile, the head of local administration requested a local organization to pay 50% of its profit for the implementation of a potential project. Another organization was prevented from performing planned ecologic activities on the Nistru river, being visited by the representatives of the local administrative and military structures. In general, we have to note that the civil society from the region is still insufficiently developed because of various artificial obstacles⁹⁰ created by the secret service of the region and by the local «authorities».⁹¹

At the same time, the civil society of the region continues to be divided. Some organizations are registered in Chisinau (national companies), others are registered in neighboring localities from the right bank of Nistru river or in regions placed under the jurisdiction of constitutional authorities. Most of them are registered in Tiraspol or at the local «authorities» of the region, and others (still, very few of them) prefer to have double registration. In 2006 a catalogue of Transnistrian NGOs was published, which, however, did include only companies registered in Tiraspol.⁹² This fact can probably be explained by the fear of persecution of NGOs registered with constitutional authorities. As a matter of fact, the last are «unofficially» declared as «enemies» or «opponents of the republic».

Often for the above said reasons representatives of NGOs from the right riverbank, as well as very many journalists, are forced to perform their activities on this territory in a semi-clandestine manner. New cases of intimidation of representatives of the civil society were again reported in 2006, followed by the detention of Mr. Gheorghe Caraseni.⁹³ Local «secret police» structures prohibited in an indirect way his activity on the territory placed under the control of the separatist regime. As a matter of fact, this amiable type of discussion held by dubious persons is a real warning for uncomfortable persons. Meanwhile, the arrest of members of an organization from Slobozia, namely the «Dignitas» Association,⁹⁴ under pretext of some acts of terrorism, proves the fact

89 Certain local parties and NGOs are created and financed by the separatist regime. They are placed under the control of local secret services and promote a pro-regime policy.

90 Political and administrative obstacles, lack of information and free movement, distrust and suspicion toward colleagues from the other side of Nistru river, local authorities' refuse to cooperate in the interests of the community, no opportunities to get informed on the role of civil society in a democratic state; intimidation and threatening of initiative groups by local administrations, low presence of financing programmes for the said region, etc. Local «authorities» forbid any cooperation with NGOs from the right bank of Nistru river, as well as financing provided by institutions, organizations or funds established in Chisinau. Through local propaganda those who cooperate with their colleagues from the right side of Nistru river are called «enemies of the Republic», «traitors», «foreign secret service agents». The purpose of such actions is to intimidate local inhabitants and prevent the potential development of a natural relationship between the two banks of Nistru river.

91 A high number of public associations included in the Catalogue of non-profit organizations from Transnistria are ethnical (mostly Russian), patriotic and Cossack associations.

92 Catalogue of non-profit organizations from Transnistria, «Rezonance» – 2007

93 «Representatives of the alleged minister of Transnistrian security impeded the realization of an NGO development training that was to be held at Tiraspol. The project director, Mr. Gheorghe Caraseni, president of the «Caraseni» Consulting and Training Organization, was forced to visit the office of Transnistrian security and, after long discussions of more than 2 hours, he was advised to carry out such activities on the right bank of Nistru river»
<http://flux.md/c/pr100.php?action=show&idu=14103&cat=Editia%20de%20Vineri&rub=Eveniment&num=19>

94 «4 members of «Dignitas» organization from Slobozia were detained for being allegedly involved in the explosion of 13 August 2006 from Tiraspol. Alexandru Macovenco, Ghenadie Taran, Igor Ivanov and Lurie Zatica were released for lack of evidence. Alexandru Macovenco stated that he had been detained by Transnistrian special forces for the reason of being allegedly involved in the organization of the recent explosion. During his interrogatory the militia men were exclusively interested in the activity of «Dignitas» company and further asked the organization leader, Mr. Ghenadie Taran, the same questions.
<http://flux.md/c/pr100.php?action=show&idu=15944&cat=Cotidian%20National&rub=Politica&num=118>

that local illegal structures are willing to continue the intimidation and warning actions against the civil society.

Just as well, in 2006 «president» Smirnov issued a «decree», which prohibited the foreign financing of NGOs. The public opinion put an attitude regarding this issue, and the protest of international organizations⁹⁵ determined the separatist regime from Tiraspol to nulify this interdiction.

The large number of political parties existing in the region is aiming at misleading the public opinion and international community regarding the presence of a democratic climate in the region. Another pending issue that is to be mentioned is the presence of certain political parties of the Russian Federation in the region. For instance, the parliament fraction of the Russian Duma, namely the LDPR, led by Mr. V.Jiriniovschi, has a local branch in the region. Meanwhile, there are no branches of Moldovan political parties in the region,⁹⁶ which violates Moldovan citizens' right of assembly and association, and proves once more that the region is under the de facto control of the Russian Federation. At the same time, we believe that Moldovan authorities did not make any effort for securing the fundamental rights and liberties of country's citizens on this territory.

FREEDOM OF CONSCIENCE

Everybody has the right to freedom of conscience in Moldova. It must be manifested by a spirit of tolerance and mutual respect. Religious cults are free to meet and perform their activities according to their own regulations and under the law. All acts of hatred are prohibited in the relationship between religious cults. Religious cults are autonomous, separated from the state and benefit from its support, including religious support in the army, hospitals, penitentiaries, asylums and orphanages.⁹⁷

Even though this freedom is generally respected, there were some cases, in which local and central authorities tended to favor one specific cult as compared to other cults. At the same time, discords were noticed, which had a negative influence on the reputation of the said cults.

95 On the initiative of the Moldovan delegation, the Council of Europe tried to adopt a Resolution, but Russia opposed. Romanian, Ukrainian, Georgian, Polish, Czech, Latvian, Irish, Luxembourg delegates etc. upheld the proposal; nevertheless, it was not adopted because of the position of the Russian delegation. OSCE also condemned this decision and further requested its annulment.

96 The year 2006 was marked by a «boom» of political parties: «... were created: (1) Popular Democratic Party «Proryv!» (the «off-spring» of the well-known and controversial public organisation «Proryv!», who's ideologist is not less known and controversial Dmitri Soin), (2) Republican Party «Obnovlenie» (created on the skeleton of the public organisation «Obnovlenie», founded in 2000), (3) «LDPR (ЛДПР – n.tr.) Transnistria» (de facto, the branch of the well-known LDPR from Russia), (4) Patriotic Party from Transnistria (particularly known by the fact of having as leader one of Igor Smirnov's sons – Oleg Smirnov), and (5) «Popular Will of Transnistria»... Some experts take this process as an attempt of Igor Smirnov's administration to show the international community (which do not give much attention to building democracy in Transnistria) that the majority of the population in the region supports the activities of the current «president» of this unrecognised entity, and the trends of the foreign policy towards Russia. www.e-democracy.md/comments/political/

97 Constitution of Moldova, art.31

The data of the National Bureau of Statistics show that during the 2004 census the majority of the population declared itself orthodox (93,3%), while 1,4% declared themselves to be atheists. As to the number of other religious confessions registered on the territory of Moldova, 1% declared themselves to be Baptists, 0,4% – Adventists of seventh day, 0,3% - Pentecostals, old-style Christians and Evangelists registered a proportion of 0,15%, and other religions than those specified above constitute 1,1% of the total of population.

One of the most important problems of year 2006 related to the freedom of conscience is the non-execution of ECtHR Decision of 13.12.2001 with respect to the case of Metropolitan Church of Basarabia. Thus, on 8.02.2006 the Committee of Ministers of the Council of Europe (CoE) showed great concern about the non-compliance of the decision of the European Court for Human Rights (ECtHR) on the case of the Metropolitan Church of Basarabia vs Moldova by Moldovan authorities. The declaration particularly mentioned that the Chisinau Government continued to maintain a high level of discretion in authorizing, suspending or annulling the registration of religious organizations. Moreover, legal provisions do not adequately reflect the proportion requirements of some possible restrictions in the field of exercising the freedom of religion. CoE emphasized the need to accelerate the process of adjusting the existing legislation to European norms, particularly to the ECtHR decision, taking into account the recommendations of CoE experts.

The Committee of Ministers adopted an interim resolution for the case of the Metropolitan Church of Basarabia. Subsequently, on 28.03.2006 a provisory resolution concerning the failure of Moldovan authorities to observe the ECtHR Decision on the case of the «Metropolitan Church of Basarabia and Others vs Moldova» of 27.03.2002 was adopted. In the resolution Moldovan authorities are urged to amend the legislation without delay and to adopt all necessary implementation measures for its compliance with the requirements of the European Convention, as specified in the decision. The resolution also condemns the fact that upon the expiry of 4 years from the adoption of such decision Moldovan authorities have not yet made any satisfying effort and, particularly, have not amended the legislation according to the requirements of the Convention, as set forth in the decision.⁹⁸

Given the non-execution of the ECtHR decision regarding a religious cult, it is rather weird to see church leaders from abroad interfere. For instance, in an interview given to a specialized publication, the Patriarch of Russia Aleksii II stated that the fate of the Metropolitan Church of Basarabia is uncertain. The Patriarch tended to mention that the Metropolitan Church of Basarabia was established in 1990 as a division of the Moldovan Metropolitan Church. Meanwhile, the Patriarch noted that the Metropolitan Church of Basarabia was, in fact, created as a result of certain political movements. This is merely the opinion of the Moscow Patriarch, but Moldovan authorities are to be held responsible for the created situation and for securing the rights of believers without admitting, directly or indirectly, any discrimination against any cult or a group.

98 www.azi.md

After the events of 2005, the disputes between priests of the Moldovan Metropolitan Church and the Metropolitan Church of Basarabia intensified, some of those degenerating into mass scandals, including the use of force and unchristian solution methods. Meanwhile, the interference of state agents in church's activity is still a problematic issue. Thus, in April 2006 several persons aggressed a group of believers, including the priest of the Metropolitan Church of Basarabia, Petru Botezatu of Floresti settlement. The believers alleged that they had been aggressed before a number of police officers, which, however, totally failed to interfere in order to secure their safety and the public order. On the contrary, representatives of forces of law and order prevented the believers of the Metropolitan Church of Basarabia from entering the church building.

The said case was not the only one. For instance, in 2006 the situation was very tense in Calarasi and Ungheni regions. All those cases only prove that the authorities do not make efforts in order to inform and education the population in a spirit of religious tolerance. On the contrary, they often admit a totally inadequate behavior and, thus, encourage the violation of the right to freedom of conscience. Another relevant case in this sense would be the statements made by the President of the country during the electoral campaign organized in Gagauzia, in which he declared that «Formuzal (electoral opponent from the part of the opposition) cannot be elected to the position of governor because he is a Baptist, and 90% of our population is orthodox». Subsequently, Mihail Formuzal, who won the elections in the local autonomy of Gagauzia, accused the President of the country of electoral flurry, based on religious discrimination, by alleging that «the statements were aiming at starting a conflict between the inhabitants of the Autonomy on a religious basis and they come in contrast with the Constitution, which provides for freedom of choice of religion».⁹⁹

The separation of the two Nistru riverbanks did not bear only a political, economic, social, cultural or academic character. The Tiraspol «authorities» isolated the population from the left side of Nistru river by modifying the telephonic system and collecting «customs duties» at customs points instated illegally. The religion, though, is a field that formally preserves intact relationships. Thus, the Tiraspol and Dubasari Eparchy is subordinated to the Moldovan Metropolitan Church, which, in its turn, is subordinated to the Russian Patriarchy. However, the relationship between these two structures is practically invisible; they are affected by the existing tension between the Chisinau central administration and the Tiraspol separatist administration.

Various cases of harassment of priests by representatives of local «tax structures» were reported in 2006 in Grigoriopol region. The priests were accused of lacking a cashier's machine and of failing to work 8 hours per day.¹⁰⁰ It is also relevant that church representatives copy the behavior of Tiraspol «authorities» by subordinating themselves directly to the hierarchical superiors from Moscow and by avoiding those from Chisinau.

99 Moldova Azi, 25 October 2006, www.azi.md

100 www.cip.nm.ru

101 See p.87 of the «Report on the situation of human rights in Moldova for year 2005», http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

A positive trend is the fact that today the Corjova church¹⁰¹ is under construction with financing from local and central constitutional authorities. The Dubasari separatist authorities do not oppose the construction of the church without entering into details or giving any explanations. However, Corjova inhabitants do not have the certainty and confidence that those incidents shall not repeat themselves when the Holy Place is erected.

Just as well, various religious groups perform their activity in the region. Some of them distribute humanitarian aid in the region and we have to note that not all NGOs or religious groups have access to this right.

5. RIGHT TO EDUCATION

Education is a priority for states that tend to continuous development, to growing the young generation in the spirit of democratic values and to forming citizens, who have their own critical opinions and are anxious to have an active participation in the social and political life of their country. Education is, at the same time, a part of the agenda of international organizations.¹⁰² Even though education is assumed to be a priority field in Moldova, a part of the actions carried out so far prove the contrary. From elementary to graduate and postgraduate education, Moldova continues to face the same problems as those reported in 2005.

Undergraduate education is marked by a phenomenon, which is regarded as a tendency by most members of the society, and is related to the reduction of classes of Romanian language in educational institutions and the replacement of the courses of «Romanian History» and «World History» for «Integrated History».¹⁰³ Meanwhile many representatives of national minorities complain that they do not benefit from adequate conditions to study the official state language.¹⁰⁴

On the other hand, under the terms of the social-economic crisis (miserable wages for the didactic staff, insufficiency of teachers, especially in rural settlements, and the lack of necessary equipment in educational institutions), the authorities preferred to use their funds on the elaboration, publishing and distribution of new history textbooks, whose quality was repeatedly contested by many renowned historians. As a result of several examinations, the textbooks were sent for revision. Thus, we believe that significant funds had been unjustifiably wasted, and no persons responsible had ever been sanctioned.

Lately the number of persons studying in universities has been registering a continuous increase. According to official data,¹⁰⁵ in the study year 2005/2006 the number of

102 The United Nations Organization qualified the years 2003-2012 as the UNO Decade for alphabetization: Education for all, and years 2005-2014 as UNO Decade for education in the spirit of sustainable development, having attributed priority to its programmes related to human rights promotion. www.portal.unesco.org/education/en/ev.php-URL_ID=5000&URL_DO=DO_TOPIC&URL_SECTION=201.html, portal.unesco.org/education/en/ev.php-URL_ID=27234&URL_DO=DO_TOPIC&URL_SECTION=201.html

103 The authorities continued insistently the process of replacing the history course. Finally, under the pressure of civil society and the academic community from the country, they formed a Committee attached to the Academy of Science of Moldova, which focused on studying the objections raised by the quality of materials included in the new textbook. The Committee found certain irregularities and remitted the textbooks for being reviewed. It noted that the new textbooks show historic events in the light and vision of the governing Communist Party. (Extract from protocol no.2 of the session of the Committee for scientific expertise of the new history textbooks of 22.12.2006, www.asm.md/news/Prezentare1.doc)

104 This problem was pointed out in the Report on the situation of human rights in Moldova for year 2005, p.29 www.promolex.org.md/docs/reports/Raport_2005_Drepturile_Omului_in_Moldova.pdf

105 www.statistica.md/dates.php?lang=ro&ct=25

students registered a continuous increase of 10,1% as compared to year 2004/2005 and of 21,1 % as compared to year 2003/2004.¹⁰⁶ In January 2006 the Government drew the Regulations on providing support to talented pupils,¹⁰⁷ which sets forth identification, development and support activities for talented pupils at undergraduate level in the intellectual, artistic and technical-application fields. In our opinion, the funds allotted for such activities are more than insufficient and do not allow their normal development and performance.

5.1. The school curriculum

The distribution of «Integrated History» textbooks in schools rose numerous controversies and disputes among historians. Regardless repeated protests, the course was still introduced on a mandatory basis in the Curriculum starting with 1.09.2006. This decision rose sentiments of dissatisfaction and protest among teachers, pupils, parents, NGOs and certain political parties; experts qualified it as «historic false» and an attempt to impose an ideology to the undergraduate education system. Teachers and pupils were forced to accept the course of integrated history; otherwise, teachers were threatened with being excluded from the education system.¹⁰⁸

Meanwhile members of the Academy of Science allege that the elaborated programme is completely disproportional and that national history topics are totally missing. The concept and curriculum have never been discussed and approved. The history textbook for 5th grade proves more than once the clear intentions of the author – to falsify history, to put it up for the service of certain political structures, to denigrate national history, to reduce it to certain insignificant events of the Moldovan people's past.¹⁰⁹ «The intention hidden behind the introduction of integrated history course is to deprive Moldovan natives of their national history and culture, and to confer it an eminently political identity. From the viewpoint of integrated history followers, history transforms itself into a completely politicized school course. ... The reintroduction of primary and overrun ideas into the education process can have severe consequences on the society; they can disturb the civil balance that was established in the last few years».¹¹⁰

106 We have to note that 75% of students pay their study fees as compared to those, who are financed from the budget. The economic capacity in this case is closely related to the income of able-bodied citizens. Another suggestive fact is that approx. 15% of the funds created from transfers made by Moldovan citizens from the EU and CIS are oriented to educational services. (Statement of the Liberal Party of Moldova, 4.07.2006)

107 Decision no.17-XVI of 4.01.2006

108 A history teacher from the Chisinau Choreographic Lyceum, Ms. Viorica Conovan, stated that she had been expelled from her advanced training course held in the Advanced Training Institute because of having a different point of view regarding the process of teaching history (www.azi.md/news?ID=38541). On the other hand, as a consequence of an opinion poll initiated by the newspaper of the National Youth Center of Moldova (NYCM) «Asta Da» (This Is It) regarding the introduction of the course of integrated history course in schools, a young lady from Causeni was threatened by a school inspector with being expelled. Nevertheless, the results of the poll are more than convincing: 84 % of the respondents were against and 16% - for such a change. The poll was carried out in 5 district centers (www.flux.md/c/modb2arh.php?action=show&idu=17301&cat=Editia%20de%20Vineri&rub=Social)

109 Iurie Rosca, the vice-speaker, requested the dismissal of the ministry of Education, so that the latter could personally take the responsibility for this error, while the IXth grade textbook should be taken out automatically. In his turn, deputy Gheorghe Susarenco filed an interpellation with the General Prosecutor, in which he requested that IXth grade history textbook authors be subjected to criminal proceedings (www.parlament.md/news/plenaryrecords/12.10.2006/)

110 On 15.04.2006 the general assembly of history teachers approved a similar resolution, which proves that the policy promoted by communist authorities in the historic field only leads to the disorientation of teachers and the disinformation of parents, pupils and the public opinion. Such actions are only a source of chaos in the historic field and are meant to defame history teachers and give birth to sentiments of repulsion toward history courses taught in schools

On 18.09.2006 a new act of protest was held against the introduction of «Integrated History» into the curriculum. The introduction of this course comes in conflict with art.4 (3) of the Law on education and with the Resolution of the Parliamentary Assembly of CoE on the functioning of democratic institutes in Moldova, adopted at Strasbourg on 24.04.2002.¹¹¹ The so-called experiment is a direct violation of the constitutional provision regulating parents' right to decide upon the type of education for their children. Protest organizers argued that «World History» and «Romanian History» textbooks received positive advices from CoE experts and the «G. Eckert» Institute of Germany, while the experimented textbooks had been elaborated secretly by persons with no academic relevance.¹¹²

These protest actions were not the only ones.¹¹³ A public opinion poll was also carried out by the Centre of Sociology of Communities and Genre Studies (CSCGS) – the results showed clearly that nothing is more untrue than the statement that the population agrees with authorities' experiment to introduce integrated history textbooks in schools.¹¹⁴

One way to solve the problems related with the implementation of a new history course would be the elaboration of a Concept of historic education in a Curriculum, which would end up with the elaboration of integrated history programmes and textbooks. The process must be totally transparent and agreed with the civil society and public opinion; it must also imply the involvement of experts in this field. The decision of the Ministry of Education and Youth (MEY) to reduce the number of Romanian language classes was also the reason for a new series of protests and statements. For instance, young people reacted by speaking against children's indoctrination with a false history, as well as against the promotion of analphabetism in Moldova by reducing the number of classes for certain disciplines, especially for Romanian language.¹¹⁵

One objective of the education process is to develop pupil's personality, to prepare him/her for an active life oriented toward developing the society in the terms of an authentic democracy. Thus, the young generation is to learn the values that shall educate them in the spirit of a democratic society from an early age, implying an effective and responsible behavior in social life. In this sense, the school curriculum has to secure the development of communication skills, critical thinking, living habits, etc. Courses

111 www.azi.md/news?ID=41014

112 A tense situation occurred in the Institute of Educational Sciences of Moldova. History Chair members were called to accept the course of «integrated history» in the continuous education programme. When the pressure turned unbearable, the staff of the said chair left their jobs in corpore. The Parliament received more and more protest messages from educational establishments and from other places about the same fact. www.azi.md/news?ID=38266 si www.azi.md/news?ID=24736

113 On 11 October approx. 500 people (historians, politicians, pupils, students, professors and parents), according to the police, and around 3000 people, according to the organizers, took part in a protest meeting against the introduction of the course and textbooks of integrated history.

114 According to a survey carried out by CSCGS, 61% of the participants do not know anything about the conflict generated by the introduction of integrated history textbooks, and 5% failed to answer this question. Accordingly, only 34% are aware of this conflict, half of which believe that schools have to reintroduce the course of Romanian history, and another quarter of which opt only for the preservation of the integrated history course, and not the existing textbooks that interpret historic events from the viewpoint of Soviet historiography. If we were to make a calculation, we would find out that approx. 3 percent of the participants in the survey agree with the introduction of integrated history textbooks in schools.

(www.flux.md/c/modb2arh.php?action=show&idu=17281&cat=Editia%20de%20Vineri&rub=Editorial)

115 The president of the Liberal Party stated that the «liberal youth condemns the government policy of reducing the hours of Romanian language, because we speak Romanian very badly, starting with our Government, the deputies and a large part of the society. This action of the government is merely a pretext and a starting point meant to bring us not only to an integrated history, but also to a Moldovan language»

such as «Civil education», «We and the Law» are meant to awaken children's interest for knowing and promoting fundamental human rights and liberties, dignity, mutual respect and tolerance, Law supremacy.¹¹⁶

We therefore believe that MEY's policy regarding the transfer of the said courses to an optional curriculum (starting from 2006 the courses «We and the Law» (at a high school level) and «Civil education» were excluded from the mandatory curriculum and entered the list of optional courses) is wrong. Taking into account the fact that many pupils are being raised by persons other than their parents (when the latter are working abroad), their education falls under the competence of their school teacher(s).¹¹⁷ Over 4000 signatures from teachers, pupils and parents were collected in support of the application for reintroducing the courses «We and the Law» and «Civil Education» as mandatory. MEY's decision rose numerous complaints, and teachers were protesting against it in a hidden way, thus trying to avoid any conflict with the school management, this also being a result of their persecution.¹¹⁸

Every year school teachers pass training courses within the Institute of Education Science. However, it seems that these courses do not provide all necessary information, training and education material, because teachers also take additional courses provided by specialized NGOs. The course «We and the Law» is one of the disciplines for which they require advanced training.¹¹⁹ In our opinion, most teachers are not sufficiently trained as to raise pupils in the spirit of participating democracy, especially the teaching staff from rural settlements.¹²⁰

5.2. Teaching staff

Today the most stringent problem faced by people working in the education system is the lack of a decent salary, which significantly affects other aspects of the education process and teachers' rights. In our opinion, the problem can be solved by increasing the efficiency of education trade unions.¹²¹ The trade unions often inform the public opinion and international organizations on the precarious situation of persons employed in the education system and on the brutal interference of members of other trade unions with the activity of trade unions of the same field of activity. In December 2006 the Education and Science Trade Union of Moldova addressed a notification to the Parliament, Government and Ministry of Education and Youth referring to the fact that the state budget for year 2007 did not provide for salary increases, set forth in Law no.335 of 23.12.2005. Most teachers do not dare protest or express their dissatisfaction directly.¹²²

116 Report on human rights violation in Moldova for year 2006, CpDOM, p.13

117 In the opinion of many teachers, the pupil is like a boat with no paddles without these disciplines.

118 Based on the information offered by the Independent Society for Education and Human Rights (ISEHR)

119 Beside training courses, school teachers are also subscribed for the «Alternativa XXI» magazine and for such books, as «Democratia pentru toti» (Democracy for all) and «Ghid de mediere pentru semeni» (Mediation guidelines for our contemporaries) on a free of charge basis

120 Conclusion based on the activity of Promo-Lex Association

121 Conflict between several trade unions (the Trade Union of Education and Science of Moldova and «Viitorul» Trade Union) hinder the working process and the solution of pending problems.

122 «Human rights (in the education field) in Moldova» - «Alternativa XXI» magazine, nr. 3(18) 2006, p.3

Province intellectuals are who have to fight hard for their living. The salary of an intellectual, especially that of rural teachers, can hardly cover his/her minimal needs for survival.¹²³ The issue of a decent living in Moldova is not only related to teachers or intellectuals, but rather to the entire budget sphere. This is also the reason why teaching staffs «grow old» nowadays.¹²⁴ Approx. 2000 people abandon the didactic field every year.¹²⁵ MEY once stated that 1371 of the 1515 budget-financed graduates from higher pedagogic institutions of 2006 received repartition certificates for being placed on the labor market. Still, this number does not cover the staff deficit.¹²⁶ Many young teachers cannot resist and leave the country in search for an unqualified job in the Occident or in Russia.¹²⁷ Even though there are facilities oriented toward young specialists, they are not attractive to them. The school is, therefore, one of the most important cells of the society that functions at low capacity because the teacher, in his need to support his family, is forced to search for means of subsistence in other places and does not always have the opportunity to retrain.¹²⁸

The Government grants certain facilities to rural teachers, for instance, a monthly payment for 30 m³ of natural gas. For supporting the teaching staff, especially rural teachers, and at the initiative of the ministry and with the assistance of the Government, the Parliament of Moldova amended the Law on education that provides for facilities during the first 3 years of activity for graduates of higher and secondary-special education establishments, who get employment in rural schools according to their repartition certificates. Young specialists receive a single substantial indemnity, a residence or compensation for renting a dwelling. Such motivation is welcome, however this is a discriminating measure with respect to other teachers, who find themselves in a similar economic and social situation.

5.3. Pupils

Undergraduate education should be free of charge according to fundamental principles. The state, however, does not fully comply with this responsibility, given that lately MEY introduced textbook rental fees, which vary between 3 and 13 lei per unit. Thus, elementary, gymnasium and high-school pupils are forced to pay an amount of 50-150 lei for the textbooks they use during the year of studies. This situation affects the situation of rural children very much.

Another violation of the right to education is related to the choice of optional courses, especially in the case of final-year classes. In most cases final-year pupils are forced to take supplementary study hours for disciplines included in the Bacalaureate exami-

123 <http://www.flux.md/c/modb2arh.php?action=show&idu=17203&cat=Editia%20de%20Vineri&rub=Social>

124 In Anenii Noi, the average age of the didactic staff varies between 45-50 years. <http://www.azi.md/news?ID=40520>

125 According to data provided by the MEY, in August 2006 schools were experiencing a deficit of 2163 teachers. The situation was most severe in Hancesti district, where the deficit of didactic staff reached 118 persoane... etc. Ibidem

126 Ibidem

127 <http://www.azi.md/news?ID=41291>

128 The average salary of a teacher with no didactic degree constitutes approx. 900 lei. Meanwhile, a teacher needs 1.000-1.500 lei per month for paying for public utilities. Budgetary salaries are hardly covering such expenses, and the purchase of specialized books and publications is totally out of the question.

nation instead of their optional courses. The pupil is, therefore, deprived of his right to choose the optional course by himself.¹²⁹

Students are not in a very different situation as to their right to education. Even though the MEY provided for certain students' rights in the Collective convention for years 2006-2007,¹³⁰ they are not secured. The freedom of speech, expression and ideas in educational establishment is not encouraged and, on the contrary, suppressed by teachers and by the administration; sometimes students are expelled for exercising this right.¹³¹

Students' right to receive scholarship, hosting, textbooks, medical assistance and food is merely declarative, because scholarships do not cover for the minimum means of subsistence, there is an obvious deficit of textbooks, and hosting conditions are not complying with minimum standards at least (up to 6 persons living in a room).¹³²

5.4. Other violations of the right to education

In 2006 the authorities decided to replace the notion of «Romanian» with «Moldovan» in the names of lyceums. This action led to numerous protests of pupils and teachers. The first ones to protest were pupils of «Gheorghe Asachi» Theoretic Lyceum of Chisinau, when their administration changed the name of their lyceum from «Romanian-French» to «Moldovan-French».¹³³ Subsequently, 4 pupils of the said lyceum were investigated by the police for deteriorating the inscription made on the frontispiece of the edifice.¹³⁴ As a result of the protests the Government approved a «compromise», by which all lyceum with a mixed linguistic profile have to bear the name of «Theoretic Lyceum».

Another Government decision no.434 of 25.04.2006 provided for single shares for the enrollment of students in higher education establishments in Moldova. The constitutional legality of the acts was contested by the civil society and political parties,¹³⁵ who argued that it reduced the access to education, limited citizens' right to choose the form of education and was a true example of unfair competition in comparison with private educational establishments.¹³⁶ The Government might be entitled to regulate the threshold of studies financed by the state, but it is unconceivable that it sets forth the exact number of students enrolled on a contract-basis. In addition, legally accre-

129 Cases notified by teachers and pupils who are beneficiaries of SIEDO

130 Collective (branch) convention nr.1 of 04.03.2006

131 See above the case of a pupil threatened with being expelled for the initiated survey www.flux.md/c/modb2arh.php?action=show&idu=17301&cat=Editia%20de%20Vineri&rub=Social

132 A group of students accused the administration of the Agrarian University of failing to secure them with minimum living conditions in hostels www.azi.md/news?ID=38825

133 On 4.05.2006 approx. 300 pupils of «Gheorghe Asachi» lyceum protested against the modification of lyceum's title from «Romanian-French» into «Moldovan-French», introduced by the school administration. The president of the ad-hoc strike committee, Nadejda Trofim, a 12th grade pupil, stated that «Gh. Asachi» pupils are profoundly revolted by the decision of their administration to change the name of the lyceum and to attempt, in such a way, on their national identity www.azi.md/news?ID=39130

134 Authorities' actions resulted in a protest act of Romanian pupils and students in front of the Embassy of the Republic of Moldova in Romania www.azi.md/news?ID=39622

135 www.azi.md/news?ID=40201

136 The adoption of this decision is a violation of art. 35 of the Constitution (Right to education), art. 49 of the Law on Education and point 75 of the Action plan of EU-RM

dited higher educational establishments, be they public or private, are free to enroll students depending on their schooling capacity, material and technical basis, etc. At the same time, the said decision comes in conflict with the constitutional provisions regarding the autonomy of universities and protection of loyal competition. In civil society's opinion, governmental policies should lead to stopping mass migration of qualified workers and to the stimulation of private initiative. However, the decision to reduce the number of students and limit the access of young people to higher education proves the contrary. On the other hand, this fact comes in conflict with the official engagements taken when adhering to the Bologna process because it orients higher education toward strategies applied in the Soviet education system and ignores social needs, which are given priority to in the European higher education system.

Meanwhile, we have to note that the phenomenon of corruption within educational establishments is still a severe problem in Moldova. Most citizens relate it to the miserable salaries received by teachers paid from the budget; still, in our opinion the phenomenon becomes more and more perilous and cannot be tolerated or justified. Transparency International Moldova carried out a poll of opinion that showed that the total amount of unofficial payments performed within the Moldovan educational system constituted 126 mln. lei, while only 5,3% of the questioned students opined that not paying did not affect their grades.¹³⁷ The phenomenon becomes more and more perilous from the perspective of education of young people, i.e. future specialists of national economy, citizens with full rights, etc.

Further, if we were to refer again to the problem of undergraduate education establishments, we can state that rural schools are in a stringent need for current or capital renovation. Some of them solve this problem on their own by applying for the assistance of international charity organizations.¹³⁸

Even though every year the MEY and the Government allot funds from the national and local budgets for the development of the material basis of undergraduate institutions, local schools and lyceums are still lacking the necessary number of textbooks and request didactic materials for various disciplines, including optional ones. In year 2006 schools continued to experience a lack of didactic material.¹³⁹ The book fund of school libraries is being updated only through donations. Just as well, school get connected to the Internet from donation funds, thus allowing the pupils to have access to alternative information sources.

In order to secure the continuation of the education process it is, therefore, necessary to reequip the lecture halls with new furniture, to complete the book funds; to procure modern equipment, computers for the schools; to procure additional didactic materials - «pupil's notebooks» that complement the physics, biology, English textbooks; contour maps, atlases, dictionaries, etc.¹⁴⁰

137 www.transparency.md/presa_ro.htm

138 For instance: the Ecumenical Patriarchate of the Hellenic Republic promised to erect a school in Macaresti village, Ungheni district, after having signed a cooperation agreement with the MEY and the local council. All funds for the construction are to be allotted from the Budget of the Patriarchate of Constantinople www.azi.md/news?ID=38251

139 SIEDO statistics can serve as proof – around 5 persons appeal daily to the Resource Center and its library

140 Report on human rights violations in the Republic of Moldova for year 2006, CpDOM, p.16

As to the situation in the region of Transnistria, it is to mention that it is mostly unchanged. The public opinion has to be informed about the fact that this region of Moldova has admitted an ethnocide against Romanian/Moldovan speaking locals for over 15 years. Consequently, we believe that the Government should take all necessary steps towards counteracting this negative phenomenon and securing the real protection of human rights in the region, and refuse to accept in its turn the application of Soviet and Stalinist theories regarding the promotion of pseudoscience.

For instance, the situation of the teaching staff of the Transnistrian region is rather precarious. First, teachers continue divided – some of them find themselves under the jurisdiction of constitutional authorities, others are under the control of Transnistrian «authorities». Meanwhile, regardless of their «degree», they have to face numerous problems of social, economic and cultural nature. In this sense, we have to note that the situation of rural teachers is not very different from their colleagues from the right bank of Nistru river. The «ageing» of the teaching staff in Transnistrian villages is very acute as well.

Moldovan school teachers and pupils are particularly discriminated in comparison with their colleagues from Russian and Ukrainian schools. Russian and Ukrainian authorities pay constant attention to Russian- and Ukrainian-language schools from the Transnistrian region of Moldova by offering them humanitarian aid, literature and manuals, by organizing training sessions and foreign exchanges for the teachers, etc. Education establishments that use Latin script benefit from the support of constitutional authorities. Instead, local Moldovan institutions (that use Cyrillic script) are further forced by the Tiraspol regime to study according to an inadequate Programme, using outdated textbooks (mostly edited in the Soviet period). Therefore, those parents who can afford to secure a certain perspective to their children agree to enroll them in Russian/ Ukrainian-language schools or education establishments that teach according to the National Education Programme. For instance, approx. 100 children from Camenca region travel daily to the Sanatauca Lyceum, Floresti region, situated on the right bank of Nistru river. Pupils and parents agree to this incommmodity only because it gives them the opportunity to acquire adequate knowledge and studies. We have to note that notwithstanding the pressure, persecutions and problems artificially created by Transnistrian «authorities», these institutions hold on because most locals do not have a choice.

On the other hand, Moldovan-language schools transform themselves into Russian or Moldo-Russian schools because of the said state of things. This is true for many localities, where most inhabitants are not of Russian origin, but parents, pupils and teachers who have no other alternative.¹⁴¹

Children's education in the region is mostly based on methods of Soviet propaganda. «Patriotic» education, often supported by aggressive methods, promotes ideas of «ex-

¹⁴¹ For instance, because the pupils preferred to study in a Russian-language school from Dnestrovca town, the Moldovan-language school from Nezavertailovca village, Slobozia district, was transformed in a Russian-Moldovan-language school. Nevertheless, none of the 1st grades for the 2006/2007 study year were completed. Only one Russian-language 1st grade was formed and it included 12 people. In the lack of an alternative, local inhabitants prefer to pass a long distance to a high quality educational establishment, even though it has a different language of study and is situated in another locality. www.cip.nm.ru

clusive friendship with the Russian people» on one hand, and «Moldova – our worst enemy» on the other. Most parents of those children are Moldovan nationals, citizens of Moldova and cannot bear such an attitude and behavior toward their country of origin. Most young people are, therefore, educated by means of the same methods used in Soviet times, which promote sentiments of hatred and ethnic or national intolerance, as well as foreign and anti-democratic values. At the same time, the Transnistrian «education» system is undergoing a crisis as the local education establishments are lacking the necessary material and technical basis, literature, textbooks, qualified teaching staff, etc., and the issue of children's nutrition and health is completely ignored, especially in rural settlements.¹⁴² Meanwhile, local «authorities» speak of educational reform, which is, however, completely oriented and copied from the one applied in the Russian Federation.

Even though the region has 3 languages declared «official», there are practically no Moldovan publications, libraries have no Latin-script manuals and textbooks, higher or vocational education (except in the pedagogical field), movies, theaters and concerts are only accessible in Russian, «local legislation» is published exclusively in Russian, the correspondence addressed to the «authorities» must, as well, be written in Russian, etc. Artists, journalists, politicians or NGOs from the right side of Nistru river cannot access the region any more. Thus, locals and the rest of the citizens are practically isolated from their native culture and tongue.

Speaking again of the situation of pupils and teachers from Latin-script education establishments, Promo-Lex reported numerous problems at this chapter in year 2006. First, we have to remark the existence of the same problem related to free movement, which affects substantially all fundamental rights and liberties of this category of citizens. Pupils are often facing obstacles meant to prevent them from participating in various contests, Olympiads and educational events.

At the same time, the existing situation is limiting teachers' access to medical services. Being employed with constitutional structures, they are to pay fees and taxes for the National Budget, including for their insurance policy, although in reality they cannot benefit from medical services very often. Given that they are still residing on a territory situated under the control of the illegal regime from Tiraspol, they do not have access to services provided by constitutional structures and authorities. For instance, if a teacher from Roghi or Rabnita were to need the assistance of a qualified doctor, including an ambulance car, while being at his/her place of domicile, he/she would have to travel to Criuleni or Rezina town (respectively). The ambulance car will be unable to reach these destinations nor for assisting the insured neither for transporting an insured person to the hospital. Under such terms, sick people are forced to travel to the right bank or to accept the medical assistance offered by local services in exchange for enormous amounts of money.¹⁴³ In fact, the situation is as follows: the respective

142 «... they have revealed the problems faced by all educational establishments, which are issues related to nutrition, health, improvement of the material and technical basis, education, school staff policy and others. ... Noone has handled these problems during the last 15 years...» www.tiras.ru

143 Local Transnistrian «authorities» regard Latin-script school teachers as «traitors», «enemies of the Transnistrian people» and, in the best case, «foreign citizens».

category of teachers is not safe and we are again facing the phenomenon of discrimination.¹⁴⁴

A similar problem is the one related to securing teachers with a dwelling. Teachers residing in settlements placed under the control of Transnistrian «authorities» cannot benefit from the provisions of the national legislation concerning the insurance of a dwelling or improvement of living conditions. As some of them live in hostels¹⁴⁵ for more than 15 years, they depend on local «authorities», who blackmail and threaten them. The purpose of such acts is to determine people who come in their way to leave the region.

In our previous report we noted that there were entire localities in the region, where pupils «officially» study in Cyrillic script, while studying in Latin script in an «unofficial» manner. Even though the status of teacher, parent, pupils and citizen of Moldova gives one the right to choose (theoretically) the learning language, used alphabet, etc., the separatist regime forbids any open action in this sense.¹⁴⁶ Locals do not insist upon enforcing their rights both because of the constant persecutions and threats coming from local «law and order keeping agents», and because of the indifference of constitutional authorities.

Another severe problem is the one related to grade equivalents. Education establishments placed under the control of the Tiraspol regime assess their pupils' performance on a scale of 1 to 5, while those placed under the jurisdiction of constitutional authorities use a scale of 10 points. Thus, the grades of young Transnistrian natives, who decide to advance their studies in Chisinau, are being «transformed», although for 5 they can only get a 9,5 maximum, instead of 10. Under such terms, almost everybody is unsatisfied; they even reported some conflicts between the 2 «camps». First, teachers, pupils and parents from Latin-script schools believe that a grade of «5» received in local schools using Cyrillic script cannot be the equivalent of a grade of 9,5, which is very hard to earn in establishments that activate according to the National Study Plan. Respectively, those who fight for their rights believe that they are disadvantaged in comparison with those who do not make any efforts toward benefiting from equal study terms. People, who studied in secessionist-controlled education establishments

144 This category of tax-payers and citizens are discriminated as compared to inhabitants of other regions of the country; there are no mechanisms of protection of their rights and interests or for the compensation of damages.

145 Often 3-4 adults live in approx. 20 sq.m. Accordingly, children, who reached their full age, continue to live with their parents in one room. Often these rooms cannot be privatized. Local «authorities» do not provide any support to Latin-script school teachers, while constitutional authorities declare that they do not hold control over this region and, accordingly, the situation cannot be solved. Promo-Lex registered cases, when teachers were offered to join local secret police structures (MGB), being invited to «cooperate». Teachers received promises of getting a dwelling space, human living conditions and decent salaries in exchange for their services. Otherwise, they were being threatened.

146 Tiraspol «authorities» encourage and favor the cooperation of regional educational establishments exclusively with similar structures, authorities and institutions from the Russian Federation. Thus, the Rector of the Tiraspol University stated that «...we have the support of education and science committees, the ministry of education (of Russia) and its structural subdivisions – the Russian Academy of Natural Science, the Russian Academy of Science, the Russian Academy of Education and others. This gave us the opportunity to secure state standards for the new generation at the Russian level, to use Russian intellectual products for performing the quality control of pupil and students' knowledges, to use the scientific and methodological basis of higher education of the Russian Federation, the study literature and many other things... The agreements that have been signed ... are not single results of our relationship with the Russian education system. The Transnistrian University is successfully participating in several very important inter-university and inter-state university associations, such as the «Association of Russian institutes of higher education», the «Eurasian university association»; we have signed approx. 50 agreements with leading Russian universities» www.tiras.ru

are, in their turn, unsatisfied with the fact that their grades of «5» can only be equal to a «9,5» instead of «10», which is the highest grade, and believe this to be an act of discrimination and a disadvantage before the rest of the country.

The issue of corruption had a major impact on local education establishments. Promo-Lex has therefore been informed about the fact that graduation certificates issued by local institutions are traded for a minimum amount of 250 USD.¹⁴⁷ Just as well, students of higher education and vocational establishments are forced to promote and take part in pro-regime actions, being enlisted in pro-secessionist NGOs or patriotic movements. In case if students are already members of certain independent NGOs, they are often pressurized toward «reorienting» to other patriotic, pro-Russian and «pro-governmental» associations.¹⁴⁸

Promo-Lex was also informed about the fact that during the «economic self-blockade»¹⁴⁹ both students and pupils from local schools were forced to take part in protests on the Ukrainian border or on the territory of Nistru «posts» against the EUBAM Mission.

RECOMMENDATIONS:

1. To promote an education policy by European standards: to secure and respect university autonomy; to secure total transparency and consult the civil society and public opinion; to double the GDP allocation for education (an increase of up to 10% of the GDP in perspective); to respect the constitutional principles of gratuity of public education; to secure education establishments with didactic materials; to solve the dwelling problem for the teaching staff and young specialists; to rehabilitate the infrastructure, to improve the living conditions in student hostels; to secure a decent level of salary, which should at least cover the minimum consumption basket, etc.

2. To cease all action of persecution of teachers, who are not willing to accept the political dictate, to cease the corruption practice by increasing salaries, raising to

147 Case from Promo-Lex practice

148 4 active members of a local public association were forced to leave their association in favor of a «patriotic» organization from Tiraspol. Case from Promo-Lex practice

149 On 6.03.2006 Moldova and Ukraine, supported in the framework of the EUBAM programme, initiated monitorization actions on the Moldovan-Ukrainian frontier. The Russian Federation and the separatist regime from Tiraspol alleged that such actions constitute a «blockade of Transnistria». The Russian Federation sent humanitarian aid to the region without delay, contrary to all international norms in this sense. Here are some details on the Mission:

«Upon the request of the President of Ukraine and Moldova, EU Mission of Assistance at Frontier cooperates with competent authorities from both countries for the consolidation of the infrastructure and capacities. The Mission contributes to the development of the cooperation between frontier and customs services from both sides of the border and to the improvement of objective monitorization activities in view of identifying illegal activities alongside the green border. EU Mission of Assistance at Frontier started its activity on 1.12.2005. The mandate of the EU Mission of Assistance at Frontier was issued for a two-year period, with possibility of extension. The European Committee contributed with over 20 mln Euro. EU member states contributed by delegating an expert team at the frontier (70 people). The Mission is established in Odessa. ... The Commissioner for Foreign Relations and European Neighborhood Policy, Benita Ferrero-Waldner, saluted the extension of the EU Mission of Assistance at Frontier and stated that «after the first 5 months of Mission activity, standards at frontier have improved and we can note a high level of identification of illegal activities. This is a practical result of our cooperation with Moldovan and Ukraine in the framework of the European Neighborhood Policy». Mrs Ferrero – Waldner also mentioned the following: «Illicit activities that have been identified during the activity of the Mission come to support the idea of extension of the Mission. Thus, we have opened new offices in Chisinau and the Odessa port and are performing actions meant to trace a demarcation strip around the Transnistrian region». Press release, www.delmda.ec.europa.eu

.....

higher positions and increasing the number of classes. The MEY and its structures, as well as ministries, which hold education establishments under their subordination, must take all necessary efforts toward securing minimal conditions for the normal functioning of the teaching and education process in Moldovan education establishments.

3. To elaborate a plan of actions that shall contribute to the observance of the rights of teachers, pupils and parents residing in the region of Transnistria, including the right to medical assistance, free movement, non-discriminatory application of legal provisions, etc.

4. To intensify local and international efforts toward determining the secessionist authorities from Tiraspol to respect the right of all locals to choose the learning language, alphabet and study Programme.

6. RIGHT TO WORK AND SOCIAL SECURITY

Human dignity, rights and liberties, as well as the free development of human personality are supreme values in a democratic state. Strong human resources with a high physical and intellectual potential are the main source for country's economic growth and modernization. Meanwhile, the state must not neglect those persons, who have already accomplished their duty before their country or are unable to accomplish them for reasons beyond their will. The state is therefore obliged to create a relevant legal framework allowing all citizens to work and securing their social security. The state is also responsible for securing the protection of persons unfit for work.

Numerous cases of violation or ignorance of the above said provisions have been registered in year 2006. Please find hereunder their examination by 4 groups:

6.1. Unemployment, internal labor market and migration

Unemployment is still a major problem not only for Moldova, but for the entire world. Each particular country tries to solve it by promoting certain policies meant to redress the existing situation. Moldova is not an exception in this sense and it has taken many steps toward reducing as much as possible the number of unemployed in year 2006. Here we can mention the Government Activity Program 2005-2009 «Country Modernization welfare of People» and Economic Growth and Poverty Reduction Strategy Paper. However, we have to say that these measures are still declarative and have no impact on the existing state of things.

The number of people employed is still continuously decreasing,¹⁵⁰ having constituted 1.271.000 people in 2006, in comparison with 1.318.700 registered in 2005. This decrease is particularly due to the increase of number of pensioners to 621.400 (2006) as compared to 618.300 (2005), as well as to the fact that young specialists are not willing to replace pensioned persons. This situation has been conditioned by the miserable salaries that do not even cover for the consumption basket of one single person, less for a family. This is mainly why young people prefer to work abroad, where salaries are higher. Their goal from the very start is to earn the financial resources they need to support their families or invest in a dwelling. In time their priorities often change and they do not want to leave a country that offers them a higher standard of living and

150 www.scers.md

security. Unemployment continues to be a severe problem in Moldova and requires for significant efforts from the authorities. On one hand, Moldova needs numerous qualified workers to fill in the existing vacancies;¹⁵¹ on the other hand, there are many job-seekers who have not been able to find a job for over 10 years.¹⁵² Job-seekers often refuse to apply for the assistance of Employment Agencies both because of bureaucratic procedures¹⁵³ and because of inadequate employment offers (for instance, miserable salary).

At the same time it is to be said that the legislation regulating the employment of invalids is not respected in Moldova.¹⁵⁴ According to the legislation at least 5% of the total number of employees of a company, institution, etc. must be selected from this category of people. The data provided by the Ministry of Informational Development show that approx. 465.000 people from Moldova reached the pension age limit, while according to the Ministry of Social Protection, Family and Child (MSPFC),¹⁵⁵ the total number of pensioners registered at the end of year 2006 constituted approx. 621.400 people. Thus, we can conclude that at the end of year 2006 Moldova registered approx. 155.000 beneficiaries of invalidity pensions. Further, data provided by the MSPFC 1.271.000 people were employed, and a 5% share of this number constitutes 63.550 people. We therefore believe that by securing employment for this share of disabled persons the authorities shall practically reduce in half state's responsibility toward these people regarding their ensurance with pensions, and the funds spent for pensions and benefits could be thus reoriented toward invalids, who cannot be employed, or other socially vulnerable groups of people. The incomes of disabled persons shall also increase substantially as a result (employed invalids shall have salaries higher than the pension level,¹⁵⁶ and the pension amount for the rest of the invalids shall be increased at the expense of a lower number of pensioners, thus securing a decent standard of living for these groups of people).

Unemployment has reached alarming levels in the Eastern side of the country. Old people and children are the only ones left in many localities. Very often employees are illegally discharged for trivial reasons¹⁵⁷ or forced or threatened to draw up a dismissal application. The blackmail method followed by all illegalities of the judiciary has resulted in a separation of the population and have determined the latter to waive its rights.¹⁵⁸ In our opinion the decrease of number of workplaces in the region is particularly due to the efforts of people who usurped the power in the region. Many active local companies were privatized and further ruined and traded under their «leadership»,

151 Especially in rural areas

152 Case from Promo-Lex practice

153 Job-seekers, who did not manage to address to the Employment Agency within 6 months from the moment of their dismissal, are not provided with an unemployment benefit, because of being registered for only 3 months. Once every 3 months the job-seeker must pass again the registration procedure, which requires for substantial financial efforts and resources from his part.

154 Law nr.821-XII of 24.12.1991 on social security of invalids, para.3 art.31

155 www.scers.md

156 For comparison, the average invalidity benefit for the year 2006 amounted to 380 lei, and the minimum guaranteed salary according to the Government Decision nr.896 of 7 August 2006 constituted 550 lei.

157 For instance «...the seamstress Goncear Tatiana is employed with the industrial center since 1981. She was dismissed for «distrust »...» www.cjp.nm.ru

158 Case communicated to Promo-Lex: The spouse of the president of the country visited before the New Year a kindergarten from Tighina town (Bender), where she had previously worked, and offered gifts to the children. As consequence of this visit, the administration of the kindergarten and the head of the municipal Department of education were immediately dismissed.

as well as because of the inaction of constitutional authorities. This procedure led to the destruction of the economic potential of the region and to a severe humanitarian crisis. As a result, relatives and people loyal to the local regime have illegally¹⁵⁹ procured factories, plants, land, real estates etc.

We can note that the right to work and social security is not observed in the Transnistrian region of Moldova, more so when the process of re-division of the economic potential is under way. Consequently, under such terms the rights of employees, invalids and other groups of people needing the support of the authorities cannot be a priority of the regime that has been keeping control over the region for over 15 years.

First, we have to say that Promo-Lex received numerous complaints from local teachers, who receive their remuneration with delay. On the other hand, regardless of their miserable wages, village teachers are forced to attend to advanced training courses in Tiraspol for over 10 years practically at their own expense. The «Ministry of Education» from Tiraspol covers only the travel expenses, and the teachers are often hosted in hostels that provide «Soviet» living conditions and are forced to starve because of insufficient financial resources. However, the remuneration of budgetaries is one of the severest problems of current importance in the region, leading to the migration of more and more people abroad in searching for a job.

6.2. Illegal work

This is a very popular phenomenon in Moldova, and its limits and impact cannot be accounted for or analyzed for the time being. Nonetheless, the Labor Inspection¹⁶⁰ made several efforts toward fighting this phenomenon, although their efficiency is still insignificant. Data provided by the Labor Inspection show that in year 2006 people report-

159 Excerpt from the article «For the right to live on our land» published in the weekly paper «The Man and his Rights»: «... President of RM, Vladimir Voronin, from the very first days of taking over of his position, openly stretched out a friendly hand to Igor Smirnov. The people from two banks of Nistru exhaled easily – finally we will live together in one family! What do we have to split? Why fighting? That is what they thought.

But in this case Igor Smirnov had things to loose. During the meeting broadcasted live on the Moldova s and MRT's TV channels, I. Smirnov vaguely said «Don't rush!». And after this meeting he started new intrigues and provocations: cut off the Moldovan TV channel for the people of MRT, later he again declared war to the children of Moldovan schools, announced massive urgent privatisation of state enterprises, including the one of the railways.

The main privatisator, Zadreadski omniscient, was blackmailing the directors from behalf of the President «Do you want all of it to go to Moldova?». And everything started. One of the Transnistrian well-known businessman was asked «Listen, the agriculture you handle, is a non-profitable business, but you are buying the fifth plant already, and all of different profiles. There do you have the money from? And what do you need them for?». He smiled tenderly and answered «I don't buy them. If «daddy» gives them to me – then I should take». And he told us of a very interesting a la Smirnov privatisation scheme «A plant is given to me, I don't pay salaries, employees are discharged, the debts grown – a certain bank gives me a 2 million dollars credit, with the condition that one million goes back to them, and the other is for me. Later the plant is declared bankrupt, the sale of equipment is being done, for which the interested persons, partners and I have additional «income». The equipment is sold outside MRT».

According to this scheme 80% of industrial enterprises were privatised in MRT, or better «burried» for good. That is why Smirnov needed urgently the «economic blockade». The only factories functioning are the ones privatised by «Sherif». Those would be Tirotext, Kirov Plant, Dairy Factory, and others. But the companies privatised nby the new investors, having Gazprombank as guarantor, has been sold at auctions and taken out of RMN boundaries.

The «economic blockade» in RMN was conducted by Igor Smirnov personally. Calling the railway station in Tiraspol he asked the chief «Are there any load trains to Moldova?». «Yes» was the answer - «To be held until further express personal notice. Have blocked all passengers trains. Say there are reparations undergoing, anything, but don't sent a thing to Moldova». The next call says that there is a load train with iron from Ilyichevsk for the Ribnita plant. The order followed – Do not unload! The railways filled in with 65 wagons for Ribnita. Another call «Ilyichevsk imposes sanctions», to which his reply is «Don't you know hot to get rid of them?». And later on he gathers all directors of enterprises and force structures, and prevents them «The one to load any goods for transportation outside MRT shall be judged according to the martial laws» Aleksandr Flencia, www.cip.nm.ru/2006/html/42/index42.htm

160 Activity report of the Labor Inspection for year 2006

ed 677 cases of illegal work, 437 of which were registered in the agricultural sector.

We are certain that such data are not relevant and are far from being accurate. Take for instance the case of G.C., who informed the prosecuting structures and mayor of the locality with the support of Promo-Lex legal experts about certain violations of legal provisions caused by the manager of an agricultural company. One of the problems that were reported was related to forcing local inhabitants, including pensioners, to perform agricultural works for the benefit of the said company without having previously concluded labor agreements with them. It is to be said that only in this case the number of people involved from only one rural settlement is higher than the figure set forth in the report of the Labor Inspection. Similar cases were also reported in many other regions of the country.

This phenomenon is a result of imperfect legislation that regulates this field, as well as the fees and taxes collected by the state in case of legal employment. In this sense, employers are not interested in paying such amounts of money because they do not have the guarantee that their investments shall pay back.¹⁶¹ On the other hand, not even those who perform such works are willing to pay taxes out of a miserable wage, which, in most cases, does not even cover the minimum consumption basket. We believe that this problem must be solved by the Labor Inspection together with the Tax Inspection and the National Social Security Fund, who have to perform study visits and to explain to the citizens the need to pay fees and taxes. Representatives from those institutions must explain to rural inhabitants in particular the method of computing and paying pensions, as well as the way of providing medical assistance. We believe that such activities shall raise the consciousness and discipline of both legal experts and employees. A.G. was at least informed by Promo-Lex experts about the advantages of a legal work relation, including the opportunity to defend one's fundamental rights and interests in case of any labor disputes or problems.

6.3. Health protection

We have already noted that health protection is closely related to employment.¹⁶² However, this system proves to be inefficient as well, especially for rural inhabitants. Rural settlements often have medical centers that employ only family doctors or medical assistants who are merely general practitioners and cannot perform more than a general examination, respectively, while detailed investigations require hospitalization. In such case they call the ambulance services, which are usually placed in regional centers. At the same time some rural settlements do not even have qualified family doctors and medical assistants. There are also cases when family doctors from rural settlements have to assist the inhabitants of 3-5 villages while receiving miserable wages.

¹⁶¹ In most cases the enormous investments made in agriculture prove to be inefficient and risk being compromised because of the severe climatic conditions registered lately (abundant rains, hailstones and drought)

¹⁶² A mandatory medical insurance system for persons employed has been functioning in Moldova for several years now. Meanwhile, the state guarantees medical insurance for certain disadvantaged groups of people. Accordingly, persons who are not employed do not benefit from medical insurance unless they purchase a medical insurance policy on their own. Nevertheless, because of insufficient salaries that do not cover the minimum needs (especially those paid in the agrarian field) most farmers and job-seekers are unable to purchase an insurance policy

At the same time, the medical insurance system is not totally functioning because the population is not sufficiently informed about their rights,¹⁶³ and doctors have to keep up the limit of the number of patients directed for hospitalization or examination. For instance, A.C.¹⁶⁴ requested from his family doctor to receive treatment in a hospital. The doctor informed him that his request cannot be met because the limit number for such treatment had already been exceeded. In our opinion A.C.'s right of medical assistance was thus violated because of certain limits imposed by doctors employed with the National Medical Insurance Fund. When such limits are exceeded doctors or patients have to pay for the investigation.¹⁶⁵

A problem of current importance for patients and for the National Health system is doctor's irresponsibility for errors committed during treatment. Even though this problem is severe and often results in deaths, the Ministry of Health does not have any statistical data in this sense or refuses to present them to the civil society.¹⁶⁶ Meanwhile, very few cases are presented before the judiciary.¹⁶⁷

In our opinion, once the National Medical Insurance Programme was adopted the phenomenon of corruption decreased in intensity, but did not cease anyway,¹⁶⁸ and the hospitalization conditions are still under the level of European norms and standards. Even though some progress was registered in comparison with previous years, we still have to remark that the right to medical assistance is not totally secured, including people who have a medical insurance policy.¹⁶⁹ Relevant would be the case of D.C., person interned in one of Chisinau hospitals in a serious state (with big blood loss)

163 «...A study carried out by the Project of Reform in Public Health financed by the European Union shows that every second inhabitant of Chisinau municipality and Orhei district asserts that he/she does not have any knowledge of mandatory medical insurance. Meanwhile, more than 1/3 of the interviewed persons do not see any advantage of the mandatory medical insurance system. Two of the most popular reasons invoked by patients for the purpose of not buying an insurance policy are the lack of a work place (40,2%) and insufficient funds (39,2%). Meantime, 9,1% of them mentioned that it was meaningless to purchase an insurance policy because medical services had to be paid anyhow...» www.jurnal.md

164 Case from Promo Lex practice

165 Case from Promo-Lex practice

166 Information offered by the Center of Fprotection of Patients and Invalids' Rights (CADPI)

167 For instance, in Germany, where approx. 25000 medical errors are reported per year, they have approx. 15000 cases of bringing doctors to account, 30% (5000 cases) of which start with an application on the committed crime. In Italy the «Tribunal of Protection of Patients», whose representatives are spread throughout the entire country, has excellently proved itself (CADPI)

168 «...Basically, every woman who gave birth to a child during the last three years asserts to have paid unofficially from 200 lei up to 200 Euro (3300 lei) to the medical staff from the maternity, where she was hospitalized. «If you don't pay immediately after birth, when you are not yet yourself, your are either asked to pay or they make it clear that you have to pay», says Viorica P. Two years ago she gave birth to a child in a maternity from Chisinau. After having had a difficult birth of 14 hours, the doctor who assisted her approached and said that she had to pay one thousand lei. Her husband, who is a policeman, was totally surprised by doctor's forwardness, who had the insolence to repeat his demand. Further on, in the next few days, he was not further surprised when medical assistants were saying that «you did not pass the customs», meaning that he had not given them anything for taking care of his wife. Some doctors, who are contracted beforehand to assist the birth, state the payment from the very start. Today in Chisinau this fee amounts to 100 euro. Because the birth process is a complicated one, most families try to find a doctor in advance, which is why they do not even wonder why they have to pay such a large amount of money unofficially, when all such expenses are secured by the state in such cases. Even though most women who gave birth allege to have paid the doctor who assisted them, including also daughters of deputies, representatives of state institutions, law enforcement and control authorities, none of them notify such abuses and, as consequence, there are no criminal proceedings instituted against such persons. And the amounts of money that end up in doctors' pockets are enormous...» www.jurnal.md

169 «...it is true that in 2006 the health sphere was much better financed than in the previous years: medical staff salaries increased, more drugs were purchased, and hospitalization conditions and nutrition improved. Nevertheless, the number of people that require hospitalization is much higher than the number of patients registered by the CNAM. For instance, even though there are almost three months left until the end of the year, the Republican Institute of Cardiology has already served the number of patients established by the CNAM for a whole year (6500 people). It is important that until the insurance programme was implemented, approx. 11.000 sick people could receive qualified medical aid here during one year. Now they only hospitalize people in case of urgency. Alexandru Caraus, head of the department of arterial hypertension, a disease that causes most deceases in the world, states that the potential of the Institute of Cardiology is much higher than what they use. And people coming from other regions who need a sophisticated diagnose cannot reach this institution without passing a series of artificially created barriers ...» www.jurnal.md

– no glucose was administered to him due to the lack thereof in the medical institution. The doctors stated that they are not allowed to tell their patients about the lack of glucose in order to prevent procurement of medicines by the patients of their relatives, therefore to prevent the later claims against the medical institution. It is to mention that the life and health situation of D.C. was endangered, the case being communicated to Promo-Lex.

The drug legislation consists of the Law on drugs, the Law on pharmaceutical activity, the Law on the circulation of narcotic, psychotropic substances, the Law on veterinary activity and other normative acts that regulate the activities related to drugs. The Ministry of Health performs the functions of an executive body in the field of drugs and pharmaceutical articles on a strategic level and develops an administrative and financial activity for monitoring and developing the medical and pharmaceutical fields in accordance with the national policy in the field of drugs, i.e. it is in charge of everything. Just as well, the Ministry of Health carries out the State Control of drugs and pharmaceutical articles, i.e. they control their own activity.¹⁷⁰

An important problem is related to the provision of medical assistance to citizens residing in the Eastern side of the country. Moldovan citizens living in the region of Transnistria and employed by companies and institutions placed under the jurisdiction of constitutional authorities pay a monthly contribution for medical insurance out of their salaries, and still cannot benefit from medical services.¹⁷¹ Locals, including insurance policy holders, can benefit from medical services offered by institutions placed on the territory situated under the control of constitutional authorities.¹⁷² At the same time, a supplementary obstacle for this and not only this category of people is the «residence permit», even though according to Constitutional Court's Decision no. 16 of 19.05.1997, its use in social relations comes in conflict with constitutional norms and principles. Thus, contrary to legal norms the «residence permit» is used for facilitating the activity of family doctors.

A particular situation was created in some local companies. Given that there is no control over the raw materials used by Transnistrian companies, employees lack any protection from the part of the competent authorities. Some employees assume that they use perilous substances and materials in the production process that can affect their lives and health.¹⁷³

The situation of medical institutions is extremely difficult. Even though in 2006 the amounts allotted to this very important sector increased and «humanitarian aids» from the Russian Federation were distributed, local hospitals, for instance, have only 25-35% of their need for medicine covered, and hospitalization conditions are below any level of human dignity.¹⁷⁴ In many rural settlements there are no drug stores. On the other hand, drugs are being «taxed» and otherwise «imposed», which makes them

170 Information offered by teh Center of Protection of Patients and Invalids (CADPI)

171 Case from Promo Lex practice

172 See details in the chapter on the Right to education hereof. P. ...

173 Case from Promo-Lex practice

174 www.cip.nm.ru

rather expensive. At the same time, we have registered drug falsification cases and locals do not trust the quality of drugs and medicine traded in the region.¹⁷⁵

A very dangerous issue of current importance is the epidemic of tuberculosis in the region.¹⁷⁶ The economic and financial conditions of the region, the lack of an adequate social and medical system led to a dynamic increase of the number of persons suffering from TBC in the region.¹⁷⁷ Nonetheless, there is no Information and education Programme for the population that would counteract this phenomenon.¹⁷⁸

The weak financing of the health protection system, the low salaries, the lack of a modern diagnostic equipment and treatment, as well as other aspects specific for the region led to an essential degrading of the health protection system. As a result, the population bears the consequences: the low quality of medical services, the lack of specialists, high-quality services and modern drugs, and sometimes the indifferent and irresponsible attitude of doctors and the medical staff. Nonetheless, most persons employed within the health protection system of the region do not tolerate patients who address to medical institutions placed on the right bank of Nistru river. Promo-Lex registered a case, in which an individual held for treatment in a specialized centre from Tiraspol city was threatened with having his invalidity group annulled should he abandon his treatment in Tiraspol in favor of medical centers from Chisinau. It is to be said as well that Tiraspol does not even have similar institutions, and the rest of them are of a much lower quality as locals opine. They have registered cases, in which people have died because of an incorrect diagnosis.¹⁷⁹ Even in more severe situations doctors do not recommend and do not allow their patients to get transferred to specialized institutions in Chisinau.¹⁸⁰

175 The pharmaceutical business is considered to be a «closed» business, because officers employed with the Tiraspol «ministry» hold control and monopol over the trade with drugs

176 «The international community is seriously concerned with the catastrophic increase of pulmonary tuberculosis cases in Transnistria in the last few years. Thus, in year 2005 this increase constituted 32%. 574 cases of tuberculosis were registered. The most unfavorable situation was registered in Rabnita district (167,5 cases per 100 th. people). In Bender they registered 102,7 cases. Just one year ago the experts qualified the situation in Transnistria as a «double epidemic». The chief doctor of the Republican Tuberculosis Hospital Petr Dermendji offered the following statistics: in Transnistria 98 out of 100 thousand people were sick, while when the situation is favorable this indicator does not exceed 20 people; people start talking about an epidemic when this indicator exceeds 50 sick people out of 100 thousand. Today we might as well speak about a «triple epidemic». www.cip.nm.ru, article «Life or image?», signed by Valentina Sorocian

177 «... By the unfavorable living conditions of most local inhabitants, by the lack of hygienic means, by a low quality nutrition, by the lack of necessary drugs, by the low prophylactic level. In Rabnita district there is no hospital for treating people suffering from tuberculosis. Most sick locals refuse to go to the Bender hospital because of the lack of money. The lack of a fluorobus also affects the situation. Because of insufficient medication all members of families, in which there is at least one person suffering from tuberculosis, undergo chemoprophylaxis. Only 36% of the Transnistrian population have underwent a chemoprophylaxis procedure. Fighting against tuberculosis is more difficult because the disease has become more resistant to common medicines, and most patients are in need of an expensive treatment. The finalization of the DOTS anti-tuberculosis programme in Transnistria in 2008, financed by the International Health Organization, arouses deep concerns. Doctors fear that things might get worse very fast. According to data offered by specialists, the Republic of Moldova and Transnistria are European leaders by the number of people suffering from tuberculosis. The international community is concerned with the fact that Transnistria has turned into a dangerous nucleus of spread of tuberculosis in neighboring European countries...». Ibidem

178 Most of the programmes financed by international institutions and implemented in Moldova exclude the Transnistrian region of the country. In our opinion this is an erroneous approach and attitude that has a negative influence on the rights and interests of local population

179 www.cip.nm.ru, article «Health protection also needs to be treated», signed by Marina Dovgali

180 Case from Promo-Lex practice: Being hospitalized with the original diagnosis of «diphtheria», the patient deceased in the reanimation ward after 7 days. His relatives had no access, and doctors were every day in a Council. In the meantime the victim was 5 times diagnosed differently, and his relatives were forced to purchase various medicines every time for a different treatment. The relatives requested patient's transfer to Chisinau, but their request was rejected.

6.4. Social protection and assistance

As we mentioned before the number of persons in need for social protection and assistance is continuously growing. This is due to the step-by-step ageing of the population and low natality level. The high number of pensioned persons is supported by the considerable number of persons pensioned because of various diseases, who are also in need for social assistance.

We can again note that the legislation regulating the social protection of these persons is still imperfect. For instance, Promo-Lex was informed by an invalid of the 1st degree, who, according to Government Decision no.688 of 20.06.2006, was recommended to be «permanently attended by another person». As we further learned, this type of social assistance cannot be put into practice because the Government has not secured the implementation of these provisions: it did not set forth the existence of social assistants for this purpose and does not provide for any benefits for third persons for taking care of invalids. Today such people are assisted by relatives or neighbors, who lack any attention from the part of the state. The state has not made any provisions for compensations, facilities or indemnities granted for such assistance.

We believe that it is vital to find methods for encouraging and stimulating the persons who have to take care of the invalids. For instance, it would be equitable if the period of taking care of an invalid would be added to one's seniority, it should account for adding supplementary days to one's annual leave, the said person should have access to free insurance or to the procurement of an insurance policy at a lower price, etc. By guaranteeing certain privileges to disadvantaged groups of people the state shall thus assume the responsibility for their realization.

The issue related to the level of pensions received by locals shall be brought in more details by Promo-Lex in a separate study on the situation in the region of Transnistria. We shall only mention in this report that the budget of the region for year 2007 was approved with a deficit of approx. 45%, that pensions and salaries shall respectively be delayed, and that the quality of medical services, social assistance and education shall be in regress.¹⁸¹

Under such circumstances, locals were manipulated in view of acquiring Russian citizenship. Russian citizens residing in the region of Transnistria were being promised pensions, benefits and drugs. In 2006 the Chisinau press¹⁸² proved the illegal nature of the activity of a Russian «Consulate» from Tiraspol, who granted Russian citizenship to all willing locals with urgency, while various Russian officials made a public promise

181 The newspaper «The man and his rights», «New infringement of citizens' rights»: «... The Transnistrian Law «On the republican budget for year 2007» provides for the ceasure (in other words, annulment) of legislative acts of Transnistria regarding the provision of facilities to three categories of people ... The said law provides for the annulment of 9 types of facilities. Invalids were deprived of 8 types of facilities. Labor veterans, military men and pensioners were deprived of 4 types of facilities. Instead, the Law provides for the first time for the allotment of 1,1 mln roubles for financing the activity of the Inter-parliamentary Assembly of Abkhazia, South Ossetia and Transnistria (art.55). It was also for the first time that the budget provided for the financing of guarantees to the first President of Transnistria (Grigorie Maracuta) in the amount of 22 th.17 roubles. Enormous funds were allotted for the organization of Transnistria Days in Moscow, which are planned for the month of May...» www.cip.nm.ru

182 PRO-TV Chisinau broadcaster transmitted an audio recording with the participation of an employee of the «Russian consulate» in Tiraspol, which confirmed that the latter participated in the process of immediate granting of Russian citizenship

that Russia shall offer its financial support and social protection to all Russian citizens from the Transnistrian region.¹⁸³ According to unconfirmed information, certain locals have had their identity documents issued by Moldovan authorities replaced with documents issued by the Russian Federation.

RECOMMENDATIONS:

1. To serve insurance policy holders regardless of their domicile or «residence permit»;
2. To stimulate persons who take care of invalids;
3. To simplify all procedures for job-seekers registered with the Employment Agencies;
4. To account for the errors committed by doctors, to analyze those figures and make them public;
4. To secure the rights of citizens for Transnistrian inhabitants on a non-discriminatory basis.

183 «Приднестровье» (Transnistria) newspaper of 24.06.2006 (material of V. Ostrovsky «Цели определены - за работу!» (The mission was set – let us get to work)): «the head of the administrative department of the ministry of health and social development of the Russian Federation, S.E. Dontsov, expressed his hope that as early as this year all Russian citizens residing on the territory of Transnistria shall be secured with all types of social security and assistance, including the provision of medicines, social insurance, the payment of pensions»

7. RIGHT TO VOTE

The 2006 electoral year in Moldova was marked by three big events, unfolded in the Gagauz autonomy and in the Transnistrian region, along with change of electoral legislation as result of events in 2005. As the elections of the general mayor of the capital held in 2005 have not been validated because of low presence¹⁸⁴ of the electorate at the ballot boxes,¹⁸⁵ in 2006 the Moldovan Parliament reduced the electoral margin from 1/3 to 1/4.¹⁸⁶ Meanwhile, the repeated elections shall be qualified as valid regardless of the number of voters who shall participate in the voting.

Just as well a new element, namely the «electoral card», was introduced for applying a stamp with the word «voted» on it,¹⁸⁷ although those provisions were further excluded. At the same time, they decided to change the voting bulletin by excluding the detachable coupon that, in the opinion of law authors, implies additional costs and increases the time necessary for issuing the bulletins, while being of low relevance.¹⁸⁸

Even though some discussions were initiated, the changes does not provide for the possibility to vote «against all candidates». Such an option, in our opinion, shall not come into conflict with democratic principles. At the same time, some experts opine that this would only increase the number of citizens who take part in the voting process (the rate of participation is constantly decreasing in Moldova).

Legal amendments performed in 2006 are also related to making public the income declarations and the properties held by electoral candidates, and making such information accessible to the public. In our opinion, this provision is important for eradicating corruption and giving citizens back their faith in a democratic governing system.

In 2006 the Central Election Commission (CEC) approved the Regulations on the status of observer and their accreditation procedure.¹⁸⁹ Observer accreditation attributions lay into the competence of the CEC according to art.63 of the Electoral Code, and accredited persons can act as observers during elections within the entire country.¹⁹⁰

184 The new and repeated elections for the position of general mayor of the capital held in 2005 were qualified as invalid because less than one third of the persons registered in the electoral lists participated.

185 www.promolex.org.md/docs/reports/Raport_2005_Drepturile_Omului_in_Moldova.pdf

186 Law nr. 248-XVI of 21.07.2006

187 Starting with the elections of March 2005, the said stamp was applied on the loose leaf of the identity card, which, in authors' opinion, caused the dissatisfaction of certain categories of voters and led to their absence in the voting process

188 www.azi.md/news?ID=40080

189 CEC Decision nr. 332 of 24.10.2006

190 www.alegeri.md/electoralcourier/20061025/

Nonetheless, the legislation regulating the electoral process is still imperfect, so that there are numerous problems regarding the insurance of electoral rights to certain categories of citizens. Take, for instance, hypoacusic and blind people, who cannot be certain of the secrecy of their votes. Another solution for this problem would be the publication of special voting bulletins (with Brail characters). On the other hand, it is to be said that hypoacusic persons do not have adequate conditions for participating or getting informed about electoral debates, which can be regarded as a significant obstacle in forming a personal opinion and exercising one's electoral right. Anyhow both cases relate to discrimination.

Another discriminatory and more severe and complex situation is that of Transnistrian voters. Local citizens are elementarily and definitely deprived of their electoral rights based on a plurality of ideas and opinions, free expression, assemblies with the candidates, free information and debates. Just as well, mostly due to the situation described earlier, Transnistrian inhabitants are practically deprived of the opportunity to choose and be chosen under free circumstances according to national and international norms. It is therefore to be mentioned that, in our opinion, during the last 15 years there have been grave violations of the electoral rights of local inhabitants. Constitutional authorities have made very few efforts in this period of time to secure the protection of constitutional rights in the region, including electoral rights as well.

7.1. Elections in the autonomous territorial unit of Gagauzia

The results of a survey¹⁹¹ show that the election of the bashkan of the Autonomous Territorial Unit of Gagauzia (ATU Gagauz-Yeri) occupied a very important place in the top events of year 2006, thus proving that principles of local autonomy, democracy, protection of human rights and law supremacy are still respected and consolidated, with some exceptions, in Moldova.

The Law on the special legal statute of the ATU Gagauz-Yeri¹⁹² sets forth that the Popular Assembly shall adopt laws, whose execution is mandatory on the territory of the unit, including the setting, organization and realization of elections. At the same time, art.60 of the Constitution of the Republic of Moldova provides that the «Parliament is the supreme representative body and single legislative authority of the state», which only proves the contradictory legal character of laws adopted by the Popular Assembly of the Gagauz autonomy.¹⁹³ Meanwhile, some experts opine that the national electoral legislation of Moldova applied certain international recommendations in this field, while the Gagauz autonomy failed to do the same, allowing the application of the Moldovan Electoral Code only when convenient.¹⁹⁴

In observers' opinion, the amendment of the electoral legislation on the voting procedure was quite hasty and lacked the necessary information support. A proof of this

191 Online annual sociologic – monitoring survey »Annual balance« initiated by the «OPINIA» Independent Sociologic and Information Service. 1088 people participated in the survey. www.opinia.md

192 Law nr. 344-XIII of 23.12.1994

193 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-1-ro.pdf

194 www.azi.md/news?ID=41689

.....

is the fact that voters are not familiar with the voting procedure, on one hand, and that electoral agents issue voting bulletins even to individuals who fail to produce any identity documents that could justify their domicile (section no.16 of Ceadir-Lunga) on the other hand.¹⁹⁵

7.1.1 Authorities' behavior during the election campaign

A. Behavior of central authorities

We would like to point out from the very start the phenomenon (that has been noticed during the last few years) of direct and indirect involvement of the head of the state in the election campaign in the name of the governing political party led by him.¹⁹⁶ Some electoral competitors informed the CEC about such violations and argued that such involvement damages severely the electoral process and Moldova's reputation of a democratic state.

The elections held in the autonomous territorial unit of Gagauzia were not an exception. Thus, on 21.10.2006 president Voronin performed a visit to Comrat, where he met with members of the Central Election Commission of the region.¹⁹⁷ During this visit the president qualified as «rational the examination of the opportunity to suspend for the period of the election campaign the investigation of legal disputes that involve electoral candidates».¹⁹⁸

Mihail Formuzal, who had subsequently won the elections in the Gagauz autonomy, accused the president of the country of electoral flurry based on religious discrimination.¹⁹⁹ The statements were qualified as an intention to cause a religious conflict between inhabitants of the autonomous region.²⁰⁰ At the same time we have to note that the statements breach the national legislation, including provisions of the Constitution and international treaties, to which Moldova is a party. In our opinion, this is an act of discrimination in the first place.

B. Behavior of local authorities

The issue of updating electoral lists is still unsolved and has spread to the entire country, not only the Gagauz autonomy. Thus, the number of voters who voted by supplementary lists in the Gagauz elections of 2006 constituted approx. 8,4%.²⁰¹ Even though the civil society has previously recommended that the legislation on annual list up-

195 www.e-democracy.md/files/elections/gagauzia2006/pr-ladom-18-12-2006-ro.pdf

196 Contrary to the insistence of civil society, V.Voronin did not give up the position of leader of the Communist Party of Moldova not even when he was reelected President of the country

197 www.alegeri.md/electoralcourier/20061023/, 23.10.2006

198 As a reaction to that, the president of the regional CEC, V.Calosin, stated that CEC members cannot interfere with recommendations in this sense, because such interference can be qualified as interference in justice. Prosecutor's Office must decide on the opportunity of suspending the suits filed against the candidates, but the Committee did not receive any notification from the candidates with respect to the electoral campaign. Mihail Formuzal, the single candidate who became the subject of criminal proceedings, declared that the suits filed against him were not suspended. www.alegeri.md/electoralcourier/20061023/

199 President Voronin stated the following «Formuzal cannot be elected to the position of bashkan, because he is a Baptist, and 90% of our population are Orthodox». www.azi.md/news?ID=41563

200 Ibidem

201 www.e-democracy.md/files/elections/gagauzia2006/pr-ladom-4-12-2006-ro.pdf

dating must be preserved,²⁰² local authorities have not performed such activities at the beginning of year 2006 as provided by the law. Just as well, the CEC is indifferent toward such problems and does not take any steps toward securing the enforcement of these requirements.²⁰³

Another issue brought up in most reports of international organizations that monitored the electoral process in Moldova is related to the use of administrative resources for electoral purposes.²⁰⁴ Public officers continue to use administrative resources for promoting parties, in which they hold membership, and parties of their competitors. For instance, the director of school no.20 of Ceadir-Lunga stated that on 20.10.2006 school teachers were forced by representatives of regional administration to take part in an electoral meeting held in Baurci village by Gheorghe Tabunscic (candidate of the governing party, Bashkan of the autonomous territorial unit of Gagauzia). The teachers declared that they had free-of-charge transportation and met workers from Copceac village during the meeting.²⁰⁵ The obligation of budgetary employees to take part in electoral meetings with candidates from the governing party during their working hours and the use of service transportation has practically become a norm during election campaigns in Moldova.

The administration of the State University of Comrat has unofficially prohibited its students to get involved in political events, including election observation, which only proves the tensioned atmosphere of the elections and the violation of democratic rights to freedom of expression, freedom of ideas and freedom of affiliation and association, including political.²⁰⁶

C. Behavior of law enforcement authorities and other state structures

The involvement of law enforcement authorities in the election campaign is another old and unsolved problem in Moldova. During elections held in year 2006 the fact of law enforcement authorities' implication in the electoral process was more than obvious.²⁰⁷ For instance, on 2 November in Baurci village, Ceadar-Lunga, the police arrested Mr. Axentie Terzi, whose access to the meeting with candidate Tabunscic was prohibited. Without having ever received any explanation, Terzi was escorted to the police station (after having had his vehicle searched), where he was detained for 5 hours and underwent an illegal interrogatory.²⁰⁸

According to provisions of the OSCE, the existence of illegal orders led to the fact that certain agents of the Ministry of Internal Affairs ignored the national legislation and their responsibility to secure citizens' rights and interests regardless of their political affiliation. Thus, several cases of misuse of work attributions, such as selective destruction

202 See p.40 of the Report on the situation of human rights in Moldova for year 2005 (http://www.promolex.org.md/docs/reports/Raport_2005_Drepturile_Omului_in_Moldova.pdf)

203 www.e-democracy.md/files/elections/gagauzia2006/pr-ladom-18-12-2006-ro.pdf

204 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-2-ro.pdf

205 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-1-ro.pdf

206 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-2-ro.pdf

207 Ibidem

208 www.azi.md/news?ID=41728

of electoral materials, detention and ill-treatment of persons involved in the election campaign (including electoral candidates), performance of illegal searches of electoral candidates' offices, as well as cases, in which policemen and ISS representatives assisted during meetings of opposition candidates with the voters, were registered. At the same time, they impeded opposition candidates to perform electoral activities, and the confiscation of 5.000 copies of an editorial that supports an opposition candidate only speaks for itself.²⁰⁹

7.1.2 The competence and attitude of electoral authorities

On 29.09.2006 the Popular Assembly of the ATU Gagauz-Yeri approved the composition of the local CEC. Several opposition representatives stated that the identification of the composition of the election authority was accompanied by several violations²¹⁰ as follows: CEC membership list was not brought to the attention of deputies at least 5 days in advance; the Commission did not include representatives from all areas of the Gagauz region and opposition candidates in its composition, while it has members from the Communist Party, which comes in conflict with legal provisions.²¹¹ CEC did not comment these events.

CEC displayed a different attitude toward electoral candidates. Thus, during the registration of membership lists, the presence of some representatives of the concurring parties during the verification process was prohibited, while the candidate of the governing party together with his representative had the opportunity to participate at this procedure.²¹²

The local CEC did not apply any sanctions, nor did it notify on the permanent violations of the regulation related to making public the election campaign in the press. Experts noted especially the direct favoring of the Bashkan of that moment by budget-financed press institutions at the expense of other competitors.²¹³

Observer accreditation is often causing the dissatisfaction of organizations concerned with the monitoring and observation of the election process in Moldova. Thus, this time the CEC issued accreditations for national observers only in the morning of the election day. Subsequently, in the process of their registration at the voting sections they noticed a lack of coherence from the part of the CEC regarding the previous notification of election bureaus about the validity of accreditations received during the first poll as was naturally done in previous elections. Generally, election officers from the Gagauz autonomy proved to have a quite reserved attitude toward the observers. On the election day, based on unsubstantiated rumors and having no evidence or verifiable indicators, the CEC accused national observers of performing political partisanate actions, and further dropped such accusations when legal evidence was produced.

209 www.e-democracy.md/files/elections/gagauzia2006/pr-osce-4-12-2006-ro.pdf

210 www.alegeri.md/electoralcourier/20060929/

211 www.azi.md/news?ID=41245

212 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-1-ro.pdf

213 www.azi.md/news?ID=41728

These hasty measures could have damaged the monitoring process and channeled the attention toward inexistent problems. In some voting sections certain election bureau members displayed even an attitude of hostility toward the observers.²¹⁴

7.1.3 Electoral competitors

None of the four electoral competitors registered with the CEC followed the legal provisions that require them to indicate in their electoral promotion materials the name of the printing works, the date and number of edited copies, which proves a lack of transparency regarding the election campaign financing.²¹⁵

Cases in which electoral competitors used administrative resources were repeatedly reported.²¹⁶ Another negative phenomenon that occurred during the elections is related to the fact of influencing the voters in various ways (for instance: in Gaidar village most voters presented themselves to the voting section in a state of alcohol intoxication, and it was subsequently proved that certain followers of one of the candidates had offered them free alcohol in exchange for the promise to vote for the candidate in question. A similar situation that involved followers of the same candidate was registered in Chirsova village).²¹⁷

Even this time we had cases of organized transportation of electors to the voting sections and electoral advertising on the election day. The irregularities that have become a tradition for Moldova were not an exception: the presence of policemen inside the voting sections, the non-motivated entrance of 2 people at once in the secret voting cabins, etc.

7.1.4 Elector information

The lack of adequate conditions for an accurate and equitable presentation of the election campaign affects the entire election system of Moldova. The presence and activity of free mass-media during the election period is vital not only for elector information, but also and certainly for their final option.

The pre-election period was marked by a phenomenon that has been specific for Moldova during several years in a row: regional public mass-media intensify their support for representatives of the local power,²¹⁸ and make public exclusively positive and optimistic materials. Even though there is an attempt to make the election campaign more dynamic by organizing public debates in direct transmissions, we have to note that certain candidates (especially representatives of the governing party) avoid any debate held in public. Thus, electors are deprived of the possibility to be fully informed

214 www.e-democracy.md/files/elections/gagauzia2006/pr-ladom-18-12-2006-ro.pdf

215 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-1-ro.pdf

216 www.alegeri.md/electoralcourier/20061106/

217 www.e-democracy.md/files/elections/gagauzia2006/pr-ladom-18-12-2006-ro.pdf

218 While referring to the way, in which the mass-media covered the electoral campaign, API representative, Petru Macovei, stated that the press «failed this exam», because of acting in a spirit of partisanate and partiality and not reflecting the facts in an equidistant manner, favoring in most cases the candidature of Tabunscic. Moldova Azi, 4.12.2006, www.azi.md

on the election programmes and their quality. At the same time, the transmission signal was very weak (of low quality) during the electoral debates held in the Gagauz region. The administration of the public broadcaster Teleradio from the region could not offer any pertinent explanation for the assumed technical deficiencies.²¹⁹

Meanwhile, national public broadcasters preferred to have a passive participation during the elections held in the Gagauz autonomous unit, except during the last days of the campaign, when they made public several news, in which the candidate of the governing Moldovan Communist Party was indirectly favored.²²⁰

As a result of the demarches filed by candidates and subjects concerned one month before the election day, the local CEC amended the Regulations on the presentation of the election campaign for choosing the Bashkan in the mass-media. Thus, the transmission time awarded to the candidates was increased, and public radio and TV broadcasters were forced to offer the candidates 20 min. on television and 40 min. on the radio each on a weekly basis.²²¹

The degree of involvement of national mass-media in the election campaign was much lower than that of regional mass-media. Generally, newspapers tended to create a positive picture for one candidate at the expense of the others.²²² At the local written press, the election campaign was preponderantly covered by newspapers like «Вести Гагаузии» (Gagauzia News), «Знамя» (The Flag), «Настоящее Знамя» (The Real Flag) and «Панорама» (The Panoram). The «Знамя» (The Flag) edition that is financed from the state budget and favored the candidate of the governing party came out in an increased number of copies for some time. Its official circulation of the newspaper constitutes 3800 copies, while the number circulated de facto amounted to 6000.

They were distributed to the electors free of charge, and thus led to the creation of unequal conditions for all election candidates and their disproportional promotion through the mass-media.²²³

Television broadcasters did not offer sufficient transmissions with electoral debates, education or publicity. Electoral education and publicity materials were also lacking in most local newspapers. Only one single radio broadcaster offered to its listeners educative transmissions.²²⁴

7.1.5 Election observation and monitoring

The elections held in the autonomous territorial unit of Gagauzia were monitored by international observers, foreign journalists, as well as local independent observers. The civil society constituted in a national coalition had an active participation and contri-

219 www.e-democracy.md/files/elections/gagauzia2006/pr-osce-4-12-2006-ro.pdf

220 Report nr.5 on mass-media monitoring in the electoral campaign, API

221 www.alegeri.md/electoralcourier/20061108/

222 Report nr.1 on mass-media monitoring, API

223 www.e-democracy.md/files/elections/gagauzia2006/report-ladom-2-ro.pdf

224 Report nr.2 on mass-media monitoring, API

buted to the monitoring and observation of the election process.²²⁵ The creation and activity of this structure encouraged most electoral candidates and determined them to adopt an adequate attitude toward following legal norms and state authorities to respect the rights of the opposition.

One of the severest problems reported by national observers during the election process was related to the voter registration. Thus, they noted that electoral lists had not been periodically updated and included deceased people or persons who had changed their place of residence, while some lawful voters had not been included. This is how one of the main causes for the numerous complaints and notifications received from electors during the previous elections can be explained.²²⁶

Members of the OSCE Monitoring Mission reported a series of irregularities and problems on the election day. Still they concluded that the implementation of voting procedures had considerably improved as compared to previous elections.²²⁷

In conclusion we can state that regardless of the problems, abuses and irregularities that have occurred, the elections were in line with the necessary criteria and conditions for validating the results in the opinion of national and international observers.

If we were to make a list of problems, abuses or electoral frauds that occurred during the elections held in December 2006 in the Gagauz autonomy it would include the following: a non-equitable and selective presentation of the candidates and of the election events in the public mass-media; harassment of the opposition by the police and other state structures; intimidation of independent groups of the civil society; use of administrative resources for electoral purposes; administrative impediments for exercising the voting right; incompetence of representatives from electoral structures; lack of equal conditions for all electoral candidates, etc. Electoral structures and the authorities failed to address most previous recommendations of the civil society and observers.

7.2. Elections in the region of Transnistria

Once the control over the region of Transnistria was overtaken by an act of violence, local «authorities» have limited locals' right to participate in a civilized and democratic election process meant to secure in a transparent and non-discriminatory manner the right to elect and be elected that should lead to a democratic and peaceful replacement of the regime.

225 3 organizations involved in the realization of the election monitoring project carried out a set of actions: LADOM performed long- and short-term monitoring of the election campaign and of the elections according to OSCE standards; ADEPT revealed the activity of election structures and candidate campaigns on their web site, and elaborated educational materials, thus offering its assistance to the CEC in training election agents; API monitored the covering the the election campaign by public mass-media

226 Press release, LADOM 18.12.2006

227 www.e-democracy.md/files/elections/gagauzia2006/pr-osce-4-12-2006-ro.pdf

On 17.09.2006 local «authorities» organized a new referendum²²⁸ regarding the future statute of the region.²²⁹ At first it could seem to be a democratic, correct and necessary exercise and mechanism for surpassing the situation that was created for local inhabitants.

In this order of ideas we have to note that the public opinion, constitutional authorities and international community have once again refused to qualify such «elections» as legitimate mostly because of the conditions, in which local events are carried out. Given the lack of an effective control from the part of legitimate authorities or the international community, for over 15 years the region has been under the control of an illegal regime based on force, dictatorship and mass manipulation. Local population has no access to information and is not familiar with the new rules and democratic values characterized by transparency, access to information, political pluralism, human rights, etc. Moreover, under the terms of a tough and intense propaganda (otherwise called «brainwashing» by the people), of constant persecutions and a total control over the population through various paramilitary «structures», locals did not participate in governing the country (the Republic of Moldova) or the region of Transnistria. The local population has practically become a hostage of the situation, and constitutional authorities preferred to tolerate the attitude and involvement of the Russian Federation in the affairs of another subject of international law, i.e. the Republic of Moldova. Under such circumstances, the fundamental rights and liberties of Moldovan inhabitants and citizens from the region of Transnistria have been ignored during the last 15 years, and they have been as well deprived of the right of democracy and political pluralism.

On the contrary, the population is regarded as an «experimental mass» for testing various «dirty» election technologies (mass manipulation and misleading of international community).²³⁰ Meanwhile, in 2006 the Association of the Bar of the City of New York (ABCNY) elaborated a study on «Unfreezing a frozen conflict: Legal aspects of the secessionist crisis of Moldova», based on documents, events and real circumstances, and their conclusions prove clearly not only the continuous and unacceptable violation of

228 Previously, numerous such «referendums» were held in the region

229 «... If we were to admit that the planned referendum had one dram of legitimacy, we would conclude that even this legitimacy was subverted by the procedure of preparing the elections: a. the questions put up for consultation are deliberately formulated so as to receive equivocal answers; b. more than a half of year before the referendum, Transnistrian authorities, supported by certain circles from the Russian Federation, resorted to falsities with the implication, for the first time, of certain private organizations from the Occident, hoping thus to justify the right of the «Transnistrian people» to self-determination and, particularly, to speculate the recent case of separation of the Montenegro from Serbia and eventual independence of Kosovo; c. Transnistrian authorities have previously violated and continue to infringe deliberately the right to free and multilateral discussion of issues put up for voting in the framework of the referendum, according to generally accepted norms in this field; d. the preparations for the referendum are performed against the background of several dubious explosions in public transportations in Transnistria, which had tragic consequences for the citizens...» www.e-democracy.md/comments/political/

230 It is a generally renown and proved thing by the ECtHR that the separatist regime appeared and is preserved due to support from outside Moldova. Nevertheless, Transnistrian authorities and their external supporters wished for a minimal legitimacy based on the invocation of international law. For this purpose they resorted to a false pretence. The said history of resorting to false pretences and using the names of notorious personalities from the scientific community for justifying the region's right to external self-determination with bad faith was described in details in Jamestown Foundation and The Economist. The shameful withdrawal of the names of «authors» of the study «State sovereignty of Pridnestrovskaja Moldovaskaia Respublica (Pridnestrovia) under international law», published by the so-called International Council for Democratic Institutions and State sovereignty (ICDISS), that pretends to be registered in the USA, under the auspice of the alleged Contact Group of the Unified Euro-Atlantic Forum, the refuse of the said authorities to answer the most elementary questions on their statute and addresses, are only several moments that deconspire an entire network of falsifiers, producers of counterfeit products to be used as tools by the Transnistrian propagandistic machinery in order to justify the referendum of separation from Moldova www.e-democracy.md/comments/political/

the rights of the 500 th. people from this region, but also the failure to comply with norms of international law. The ABCNY concluded that:

a). The region of Transnistria is not entitled to external self-determination. Secession without the agreement of constitutional authorities of Moldova is not admitted in international law;

b). The Transnistrian regime can be qualified as a de facto regime with certain rights and obligations. The administration by this regime of the public property from Transnistria in accordance with the same international law must be regarded as an administration performed by an occupation regime that can only use such property for the benefit of the population and cannot dispose of it through alienation. i.e. the privatization process led by Transnistrian authorities is illegal, and foreign companies that participate in the Transnistrian privatization process can expect to receive complaints;

c). Russia as a third party to the conflict has already surpassed the status of mediator and guarantor, so that it offers its direct military, economic and diplomatic support to the secessionist regime from the territory of Moldova.

Such circumstances are another reason why the local public and national opinion cannot recognize the results of such elections. The organization of a referendum regarding the opinion of locals on determining the statute of the region is vitally necessary subject to the observance of several basic prerequisites, such as the diversification of information sources in the region, the organization of free debates, including through radio and TV broadcasters, the free circulation of information, goods and people, the insurance of the right to freedom of expression and of opinion, the implementation of certain projects on the promotion of culture, peace, tolerance and civilized dialogue, the elimination of foreign military structures in the region, etc. The time necessary for this absolutely necessary democratic exercise must be of at least 3 years. Only then would a referendum be possible on both banks of Nistru river, in which the population can freely and consciously express their opinions on the future statute of the region. We have to note that today local population cannot agree to the application of methods used by Stalin and Hitler in the previous century, which implied that several international actors or officials elected for a short period of time decide the fate of the region without informing and consulting the population.

In order to make our arguments and statements more complete, we shall briefly describe the violations, frauds and electoral problems that have been registered in this region by Promo-Lex in year 2006.

We have to mention that children were also involved in the «election campaign». They were forced to distribute election materials during their study hours.²³¹ Meanwhile, both employees of «official» and commercial structures received threats of being dismissed should they fail to present themselves at the ballot boxes. The «electoral» pro-

231 Situation reported in Dubasari city on 14.10.2006

paganda was exclusively accepted for one single option, i.e. «for the unification with the Russian Federation».²³² The way of formulating the questions for the «referendum» itself was manipulative.²³³ Administrative resources are intensely used during each «poll» for supporting the position of the regime with the assistance of special experts in election technologies from Russia. Moreso, the financing of the «referendum» was not transparent and the sources of financing for the organization of unprecedented events still remain unknown.

The poll was accompanied by actions meant to influence locals' opinion mass financial «injections» and humanitarian aids coming from the Russian Federation, hasty acquisition of Russian citizenship, promises regarding the payment of pensions and social insurance out of the Kremlin budget, visits and statements of Russian officials, etc. Towns were supplied with hot water for only 20 days (during the «election» period); hot water supply was ceased immediately after the voting. Owners of public passenger transportation were forced to work gratis on the day of the «referendum»; otherwise, those who opposed were sanctioned.

The «poll» was monitored by persons concerned²³⁴ from the Russian Federation,²³⁵ as well as by «observers» from the ex-Soviet area,²³⁶ especially from other separatist regions. Finally, most experts stated that the «referendum» aimed at preserving the regime led by the Russian citizen Igor Smirnov, who had usurped local power by violent ways at the beginning of the 90-s. Subsequently, these statements were confirmed because the «referendum» was regarded as a starting point for «presidential elections».

The elections for the position of «president» of the region were held in December 2006. The Russian citizen Igor Smirnov was «elected» to this «position» the fourth time in a row. This «poll» was also accompanied by severe violations of democratic norms and values and was not recognized by the national public opinion and international community. The delayed registration (practically a few days before the «elections») of the opposition candidate is essential in this case.

Only on 5.12.2006 Mr. Andrei Safonov²³⁷ was registered by a court decision in the election course for the «poll» held on 10.12.2006, while he had submitted all necessary documents on 9.11.2006. The «court» rejected Mr. Safonov's application to annul the

232 The ideas of country reunification in a peaceful and democratic manner are persecuted in the Transnistrian region, being at the same time catalogued as «anti-statal», while ideas of «adhesion» of the region to Russia are not considered as illegal and are being encouraged by Transnistrian «authorities», as well as by Russian Federation Duma representatives. Locals who do not share the ideas of the regime are regarded as «enemies of the republic».

233 «...it is worth mentioning that the separatist leader, Igor Smirnov, declared publicly that the formulation of questions was suggested to him by Russian experts, who also implied that the Russian legislation allows for the incorporation of independent states in the federation...» www.e-democracy.md/comments/political/

234 Thus, we learned that the former Transnistrian minister of justice, Victor Balala, is a member of the group of Russian State Duma deputies - Serghei Baburin and Victor Alksnis. After his dismissal, Balala became a councillor of the Russian deputy Baburin, and until his dismissal he acted into the economic interests of «Russian patriots», who based their business on «securing the rights of their compatriots from the CIS area». It was namely Balala who facilitated the involvement of Baburin-Alksnis group as mediator in the obscure business related to the privatization of the Electric Power Station from Cuciurgan at a price much lower than its real value. www.e-democracy.md/comments/political/

235 Russian deputies often ignore Moldovan constitutional authorities and actively participate in various actions and events in the region without previously applying to or asking for the agreement of constitutional authorities.

236 Local opposition certified the impartiality of CSI-EMO observers and brought arguments in this sense. www.cip.nm.ru

237 His candidature was not accepted in 2001 either.

results.²³⁸ Anyway, the elections were again a scene for multiple violations, abuses and frauds of electoral nature.²³⁹

Transnistrian elections have not been monitored by international observers and cannot therefore be qualified as free or correct.²⁴⁰

RECOMMENDATIONS:

1. To analyze the recommendations elaborated in years 2005 and 2006 by national and international election observation and monitoring institutions and to take efficient steps toward their realization;
2. To organize and hold permanent education activities for electoral agents;
3. To secure the transparency of all CEC procedures, including the verification of signatures; to sanction those who use administrative resources for electoral purposes; to publish without delay in local mass-media the documents issued by the CEC, as well as the modification of the transmission time of election debates;
4. To amend the legislation on the election of the Governor of the autonomous territorial unit of Gagauzia in line with the provisions of the Electoral Code of Moldova;
5. To secure equal conditions for all electoral candidates, to update accurately the electoral lists and prevent the involvement of law enforcement authorities in the election process;
6. To secure non-discriminatory conditions for Transnistrian inhabitants and to respect their electoral rights.

238 www.cip.nm.ru

239 First, even some of the «founding parents» of the separatist regime recognize that there are no authentic political parties in the region, but merely several interest groups that act according to the conjuncture. Second, the favorable or unfavorable conjuncture for solving the Transnistrian conflict was and continues to be preponderantly determined by the behavior of Russian and Ukrainian authorities. It is certain that all groups concerned with the new composition of the «supreme soviet» from Tiraspol qualify themselves as pro-Russian, which is absolutely natural if we take into account the fact that the separatist regime itself appeared and was consolidated as a «besieged castle», benefitting from the direct military, political, diplomatic, economic and financial of Russia and from the «good will» of Ukraine, which allowed for the commercial and other type of Transnistrian transit on its territory. www.e-democracy.md/comments/political/

240 www.state.gov/drl/rls/hrrpt/2006/78828.htm Country Report on Human Rights Practices - 2006

8. RIGHTS OF CHILD AND FAMILY

The protection of the child, family and maternity by the state and the society is a primordial political, social and economic concern for Moldova.²⁴¹ However this fact has not gone beyond being a simple declaration. Because of insufficient financing in the field of child protection in 2006 child's rights remained mostly affected. In the first place, the public opinion believes that investments in the defense of child's rights protection must be increased. The highest defense institution of constitutional rights and liberties is the judiciary.

Under such circumstances, we would like to speak of the following: according to the information on the activity of courts in 2006,²⁴² the Economic Court of circumscription and the Economic Court of Appeal was handling 8.359 cases. Economic courts collected an amount of 16.498.647 lei just for examining cases in first instance. It is to be said that only 20 judges from such courts entered the respective benefits into the State Budget. Consequently we can be certain that this specialized judicial institution is a very important and necessary one.

Let us further analyze the assumed violation of rights of minors (we say «assumed» because we do not know for certain that their rights have been violated or not; what we do know is that various cases that involve minors or affect their interests were under court consideration). According to the same source, 1296 penal cases involving minors were examined in court. Courts handled 3.090 cases of payment of aliments, 1.327 cases of parental rights deprivation, 240 cases of adoption and 137 cases of affiliation. Thus, a total of 6.090 cases related to children's rights or interests were examined in court in year 2006. Meanwhile, the judiciary handled 13.097 marriage dissolution cases that give no details about the situation of children; still we believe that their rights risked being affected in at least 50% of the cases. Taxes collected by the state for the examination of causes related to children's rights and interests are obviously considerably lower than those collected from the activity of economic courts. Legal statistics shows that a total state duty of only 5.618.433 lei was collected from civil causes, which is 10.880.214 lei less than the total amount collected from economic courts.

Now, the question is why there are no specialized courts in Moldova that would protect minors' rights and interests? We can only presume the answer – such solution

241 Preamble to the Moldovan Law no.338 of 15.12.1994 on childrens' rights

242 Bulletin of the Supreme Court of Justice no. 2/2007 of the Republic of Moldova

is inefficient, implies significant costs²⁴³ and does not bring any «profit» to the state. Thus, in our opinion the preamble to the Law on child's rights is not applicable, and state's economic concern in this sense is not obvious.

The same situation was noticed in other fields, in which children's rights are or could be affected. Any child has the right to live in a domestic environment together with his parents from his very birth. However the system of protection of child's rights has been inefficient for many years. This is mostly due to parents' ignorance and irresponsibility, as well as the inefficiency of state authorities in promoting an effective strategy meant to redress the situation.

Because of the social and economic situation of the country many persons are forced to leave abroad in searching for a job. Thus, a high number of children remain under the supervision of relatives or third persons, or even noone at all. The number of unsupervised children is also increased because of the lack of responsibility from the part of their parents. Some of the unsupervised children often find themselves in state residential establishments. Statistical data show that in Moldova there are approx. 12.000 institutionalized children,²⁴⁴ 15% of which are orphans with no parents at all. At the same time it is to be said that the state is financially unable to solve the problem of maintenance of such children.

A big share of the 150 mln. lei is designed for the payment of salaries of teachers and staff from residential establishments. We believe that the amendment of the legal framework regulating this problem would be a more rational approach because imperfect legislation only serves as a factor that conditions an increase of the number of children deprived of a domestic environment. For instance, we can remark child's rights protection community in this sense.

According to provisions of para.1 of art.113 of the Family Code, tutelary authorities are:

a) the central authority for child protection.

On 10.02.2005 the National Adoption Committee was established by a Decision of the Government.²⁴⁵ This Committee was awarded the role of central child protection authority. After 1,5 years of activity the Committee was qualified as non-constitutional by a decision of the Constitutional Court.²⁴⁶

b) executive boards of local public administration from 2nd level administrative and territorial units.

These are: rayon (district) presidents, the General Mayor of Chisinau, the Baskan of ATU Gagauzia.²⁴⁷

243 For the amendment of the existing legislation, the judiciary, the supplementation of judges and the needed staff, i.e. salaries, offices, conditions etc.

244 http://www.moldova-suverana.md/index.php?subaction=showfull&id=1171978428&archive=1172066716&start_from=&ucat=9&

245 Decision of the Government of the Republic of Moldova no.162 of 10.02.2005 «On the establishment of the National Adoption Committee».

246 Constitutional Court Decision no.11 of 27.06.2006 «For control of the constitutionality of the Government Decision no.162 of 10 February 2005 «On the establishment of the National Adoption Committee».

247 Law on local public administration, art.1 and art.5

c) deliberative authorities of 1st level administrative and territorial units. These are: local councils of villages, communes, towns, municipalities (except Chisinau municipality).²⁴⁸

Further, para.2 of art.113 of the Family Code sets forth that the exercise of the duties of tutelary authorities lays within the competence of:

- education departments (services);
- social security departments (services) oriented toward children from institutions placed under their subordination;
- local council secretaries in localities that have no education or social security departments (services).

We can note that provisions of para.1 and para.2 of art.113 of the Family Code are contradictory. Moreover, today the provisions of para.1, art.113 of the Family Code are practically not functioning and only para.2 is being applied.

At the same time, the content of para.2, art.113 of the Family Code is conflicting itself. Thus, the first sentence from this paragraph sets forth that the function of tutelary authority shall be exercised by education or social security departments (services) created in each district. They have territorial competence in each locality within the respective district. Under such circumstances, the second sentence, by which the function of tutelary authority is also placed within the competence of local council secretaries in localities that have no such departments (services), has no sense and logic in it, because there are no districts that lack education or social security departments (services). In such a way, this article provides for a single tutelary authority, namely the education or social security departments (services). Thus, the content of a single article of the law that was not formulated in an accurate and explicit manner leaves space for uncertainties and large interpretation possibilities especially for representatives of relevant ministries, which coordinate the activity of aforesaid departments (services). Such freedom of interpretation can be solved exclusively by amending the existing legislation.

The activity of education and social security departments (services) as tutelary authorities is characterized by numerous ambiguities related to its legality and to the considerable conflict between legal provisions stated above and the Civil Code. Thus, in line with art.35 of the Civil Code tutelary authorities are merely local public administration authorities. In such a way the Civil Code does not make any provisions for the establishment of a central authority on child protection and for conferring the role of tutelary authorities to education or social security departments (services). The new Civil Code, as compared to the Family Code, lays this function only within the competence of local public administration. However, the Ministry of Education, and Youth²⁴⁹ is, in its turn, entitled to coordinate activities of tutelage, guardianship and protection of the rights of orphans and children left without parental care. Consequently, the provisions of such Regulations are incompatible with the legal provisions of art.35 of the Civil Code.

248 Idem

249 Decision of the Government of the Republic of Moldova no.1033 of 04.10.2005 «On approval of the Regulations of the Ministry of Education, Youth and Sport».

Here we can also point out that the activity of regional education departments in line with the provisions of the Regulations on types of activity²⁵⁰ come in conflict both with art.35 of the Civil Code, and with the provisions set forth in para.1 of art.3 of the Law on local public administration. According to this Regulations, the Department is subordinated to the Ministry of Education and Youth from the administrative, scientific and didactic points of view, and is «subordinated» to (depends on) the Council (local public administration) from the viewpoint of financial and material security. This means that local public administration only finances the activity of this department, while it is in fact subordinated to the central public authority, which is incompatible with the principle of local autonomy and decentralization of public services guaranteed by para.1, art.3 of the aforesaid Law.

We can therefore note that child's rights protection is a prerogative of various structures and institutions, while a clear cooperation and/or subordination relation has not yet been established. Thus, the efficiency of activities is reduced, and a child in a risk situation can remain without an adequate protection from the state.

Nevertheless, during year 2006 the role of tutelary authority was exercised by the regional education department and, partially, by secretaries of local councils. The legislation in force²⁵¹ forbids third structures or persons other than tutelary authorities to perform the identification and placement of children without any parental tutelage.

When the tutelary authority is informed about the case of a child, whose rights could be infringed, the said authority is required to verify child's living conditions within a 3-day period of time. Should the information regarding the lack of parental care be confirmed, the tutelary authority shall take the child under its protection and secure the protection of his legitimate rights and interests by finding a provisory placement until an adequate form of protection is determined.

Still national legislation does not provide for the provisory nature of placements and does not set forth the length of provisory placement. Accordingly, when finding violations of child's rights the tutelary authorities shall place this child in institutions and only then take the necessary steps toward finding a definite form of placement. This is why over 12.000 institutionalized children are still waiting for their gate and statute to be determined.

When a child is registered, the tutelary authority is required to notify the central authority for child protection, which does not even exist because of being qualified as unconstitutional by the Constitutional Court, within 10 days. This (i.e. provisory placement) is practically where the link between the lack of parental care for a child and his legal status is breaking. In conformity with para.1, art.115 of the Family Code, children without parental care can be placed for education and maintenance with:

- a) the adopter or pair of adopters;
- b) under tutelage (guardianship);

250 Decision of the Government of the Republic of Moldova no.1380 of 29.10.2002 «On approval of the model-Regulations of the general regional (municipal) education department».

251 Para.3 of art.112 of the Family Code.

- c) in family-like children's homes;
- d) in state institutions designed for orphans and children without parental tutelage of any kind (educative, training, curative, social security centers), if there is not other possibility.

Children's placement in such institutions must be an ultimate solution only when no other possibilities exist. Nevertheless, this is specifically the most popular method that is used due to the fact that the legal status of children deprived of a domestic environment has not yet been clarified by tutelary authorities.

We would also like to point out the provisions of para.3, art.115 of the Family Code, which make the tutelary authority responsible for the child left without parental tutelage until his further placement. Today, when a child is placed with an institution (even on a provisory basis) the responsibility for this child is born by the institution in question.

The tutelary authority can therefore decline its obligations and responsibility for the protection of legitimate rights and interests of these children in favor of the administration of the institution, which, in line with para.3, art.112 of the Family Code, cannot perform the activity of placement of children left without parental tutelage. In such a way even though the administration of the institution might find another form of placement (adoption, tutelage, family-like home) it is not entitled to do any further steps. More so, the existence and financing of such institutions is directly related to the number of children placed with them, which is why their employees are not interested in decreasing the number of institutionalized children. This is how a vicious circle is created, which affects children in the first place.

RECOMMENDATIONS:

1. To create specialized courts that shall handle cases, in which minors' interests are being involved;
2. To bring into correspondence the provisions of the Civil Code, those of the Family Code and the Law on child's rights in order to eliminate all contradictions or duplicitary specifications;
3. To create an authority that would be responsible for securing and respecting children's rights regardless of their status.

9. WOMAN'S RIGHTS

In accordance with the provisions of national law and international documents, a state's citizens are all equal before the Law, regardless of their sex, nationality, religion etc. Based on such normative acts, women must be attributed the same role in the society, with equal possibilities of promotion, education and development as men are. Female gender representatives have a guaranteed right to fulfill any function or workplace according to their professional training.

In fact, those provisions are mostly declarative. Women in Moldova continue to face discriminatory procedures in all fields of human activity, such as employment, political activity, posts in the law enforcement system, health protection and, last but not least, the family. In this sense we shall further speak of the most important aspects referring to the violation of women's rights:

- Gender equality;
- Family violence;
- Female trafficking.

9.1. Gender equality

Gender equality assumes that both men and women can freely exercise a series of rights, including political, civil, social, cultural rights, etc. In this sense, the Law on securing the equality of opportunities for men and women approved on 09.03.2006 aims at securing the equal exercise of rights for men and women in the political, economic, social, cultural and other spheres, guaranteed by the Constitution, in view of preventing and eliminating all forms of discrimination by gender.

During the elaboration of the Report on the situation of human rights in the Republic of Moldova for year 2005, we have pointed out the following sections in the sense of this Law:

- a). equality in the public sector;
- b). equality in the social-economic sector;
- c). equality in the field of health and education.

A. Equality in the public sector – even though there is a certain threshold of women's participation in the political field, most of them do not hold high standing positions. The number of women who hold positions in the Parliament, Government, diplomacy is far from being equal to that of men. According to the articles on «Women and men in the

Republic of Moldova» elaborated by the National Bureau of Statistics, men hold over 90 percent of the administrative positions within central public administration.

Only in the Parliament and in the second-rank of Government functions (vice-ministers) the share of positions occupied by women constitutes approx. 20%, while their representation in second-rank (district) local public administration is of 3,1%, and in first-rank (towns, villages) authorities – of 14,8%.²⁵²

B. Equality in the social-economic sector – due to the social-economic situation from the country, employers, as a rule, prefer more to hire men than women. This is a tendency generated by employers' unwillingness to accomplish certain obligations related to the payment of maternal leaves, leaves for taking care of sick minor children, etc. Meanwhile, according to the NBS publication, the level of salary offered to women constitutes about 70% of the level of salary offered to men.²⁵³

The number of unemployed women is also continuously increasing. Women over 40 are especially ignored or rejected by most employers. This has probably become a phenomenon because the Labor Code and other laws do not observe the general principles of non-discrimination and do not include a norm that could sanction its violation. The Penal Code of the Republic of Moldova forbids discrimination (art.176), but the public opinion does not know a single criminal case that was filed based on this article.

C. Equality in the field of health and education – here we can mention that the impressive number of women working as educators and elementary school teachers confirms the stereotype according to which women have to take care of children, while adopting important decisions is men's responsibility. Just as well, health system employees are mostly women; still, women are underestimated when conferring certain degrees for better remunerated specialists.

Sexual harassment is an issue arising more frequently in Moldova. According to a study, approx. 34% of respondent women see sexual harassment as type of sexual violence, while 14% gives to it the character of gender discrimination. Cases of sexual harassment occur more often in relations between professor and student, doctor and patient, or employer and employee. Though the phenomenon grows, the society is not aware of sexual harassment cases examined in the courts or guilty persons condemned for their deeds.²⁵⁴

Finally, we can say that even though some progress was lately registered regarding the situation of women in Moldova, there is still a range of disadvantages, namely the inequality of salaries, women unemployment; human trafficking; use of violence, etc.

The gender equality in the Transnistrian region is not promoted. For example, approx. 75% of unemployed persons registered at the Employment Office are women, while employers continue preferring hiring men.²⁵⁵

252 www.e-democracy.md

253 *ibidem*

254 www.jurnal.md

255 www.n2.ru

9.2. Family violence

Family violence has lately increased considerably. In experts' opinion this phenomenon can be explained by the situation of the society - the economic decline, unemployment, women's ignorance of their rights, men's incapacity to support their families. All these factors affect the durability of family relations and render men more aggressive and violent. «*Violence against women is, probably, the most shameless breach of human rights and, possibly, the most popular one. It does not have any geographical, cultural or financial limits. As long as such a phenomenon exists we shall not be able to allege that we are making real progress toward equality, development and peace*» (Kofi Annan, UN Secretary General).

In 1993, UN Declaration on *Elimination of Violence against Women* defined violence against women as «*any act of violence based on gender differences that leads, or can lead, to physical, sexual or psychologic damage or suffering caused to women, including threats of performing such actions, forced obligation or deprivation of liberty in the public or private life*». Violence against women means corporal, psychologic and spiritual hurt and can prevent women from becoming full members of the family and society. UNO's Declaration sets forth that violence against women is a «*manifestation of historic relations of distribution of power between men and women, which led to the domination and discrimination of women by men*» and that «*violence against women is a crucial social mechanism that imposes a subordination position on women as compared to men*».

Today all types of gender-based violence are persisting in Moldova:

- direct physical violence (ill-treatment, rape, etc.);
- psychological violence (deprivation of liberty, sexual harassment, etc.);
- lack of necessary resources for supporting an adequate physical and psychologic state (for food, studies, material means of subsistence, etc.);
- the fact that women are regarded as commodities (women trafficking, prostitution, etc.).

In this order of ideas, between 25 November - 10 December 2006, over 150 countries, including the Republic of Moldova, were involved in the Campaign called «16 days of protests against gender-based violence». The Campaign was aimed at consolidating the knowledge on domestic violence, gender-based violence and human rights, fight against all forms of violence against women in line with UN Convention on the elimination of all forms of discrimination toward women (CEDAW), change of attitudes and of the violent behavior of men and women, creation of a non-violent culture of relations between the two genders, motivation of Moldovan Government/Parliament to change and develop the policy, legislation and practice of prevention and fight against domestic violence, etc.²⁵⁶

According to data provided by the Ministry of Internal Affairs, 50 crimes were committed in year 2006 as a result of family conflicts (20 premeditated murders and 30 cases

256 www.winrock.md

of severe corporal injuries). Most crimes were committed by persons with alcoholic intoxication or with mental disorders.²⁵⁷

Under such circumstances, it is common practice in Moldova that a woman, who is being intimidated and threatened with physical violence by her husband, does not have the possibility to call for the assistance of law enforcement structures. The latter interfere only when the victim has been physically aggressed. Criminal prosecution officers often reproach women with the following words: «*come to us when you will be ill-treated...*». Thus, husband's threats with application of physical violence are often brought into practice due to the inaction of law enforcement structures to cases of physical aggression. Meanwhile we have to point out that domestic violence is not only limited to applying injuries, but includes also verbal, sexual violence, etc.

We can therefore note that women in Moldova are not protected and are forced to protect themselves. This is why many women who face domestic violence end up being violent as well. A recent tendency shows that the number of women detained in Rusca Women's Penitentiary, Hancesti region, for murdering their husbands in a moment of despair continues to be constant. Consequently, in view of preventing this phenomenon the Association «Refugiul Casa Marioarei» (Casa Marioarei Assylum), with the support of the OSCE Mission in Moldova, opened a hotline that can be used by women, who find themselves in a critical situation and suffer from domestic violence. According to some estimations over 5000 women requested the advise of legal experts and psychologists employed with this center during the three years of its activity.²⁵⁸

We can also note that some women have to bear sexual perversions from their husbands, others are physically and psychologically traumatized. The police often qualifies victims of family violence as «women with family problems».

Even though the *Law on preventing and fighting against family violence* was adopted, it is still nothing more than a declarative act. Its implementation mechanism is lacking.²⁵⁹ Family violence is not qualified as direct crime and remains unsanctioned as a consequence. The results of violent actions can be sanctioned only in case of timely documentation of corporal injuries and, depending on their degree of severity, a punishment can be applied. Such sanctions usually take the form of fees paid from the family budget or administrative arrest. Once the husband returns to his family he becomes more violent and vindictive. It is important that law enforcement authorities change their attitude toward the issue of family violence; candidates for a position in the law enforcement community should pass a psychological test on their attitude toward various social problems, including women's rights.

A survey carried out by the Women Organization Forum (WOF) showed that the absolute majority of respondents admitted that there is a problem related to family violence. More than 50% of them did not know whom should the victim address to. Over

257 Today, over 5300 family trouble-makers, 40 000 alcoholics and 10 200 people with mental disorders are registered with the police (www.timpul.md)

258 www.timpul.md

259 Ibidem

60% of the victims did not know where could they seek help.²⁶⁰ The issue of violence against women is, therefore, of current importance in our country. Nevertheless, it is being ignored practically by the entire society. It is to be said that approx. 44% of the victims have never resorted to law enforcement authorities because they thought of it as inutile.

Namely domestic violence, together with poverty, is one of the main reasons for Moldovan women to migrate and further become victims of human trafficking. In 2006 the American Bar Association (ABA) elaborated a report on the instrument of assessment of the conformity of Moldovan legislation and practice with its engagements provided in the Convention on the elimination of all forms of discrimination toward women.

The report sets forth that the lack of sensitivity of the judiciary and law enforcement authorities in dealing with gender-related issues increases the number of human rights violations in general, which is especially proved by cases of violence against women.²⁶¹

9.3. Women trafficking

The issue of human trafficking is still very relevant for Moldova, even though many measures were taken for fighting against this phenomenon. Poverty, unemployment, free access to studies, family violence, access to information sources, elementary legal illiteracy contribute to the increase of the number of victims of women trafficking. The severest form of abuse that migrant Moldovan women are facing is women trafficking for sexual and labor exploitation. Moldova, together with other countries from this region, has become a source of victims for the trafficking network.

Thousands of women from Moldova work today in a clandestine manner in European countries and Russia. They are totally unprotected and lack any type of support from authorities. This situation does not only affect trafficked women, but also their families, children and the entire society. Over 5000 women from Moldova become sexual slavery victims every year, and 25% of Moldova's population (i.e., approx. 1 mln. people) are working abroad. Victims of trafficking are women and minors exploited in the Middle East and some European states. In a short period of time Moldova has turned into one of the biggest source-countries of «living beings» from Europe.²⁶²

In its report the International Migration Organization (IMO) places Moldova among countries, in which human trafficking is mostly spread. A number of approx. 60 thousand people are sold for slavery every year in Moldova.²⁶³ Nevertheless, the Government does not conform to minimum standards of elimination of trafficking, even though it made some progress in the legal field by accelerating investigations and condemning more traffickers.

260 ibidem

261 www.amnesty.md

262 www.deca-press.net/?cat=soc_and_civic&id=579&hl=abc%20news

263 www.iom.md

According to data included in the activity report of Prosecutor's Office, 248 cases of human trafficking were reported in year 2006, i.e. 2 cases more than in year 2005. Out of the total number of filed cases the court condemned only 16 offenders for human trafficking and 7 persons for child trafficking, 13 of which were punished with deprivation of liberty for 2-16 years (Moldovan legislation prohibits all types of trafficking and provides for severe punishments from 7 years of deprivation of liberty to life imprisonment).

Women usually go abroad for getting employment and, due to insufficient information, become victims of those who generally offer them support in their trip (for instance, they volunteer themselves to cover all expenses related to paper work, visa opening, employment, etc).

It is to mention that even more cases are left unknown and, thus, cannot be registered and examined by law enforcement authorities. This is why we cannot speak of a real progress in this field as compared to year 2005.

Under such circumstances, we can say that Moldova fails to implement the Law on protection of witnesses (adopted in 1998) and there is no reference system for victims.

To a lesser extent Moldova is also a transit country in the process of human trafficking. The secessionist-controlled Transnistrian region placed outside the control of Chisinau Government is still an important area of origin and transit.²⁶⁴

At the same time, in the Transnistrian region the situation is almost equally dramatic. We can only imagine the extent to which the phenomenon of human trafficking has spread in this area, since local authorities control and manipulate the society. In the lack of a viable civil society, an effective control from legal constitutional authorities and international community, an opportunity to be informed and a transparent and democratic environment, as well as under the circumstances of a Soviet mentality and a well pronounced economic, social and political crisis, local inhabitants are deprived of any support and trust and became victims of a geopolitical game.

With the exception of few opposition mass-media, the population is not informed (and educated, in addition) about the real situation of human trafficking, violence against women, equality of men and women. On the contrary, the local press makes public negative cases and statistical data on Moldova for manipulating the public opinion and deepen the gap between the 2 banks of Nistru river.

In fact, nor Chisinau constitutional authorities neither local authorities from the region are aware of the real number of persons who work abroad. Consequently, it is not known the real proportions of this phenomenon and no actions are taken toward rehabilitating the victims. Even though the national economy was redressed namely due to the enormous amounts of money transferred by the «gastarbeiters»(i.e. foreign workers), the state does not provide for any support to human trafficking victims.²⁶⁵

264 www.state.gov/g/tip, 2007 Trafficking in Persons Report of US Department of State

265 The state should provide financial support for victims of human trafficking, i.e. for their social reintegration, for treatment (the insurance policy at least), medical assistance, psychologig and social assistance and rehabilitation etc.

HUMAN RIGHTS IN MOLDOVA

Some non-governmental organizations from the region have recently initiated projects of information and education of the population about the issues in question, as well as of victims' consulting. However, this problem is still relevant for Moldova in general and for the Transnistrian region in particular, because notwithstanding the interventions of the civil society, the authorities and the international community in fighting against trafficking, which were successful to a certain extent, specialized organizations still identify new victims and new organization mechanisms of women trafficking.

RECOMMENDATIONS:

1. To intensify and increase the efficiency of law enforcement authorities' activity regarding the prevention of domestic violence and human trafficking;
2. To elaborate educational programmes for the population.

10. RIGHTS OF DETAINEES

After having examined the «Note on activity of the judiciary in year 2006»,²⁶⁶ we can state that 12434 people were condemned, i.e. 1.669 people less than in year 2005. 2.943 people were punished with deprivation of liberty, i.e. 372 people less than in 2005. At the same time, the number of minors condemned to deprivation of liberty increased from 224 to 227 persons.

Thus, in 2006 the number of persons condemned to deprivation of liberty tended to decrease, while the number of persons punished otherwise than with deprivation of liberty tended to increase. If such tendencies shall further maintain we can expect the number of persons detained in penitentiaries to decrease, which, in our opinion, shall have a positive influence on detention conditions.

Promo-Lex elaborated and published in 2006 the «Report on human rights situation in Moldova for year 2005».²⁶⁷ Here we would like to point out that some positive results were also reported. Having studied the problems in this field we have therefore decided to analyze the situation of the detainees from Moldova according to the same criteria:

- Material resources;
- Personal hygiene;
- Nutrition;
- Medical assistance;
- Contact with the exterior;
- Detainees' information;
- Reeducation, training and cultural level improvement.

10.1. Material resources

In 2005 Promo-Lex identified numerous irregularities within the detention facilities and determined their causes as well, which, in our opinion, all reduce to the insufficient financing of the penitentiary system of Moldova. In year 2006 the Government allotted an amount of 2.826.000 lei for the reconstruction of three penitentiaries in line with the Penitentiary system reform conception. Meanwhile, additional funds were allotted for the current repairs of all penitentiary facilities from the territory placed

²⁶⁶ Bulletin of the Supreme Court of Justice no. 2/2007 of the Republic of Moldova

²⁶⁷ http://www.promolex.org.md/docs/reports/Report_2005_Human_Rights_in_Moldova.pdf

under the control of constitutional authorities. The Department of Penitentiary Facilities (DPF) diversified its activities in view of ameliorating the existing situation. Thus, it signed an agreement with the Swiss Agency for Development and Cooperation, which offered 8,5 million lei for the rehabilitation of Penitentiary no. 7 from Rusca locality. On the other hand, the DPF assumed the obligation to contribute with an amount of 1,5 mln. lei to the revitalization of the said institution.²⁶⁸ It is to note that foreign Agency's investment in one single penitentiary facility is 3 times higher than the investments of the Government in the whole penitentiary system. Consequently, alternative solutions must be found, including cooperation with foreign investors and sponsors, if the state is unable to secure a sufficient financing for the system.

Nevertheless, all steps made in this direction are insufficient. Penitentiary conditions in Moldova should be improved, and the material and technical basis should be renovated as well. Overcrowding is still the severest problem for most penitentiary facilities.²⁶⁹

10.2. Personal hygiene

The creation of decent detention conditions in penitentiary facilities is state's responsibility. Thus, public competent authorities must pay special attention to general and personal hygiene, because minimal hygiene conditions do not conform to the standards. For instance, most detention cells are not equipped with sanitary arrangements. The situation of preventive detention cells is particularly critical since no progress was made in this particular field. Generally, the situation of preventive detention cells subordinated to the Ministry of Internal Affairs is most alarming.

These institutions have not yet totally replaced the bar plates with beds in accordance with the requirements of the Torture Prevention Committee. The control visits carried out by representatives of the Center for Human Rights in penitentiaries in year 2006 confirmed the existence of these negative factors in the institutions in question.

10.3. Nutrition

The problem of nutrition within penitentiary facilities of Moldova is still as acute and relevant as in the previous years. The average amount of money spent daily for the nutrition of one prisoner in 2006 consisted approx. 4 lei. In most penitentiaries the detainees serve only tea, bread, vegetable soup and cereals, while meat, fish or milk products are mostly provided by prisoners' relatives.

The situation regarding the nutrition of persons deprived of their liberty from Chisinau city has also remained constant. Thus, some persons held in preventive detention argue that they have been transported from the detention cell of the General Police Department or from the Detention Cell no. 13 of Chisinau municipality to the

268 <http://www.flux.md/news/modb2cal.php?action=show&idu=15458&cat=Cotidian%20National&rub=Social>

269 «Parliamentary Advocate» no.3 July-September 2006.

sector police departments or court for criminal prosecution purposes.²⁷⁰ Hence they can take only the morning breakfast, tea and bread. In such cases they cannot have lunch nor in court neither in the police departments, because the said institutions are not equipped to secure their meal. Consequently, they get back to their detention cells only late in the afternoon and have dinner consisting of tea, bread and some cereals. Sometimes, when they are brought back to the detention cells after dinner, they do not eat at all. Regretfully, such cases are not very rare. Thus, detainees are deprived of their lunch, which is the most nutritive meal from their daily menu.

Even though responsible persons from the Preventive Detention Cell no. 13 of Chisinau city issued a regulation that prisoners must be brought back until dinner time, this provision is often breached and, consequently, prisoners are starving.

10.4. Medical assistance

During the last few years Moldova was repeatedly condemned by the ECtHR for violating human rights. In some of those cases state's authorities were declared guilty of non-provision or insufficient provision of medical assistance to prisoners. Logically, after having been condemned by the ECtHR the state should take some steps toward redressing the situation and avoid other similar condemnations. Nevertheless, the Government of the Republic of Moldova did not draw any conclusions and does not always tend to change the existing situation. For instance, in the case of Sarban (pronounced in 2005),²⁷¹ Boicenco and Holomiov (2006)²⁷² vs Moldova, the Court pointed out the issue of offering medical insurance and spoke of the real situation in the penitentiaries. At the same time the Court opined that the «*omission to secure basic medical assistance to the applicant when the latter has expressly needed and requested such assistance, as well as the refusal to allow such independent specialized medical assistance, together with other forms of humiliation constitute degrading treatment in the sense of art. 3 of the Convention*».²⁷³ Without further detailing the cases and the need to isolate such persons from the society, we are confident that in certain distinct cases the Government has not taken the adequate steps toward securing the right of medical assistance for certain categories of detainees, even though the press has been communicating the idea that some detentions are based on political reasons.

The matter concerns the detention of ex-minister Valeriu Pasat and on inhabitant from the Gagauz territorial autonomy - Ivan Burgudji.²⁷⁴ In these 2 cases, at least, the state failed to fully secure detainees' medical assistance within the facility and refused unjustifiably the high-quality medical assistance offered from outside the penitentiary.

The insufficient funds for offering medical assistance within penitentiary facilities is also a serious problem. We therefore register new cases of tuberculosis, which only

270 Case of citizen Y of Promo-Lex practice.

271 See details on page 99 of the Report on the situation of human rights in Moldova for year 2005.

272 See chapter on cases against Moldova pronounced in 2006 herein

273 Case of Sarban vs Moldova no.3456/05 para. 90.

274 <http://www.state.gov/g/drl/ris/hrrpt/2006/78828.htm>

proves that all actions of fighting this phenomenon are inefficient and that there is a great need for increased financing from the part of the Government.

The situation of Transnistrian penitentiaries, which are placed under the de facto control of secessionist forces from Tiraspol, is even more alarming. The detention conditions of these penitentiaries are uncertain since they reported cases of violence among detainees and penitentiary officers. One of the problems invoked by the detainees is related to inadequate medical assistance, including the lack of necessary conditions for the prevention of infectious diseases. Thus, people suffering from various infectious diseases are held together with healthy individuals. Here we can cite the case of detainee A.,²⁷⁵ who contacted HIV/AIDS in a penitentiary from Tiraspol because of the lack of an elementary sanitary prophylaxis. Moreover, the risk of contaminating other detainees from the same penitentiary is still present.

10.5. Contact with the exterior

The isolation of guilty persons from the rest of the society is rather conventional. Such isolation does not therefore assume a complete separation of the detainee from the rest of the society. The existing legislation provides for certain guarantees that could secure detainee's contact with the society, his/her family and relatives. This issue was brought up in the report elaborated by Promo-Lex for year 2005 and we can note that it is also true for year 2006.

First, there is a limitation of detainees' right to make phone calls by the simple absence or malfunction of public call boxes in penitentiary facilities. Another rather severe problem is the ambiguity of interpretation of detainees' right to receiving visits from relatives. We believe that these problems shall be solved and, accordingly, avoided in the future once the Statute of execution of sentences by persons condemned shall be put into practice. It is to be said that the noted Statute was approved by a Decision of the Government of 26.05.2006, and its application into practice cannot yet be assessed.

10.6. Detainees' information

Detainees' right to information can be generally classified into two groups:

- 1). Information related to the execution of sentence, and
- 2). Information not related to the execution of sentence

As to detainee's information regarding the execution of sentence, we are certain that there are no essential problems in this sense. When being deprived of his liberty the detainee is fully informed of the terms of possible punishment, of his rights and obligations provided by the legislation in force. Moreover, various organizations and structures concerned with the protection of detainees' rights are massively getting involved

275 Case from the practice of Promo-Lex

in this field. Thus, on 19.07.2006 an information guide called «Detainees' rights and obligations»,²⁷⁶ which gives a general insight of detainees' rights, was edited and distributed in all country penitentiaries.

Certain progress was also registered in the field related to detainees' information on events that are not related to sentence execution. Thus, for the first time in year 2006 certain penitentiaries were provided with radio stations at the initiative of the Department of Penitentiary Facilities. The Statute of execution of sanction regulates the application procedure of TV and radio sets within penitentiary facilities.

Another problem rises when detainees do not agree with the actions of a specific public structure and are willing to contest such actions. A relevant case in this sense is that of Mr. P.,²⁷⁷ a detainee held in a penitentiary from Moldova. He did not approve of Prosecutor's Office decision regarding the examination of his complaint of the violation of some of his rights and, consequently, appealed it in line with art.313²⁷⁸ of the Code of Criminal Procedure before the instruction judge. Contrary to legal provisions, his complaint was examined by the instruction judge in the absence of the petitioner and, accordingly, without having notified him of such examination. The result was predictable and his contestation was obviously rejected. We have to note that the important fact was not the rejection of the complaint, but rather the fact that it has been examined in the absence of the petitioner, even though Mr. P. in his complaint requested for certain documents to be produced, so that the petitioner could get informed about his detention terms and rights, and insisted upon his presence during the process. In this case the rights of prisoner P., namely the right to fair trial, the right to an attorney etc., were infringed.

10.7. Reeducation, training and cultural level improvement

Certain progress was made in this field as well, especially concerning penitentiary facilities from Moldova. The Statute of execution of sentence provides for the methods of reeducation and training of prisoners. At the same time, in 2006 in order to reach this objective the Department of Penitentiary Facilities together with other stakeholders organized various social and cultural events within the penitentiaries aimed at minimalizing the effects of detainees' isolation from the society. We can also point out that other cultural and entertaining events are also carried out within penitentiary facilities.²⁷⁹

Nevertheless, there are also certain difficulties related to the process of resocialization of prisoners.²⁸⁰ Even though this is a procedure set forth by the law, it has not been applicable until now. Hence, the central authority should take the necessary steps toward redressing the existing situation.

276 <http://www.hr.un.md/news/57/>

277 Case from the practice of Promo-Lex

278 Criminal Procedural Code, Art.313

279 <http://www.justice.gov.md/index.php?cid=191>

280 Case of P. from Promo-Lex practice

11. RIGHTS OF NATIONAL MINORITIES

The problems faced by representatives of ethnic minorities are practically the same as before. However, ethnical tolerance is still obvious in state institutions and in the society on the right bank of Nistru river. In our opinion, the situation in this field did not suffer any changes as compared to the same period of year 2005.²⁸¹

The severest problem is related to the fact that most instructions of use and administration of drugs are written in Russian. Even though certain progress was made toward solving this problem, most drugs do not include information in the official state language.²⁸²

The situation of the national majority from the Transnistrian region is equally difficult. There are practically no transmissions and publications in Moldovan/Romanian. Even though the region has 3 «official» languages, law, for instance, are being published exclusively in Russian, courts examine the cases in Russian only, and «official» documentation and correspondence is also drawn in Russian. Local Moldovan-language schools are in danger because of the inadequate conditions and programme, which is definitely inferior to that applied in Russian-language education establishments. Higher and secondary education establishments do not offer to Moldovan/Romanian or Ukrainian nationals from this region the opportunity to study their native language, except in pedagogical departments.

Consequently, representatives of non-Russian nationalities are still discriminated and in 2006 constitutional authorities did not register any progress in solutioning the problems of local citizens. The local public opinion is of the opinion that the Latin script can be reintroduced in the region, since this is a right of local inhabitants, but the secessionist regime continues its illegal actions.

281 See the Report on the situation of human rights in Moldova for year 2005

282 Ibidem

12. RIGHTS OF SEXUAL MINORITIES

Even though lately Moldova has undergone some changes regarding the protection of rights of sexual minorities, the reality is different and proves that the attitude of authorities and of the society is not so tolerating. In other words the discrimination of a certain category of citizens affects country's image in the process of evaluation of democratic reforms and observation of its international engagements.

The Supreme Law of the Republic of Moldova admits that «human dignity, human rights and liberties are supreme and guaranteed values» (art.1) and that the «respect and protection of the individual is a primary obligation of the state» (art.16). Just as well, the Constitution secures the rights and liberties provided for in international law to every citizen of the Republic of Moldova, and the state recognizes the equality of rights and liberties, regardless of the criteria set forth in art.16, whose list is not exhaustive as a matter of fact.

Mostly the problem is not only limited to the national legal framework or international conventions on human rights, to which Moldova is a party, but is rather related to the stereotypes and prejudices of society members. The various governmental and civil society reports on discrimination based on sexual orientation confirm once again the existence of such a problem.²⁸³

Further in Moldova there is a negative attitude of the population toward lesbians, gay people, bisexual and transexual persons (hereinafter LGTB). The authorities are being pressurized by citizens and religious organizations, who particularly oppose against gay parades and marches and qualify them as nothing more than actions of promotion of an imoral way of life. The society is therefore generally tolerant, but it opposes against actions that encourage the phenomenon. Thus, members of the LGBT community from the country continue to register cases, in which law and order enforcement agents displayed an intolerant attitude toward them. A convincing example would be the case of discrimination accepted by an employee of the Ministry of Internal Affairs, who invoked the issue of personal security of gay and lesbian people.²⁸⁴

283 Take for instance the incident that occurred in May 2006 in the Brancusi National Gallery of Chisinau. «GenderDoc-M» representatives (an organization specialized with securing the rights of sexual minorities) signed an agreement for the organization of an event, but on the said day the gallery director blocked the entrance into the building. He accused the organization of lie and misleading, arguing that he had been threatened with having his reputation compromised, and that the event would be a chaos and perversion. Finally, after 2 hours of negotiations the participants were granted entrance in the gallery.

284 www.ombudsman.md/Ses_avize/inv/67/

Another incident took place during a seminar organized for police officers, during which an employee of the Ministry of Internal Affairs stated in public that in his opinion the «fundamental law is the Law of God, according to which homosexuality is a sin, and those who commit it deserve to die». This case proves the negative attitude of society members toward this category of people.

The attitude displayed by police officers during the seminar and, accordingly, during their hours of duty is inadmissible and worth being accused for, because the person in question participated at this event in the quality of a public employee. Consequently, his actions were naturally interpreted in the light of his position in the law enforcement community.

The Police Law sets forth that the police shall cement its activity on respecting the personality of citizens and shall serve as a guarantee of their dignity, rights, liberties and interests. The police shall protect citizens regardless of their social, patrimonial situation, national origin, race, gender and age, education and native tongue, religious affiliation, political ideas and other factors. The police shall not affect citizens' rights and liberties.

In addition to the above said incident, in 2006 the Center «GenderDoc-M» registered other discrimination cases admitted by the authorities as well:

Ministry of Health: a complaint was filed regarding the non-professional behavior of the head of Department of Sexual Pathology and the director of the Community Center of Mental Health displayed during the examination of a transgender patient for the reason that the latter provided false information;²⁸⁵ cases of repeated violation of the deadline for answering letters and applications (30 days); situations, in which no sanction was applied for the failure to follow the demarch answering procedure, for the reason that they are lost, while the letters in question had been repeatedly addressed to the Ministry of Health.

Police: acted in an incorrect and oppressive manner, and also abused of their powers to interfere with the private life of a couple of lesbians;²⁸⁶ abused of their powers to pressure a gay person into signing a document against his will; the refuse to provide an interpreter to the person in question, who did not speak the official language; the abuse of power by forcing a group of persons, who were assumed to be gay, to present

285 In January 2006, a «GenderDoc-M» beneficiary, who is a transgender person, addressed herself to the head expert of sexual pathology of the Ministry of Health, director of the Community Center for Mental Health. The beneficiary wished to receive more information on the activity procedure of the medical center for further undergoing a correction surgery of the biologic gender. During the discussion, the medical expert ignored the feminine gender first name mentioned by the beneficiary and opted for the masculine gender first name specified in the identity card. He further qualified the MTF process (transfer from masculine to feminine gender) as «insane», insisted that the beneficiary talked to her parents without considering her readiness to do such a thing, suggested that the beneficiary passed a psychotherapy course that would «help» her «overpass this tendency», noted that the beneficiary should wait until the age of «24-25 years» to be certain that «this tendency would not disappear». The actions of the sexual pathologist speak of his disinformation in transgender issues. The way that he treated the beneficiary was totally disrespectful toward latter's identity and sentiments. <http://www.gay.md/rom/story.php?sid=358>

286 The parents of a person filed an application with the police. The police officer asked why the said person did not leave at the address specified in the identity card as his residence, even though the said person was an adult and had the right to chose a residence independently. Directly after having learned some details about the existing conflict the police man raised his voice and changed his attitude by reproaching the said person for not listening to his parents. Only the remark of being entitled to a lawyer's assistance could remind the police officer of his professional obligations. Until that moment he had lead an interrogation about the type of relationship that existed between the two partners, thus infringing their constitutional right to private life and inviolability

themselves at the police department, by humiliating them and making jokes at their expense; exercise of pressure upon the president of «GenderDoc-M» organization and inadequate questioning in reaction to a letter of protest addressed by a religious organization; illegal attempt to force the AIM organization to abandon the abbreviation of «GenderDoc-M» during some public actions,²⁸⁷ as well as the exercise of pressure on Amnesty International by declaring that if they refused to remove their flag during the demonstrations, Mayor's Office would be informed about it and would have to take it into account in the future when examining applications for the organization of public actions. The police retired its protection when the organizers refused to take down the flag of «GenderDoc-M», thus jeopardizing the marchers.

The president of «GenderDoc-M», Mr. A.Marcicov, wrote an article about Mayor's Office's refusal to authorize the solidarity march of the LGBT community in Moldova entitled «We support the anti-discrimination law!».²⁸⁸ Representatives of the municipal police and Mayor's Office, who were members of the authorization board, were surprised by the need for such a march and by the fact that sexual minorities from Moldova continue to be discriminated in spite of the fact that the National Action Plan in human rights for years 2004-2008, adopted by the Parliament in 2004, as well as the Action Plan of Moldova and the EU, provide for actions that must be made at an institutional level in order to improve the situation of this category of citizens.

We believe that Chisinau authorities have infringed their right to peaceful assembly by prohibiting the Gay Pride in May 2006;²⁸⁹ by prohibiting the youth march All Equal /All Different – probably because of the participation of the LGBT community at this manifestation; by prohibiting the demonstrations of Amnesty International against death sentence for the reason of participation of «GenderDoc-M» at these manifestations; by prohibiting the protest action of 10 December 2006 – the International Day of Human Rights – against Mayor's Office decision to forbid the activity of LGBT community.

287 On 31 August Amnesty International Moldova, in partnership with «Casa Marioarei», «GenderDoc-M and «Winrock International», carried out an authorized public action in Chisinau focused on domestic violence issues, to which women are exposed. Some of the police officers made claims on action organizers and requested for the «GenderDoc-M» banner to be taken down. Among other arguments as company's apolitical activity, they also invoked that «GenderDoc-M» «works with sexual minority representatives, promotes such way of life and, consequently, cannot unfold any public activity. www.azi.md/news?ID=40954

288 «Our dream of having an antidiscrimination law in Moldova is not a caprice, but more a vital necessity for a normal society to exist». The LGBT community of Moldova pleads for being introduced in the protection system of this law when it shall be adopted and hope that the authorities would be more opened to a dialogue, even though Municipal Mayor's Office attitude from 2006 of refusing to authorize the solidarity march in the framework of the Pride did not contribute anyhow to building a constructive dialogue.

289 On 28 April, based on decision no.417d, the interim mayor of Chisinau rejected «GenderDoc-M»'s application for the organization of a public demonstration in the framework of the Annual Pride Festival in Moldova, which took place during 5-7 May. The mayor justified the interdiction by the «statements of religious organizations about organizing protest actions should «GenderDoc-M» receive permission for holding the demonstration,» and «reclamations of Chisinau residents». The reason specified in the official refusal was related to the «inadmissibility of public order violations with severe consequences for the society». Decree no.417-d of 28.04.2006 sets forth as follows: «According to <...> the demarches of religious organizations regarding the protests that they intend to organize in case of authorization of the meeting declared by «GenderDoc-M», as well as the demarches of Chisinau inhabitants registered with Mayor's Office regarding the organization of counter-protests <...> the organization of assemblies in the form of solidarity marches requested by «GenderDoc-M» Center for 5.05.2006 is not authorized», www.gay.md/rom/story.php?sid=366

As in 2005, municipal council members did not wish to offer authorizations for the organization of the parade. They were convinced of its unnecessary and declared of never having heard of gender-based discrimination. And, in the meantime, they brought revolting discrimination examples, stating that the population «does not love you», and that the mayor's office received over 200 letters from «correct» citizens, as one of the participants mentioned, with the request to forbid the parade. Otherwise «noone guarantees the preservation of public order before the building of the Parliament»(www.gay.md/rom/story.php?sid=369). In May 2005, the mayor prohibited the organization of a similar demonstration. The refusal to authorize such manifestations in 2005 exhausted the potentiality of all national courts and was therefore forwarded to the ECtHR for examination

There have been some irregularities from the part of the *Ministry of Education and Youth* as well. They include Ministry's agreement with the decision to prohibit the youth march; the deletion of all references and information on «GenderDoc-M» organization from the website «All Different/All Equal»²⁹⁰ immediately following the Causeni festival.²⁹¹ Moldova's participation at the Programme of the Council of Europe «All Different / All Equal», which is a responsibility of the Ministry and whose main objective is to fight against discrimination of any form, makes such violations even more obvious.

Other committed violations are also worth mentioning. Here we refer to the use of administrative transportation funds for distributing booklets and brochures with a homophobic content.

To our regret, the judiciary is also tempted to breach the law. The judiciary failed to protect and support the right to free assembly during AIM's demonstrations against death sentence by issuing a decision, which justifies the illegal actions of Mayor's Office that prohibited the manifestations. In another case the judiciary limited the right to produce evidence (by refusing to hear a witness). The court displayed an oppressive attitude and did not comply with the deadline established for taking a decision (the decision regarding the prohibition of Gay Pride manifestations was adopted in 5 months instead of 3 days).

Unfavorable social factors (society's intolerance toward people with a different sexual orientation than the majority of the population and their affiliation to a «risk group») explains the abuse of alcohol and tobacco, the condition of stress and depression and, consequently, the high number of persons, who have suicidal tendencies. The assessment and integration of health policies of LGBT community members are some of the topics of reports presented to the public opinion by «GenderDoc-M» in 2006. And the studies that have been carried out proved that they have severe health problems.

Community members do not benefit from adequate medical services. The first reason for that is that most medical employees are not aware of their needs. More than half of those employees still consider homosexuality to be a disease. As doctors themselves have stated, the reason for this is that medical establishments from the country do not pay much attention to this issue. For instance, future family doctors from the University of Medicine have only four classes of sexology, which practically do not include any topics referring to sexual minorities. Meanwhile, many doctors believe that they would be able to assist this social group if they had adequate knowledge about it.

This is why the reports brought to the knowledge of the public opinion do not focus only on discussing the policy promoted by the Ministry of Health in the field of sexual minorities' needs, but also include concrete proposals made by LGBT community members, who intend to discuss them with Government experts, other persons responsible for population mental health issues and for obtaining a concrete social benefit from offering social services to this category of people.²⁹²

290 www.alldifferent-allequal.md

291 www.gay.md/rus/story.php?sid=542

292 www.gay.md/eng/story.php?sid=101

.....

In the opinion of the LGBT community, the main problems are related to the qualification level of medical employees and to the fact that such specialized medical services did not exist in the past and still do not exist in Moldova. Only few private medical centers offer services that can almost be considered as corresponding to the needs of the LGBT community and satisfactory from the viewpoint of quality. In addition, they also bear the mark of discrimination toward this group of people.

CONCLUSIONS:

All aforesaid incidents prove once again the oppression faced by the LGBT community in Moldova both in exercising their right to free assembly and by their qualification as «different» in a society full of stereotypes. At the same time it is being excluded and not accepted by the same state that has the obligation to secure citizens' fundamental rights and safety in spite of the fact that Moldova is bound by the National Action Plan in the field of human rights and by international documents, to which it is a signing party.

An antidiscrimination law that would include LGBT community members among other socially vulnerable groups, statements regarding offenses implying displays of hatred and words of hatred, policies that would refer to health protection (mental, reproductive health), education, employment, etc., would create an adequate legal framework for the LGBT community and allow it to freely exercise its rights and liberties, to participate in the social and political life of Moldova. Such a legal framework would certainly decrease the number of incidents and prevent them in the future. The Moldovan Parliament is further obliged to execute the provisions of the article of the National Plan regarding the adoption of an antidiscriminatory legislation, as well as the organization of training sessions and seminars on LGBT problems for members of the police, legal experts, judges, prosecutors.

The situation of the LGBT community in the Transnistrian region is not very different. In 2006 «Gender-Ost» Association tried to promote the rights of these categories of people in the region. Generally, the attitude of the society and authorities toward sexual minorities here is not very different from that from the rest of Moldova.

13. RIGHT TO A FAIR TRIAL

«In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law».²⁹³

This provision is based on the activity of the judiciary that is to see justice be done. A series of actions oriented toward reforming the judiciary system for its continuous improvement have been taken during the last few years. Such actions are always welcome since the judiciary is one of the three branches of state power and, accordingly, loosing faith in this institution would lead to loosing faith in the state itself.

Numerous problems, especially of procedural nature, that, in our opinion, lead to the violation of the right to a fair trial have been registered in year 2006. We would further like to point out the most frequent and severe irregularities of the national justice system, which end up affecting its credibility and impartiality and can implicitly lead to new condemnations for Moldova before the European Court.

On the other hand, the situation is still difficult and complex in the Transnistrian region. Because of the lack of a control element from the civil society, of legal authorities and of monitoring activities from the part of international bodies, the «judiciary» from this region remains under the control and influence of the Smirnov regime. Local judges do not attend to any advanced training courses, seminars or trainings held within the country by competent public structures, specialized NGOs or relevant international organizations. Generally, the training level of local judges is very weak and does not comply with the necessary criteria.²⁹⁴

Under a regime of dictate and absolute control of illegal «authorities», the «judiciary» of the Transnistrian region of Moldova is a docile and, at the same time, essential tool for preserving this territory under occupation. Local inhabitants cannot express freely their political options; otherwise they are immediately accused of «undermining the state».

Evidence admissibility determination by judges. Generally the situation from this point of view is a relatively normal one and judges do not refuse to examine evidence in court sessions. Nevertheless, there were cases when judges limited parties' right to

293 European Convention for Human Rights, art.6

294 Until 1992 there were only local first instance judges in the region. Thus, having no necessary experience and preparation, the persons loyal to the separatist regime had become judges of higher courts in Tiraspol, of the type «Supreme Court of Justice of Transnistria».

produce evidence. Such were the cases of certain files, to which the state, or a public authority, was a party. A relevant case is that of citizens I.M.,²⁹⁵ charged by traffic police officers with committing an administrative offense. All prosecution evidences that were collected during judicial inquiries as a matter of fact, i.e. long after the elaboration of the statement of the case and of the sanction decision, consisted of police officers' statements. The proof of witness (of the wife and another persons, who was in the car at moment of the alleged incident) were ignored by the court for the reason that «one witness was a relative and the second – a subordinate» and their testimonies were qualified as subjective. In such a way, the court admitted the statements of police officers placed in direct subordination as evidence for substantiating a report that violated legal procedures, on one hand, and did not admit as evidence the testimonies of eye witnesses, on the other hand. What is important is that such cases are not single, and suspected persons become victims of long-lasting legal and bureaucratic «procedures», regardless of the final decision of the court.²⁹⁶ This phenomenon has a hidden purpose – it is meant to favor corruption. Thus, persons detained by the traffic police, legally or illegally, usually prefer to «solve» any upcoming problem immediately.²⁹⁷

The failure of crime investigation authorities to comply with the presumption of innocence. We have already mentioned before that the publication of more cases of corruption, abuse of power, torture inflicted on state representatives, etc. on Prosecutor's Office website is more than welcome, because this would increase the transparency of law enforcement community activities. Thus, we believe one single condition to be imperiously necessary: press statements or communications must observe the principle of presumption of innocence. Take for instance the case of policeman N. that was published General Prosecutor's Office webpage, in which the name of the accused officer was made public. We believe that the publication of names is unnecessary at this step of legal proceedings; otherwise it comes in conflict with the principles of presumption of innocence. In our opinion, the authorities can use abridgments in such cases.²⁹⁸ Thus, they shall describe the case and its essence, which is certainly necessary, and keep the identity of the suspected secret until a definitive court ruling. We believe that a similar attitude should be also adopted by criminal prosecution authorities in making public the identity of offenders, because the mass-media, especially TV broadcasters, often transmit images that reveal the identity of the person who is merely suspected or charged with committing an offense.

Judges' responsibility regarding the enforcement of actions. Here we would like to point out a widespread violation committed during the investigation of civil actions. We refer in the first place to the procedure of court investigation of applications that

295 Cases from the practice of Promo-Lex

296 I.M. was deprived of his right to drive for a period of 1 year. Even though a definitive decision has not yet been adopted, I.M. cannot exercise this right for 6 months already.

297 The report elaboration procedure and method used by the traffic police is a proof of this affirmation. «Contravened» persons are sometimes asked to get into the vehicle of the Traffic Police, where police officers draw up a report. Thus, the elementary principle of publicity is infringed, which only contributes to increasing the corruption phenomenon among Traffic Police employees. In line with art.236 of the CCA of the Republic of Moldova, the publicity of cases of administrative contraventions plays an educative and preventive role. However, all of those are in fact reduced to nothing because the «contravened» is invited to a solitary place (the Traffic Police vehicle), where the officers explain the case examination procedure, which usually takes some time. Accordingly, the latter is being encouraged to opt for illegal ways as an «immediate» solution of the case.

298 For instance, I.P. stands for Ion Petrescu

refer to solving the problem of securing an action. This is the case of citizen C.S.²⁹⁹, who requested in his court appearance application the suspension of the decision appealed by him. After numerous oral petitions made by him during court sessions, the court examined this head of application and decided to suspend the execution of the contested decision only after 6 months from the start of the process. We have to note that according to provisions of article 177 of the Criminal Procedure Code this petition should have been solved on the day when the court appearance application was filed, i.e. 6 months earlier. Even though this case had no financial effects related to the late investigation of the case, in other cases the failure to examine the application of securing the action within the term established by law lead to the impossibility to execute the court decision.

The situation regarding the execution of court decisions in the region is still very difficult. If on the right bank of Nistru river constitutional authorities were forced to promote reforms for increasing the efficiency of the system after the numerous condemnations with the ECtHR for the failure to execute definitive rulings, then the situation in the Eastern region of the country is practically unchanged. Even though one of the parties wins the case in local courts, most of such decisions are not executed. Noone is responsible for this situation and they take certain measures meant to annihilate the effects of a ruling.³⁰⁰

Following the reasonable case investigation time is still a severe problem for the judiciary in Moldova. Obviously the notion of «reasonable time» is a complex one and depends on numerous aspects and circumstances required for the objective investigation of a case. This prerogative lays exclusively in the competence of the judge and it is very hard to appreciate whether the time is reasonable or not. However, in our opinion most complaints filed by the parties are substantiated because the case investigation period is often exaggerated. In this sense, take for instance the case of T.P.,³⁰¹ in which a labor dispute was investigated during 4 years, while the legislation provides for a term of 30 days maximum for the examination of such cases. This case is certainly not a single one and, hence, we can allege that if the time limit is exceeded so obviously in strictly regulated situations then things are even worse in cases when the investigation term lays at the discretion of the judge. Their only excuse can be the large number of pending cases. Nevertheless we believe that this is not a plausible reason for state authorities, who have the obligation of securing the normal functioning of the judiciary, including by increasing the number of judges, etc.

If the issue related to the reasonable case investigation time is a very serious one for the national judiciary, even when judges are acquainted with the application standards of European norms, then it is fairly easy to imagine the real situation of the «Transnistrian

299 Case from the practice of Promo-Lex

300 «... Reinstated by the Slobozia court, which also constrained the company to pay in her favor an amount of 3000 roubles as compensation for moral damages. The director reinstated Ms. Goncear T.M. back to her position and awarded her immediately an unpaid leave. The company is not in a hurry to pay the compensation either. It hopes that the Slobozia court decision will be annulled by the Superior Court of Transnistria, which it filed an application with. Grigoriovici G.G.'s barber was dismissed «for the same reason» «on his own initiative»...» www.cip.nm.ru

301 Case from the practice of Promo-Lex

judiciary».³⁰² Since they lack any sense of responsibility, are under the protection of the regime and hide behind the political status of the region,³⁰³ anyway judges try to avoid complex cases.³⁰⁴ Thus, «complicated» cases are usually passed from a judge to another or from one «court» to another.³⁰⁵

The failure to investigate criminal cases in a reasonable time obviously affects most the rights of detainees. Thus, numerous cases were registered in which suspected persons were being detained for approx. 5 years, during which their cases were being investigated by the «court».

At the same time, the public nature of court hearings is an elementary condition for securing a fair trial. Based on our experience we can allege that not even the transparency of court sessions is secured in the region.³⁰⁶ Promo-Lex beneficiaries stated that some judges assume an aggressive attitude toward persons situated in the court, prohibits their presence or do not admit the participation of NGO representatives for securing human rights.

Court independence and impartiality in Moldova is the focus of attention of the national and international public opinion. In this sense we have to note that the notion of «instance» is rather relative. Generally the «instance» is the authority entitled to decide a case even when we are not speaking of a court instance.³⁰⁷ Today we find ourselves in an ambiguous situation. According to the Decision of the ECtHR on the case of *Zilberberg vs Moldova*, the Supreme Court held that the administrative charges brought against the applicant «determine in a cumulative manner the criminal nature of «charges» brought against the plaintiff». In such an order of ideas and based on the case law, we can conclude that a large share of law violations that were sanctioned according to the Code of Administrative Contraventions (CAC) are of criminal nature. Thus, the investigation of numerous administrative contraventions was necessary according to criminal procedural legislation. Meanwhile, there are situations³⁰⁸ when administrative cases are handled by various structures or committees other than courts. Moreover, when the decision is adopted by higher-ranking officials or colleagues of those, who drew up the accusatory documents, the result of the investigations and the decision is naturally predictable. Based on the experience of our legal experts, we

302 «The non-recognition of the republic is hardening and even excluding the use of international remedies. In other words, verdicts brought by Transnistrian judges are rather difficult to be contested in an international court. International court decisions are also practically impossible to be applied on the territory of Transnistria. Such actions are set forth in international agreements, which cannot and don't have a non-recognized state as a signing party». www.cjp.nm.ru, the material - «Ваша честь» (Без чести) («Your honour» (without honour))

303 A judge from Transnistria stated the following to a Promo Lex beneficiary: «noone shall ever be able to make us answerable for our acts, because we are an inexistent state that awaits for international recognition. Anyhow, we are the law on this territory, whether you like it or not. You either have to conform or leave this region. You have no other option». The judge made allusion to the case of *Ilaşcu and Others vs Russia and Moldova*

304 «None of the verdicts brought on cases with my participation was based on the law. Not even one! I have already addressed all possible instances to prove it. And it seems that I was not the only one to do this. But the only answer I received was an unbreakable all-round defense» www.cjp.nm.ru, the material - «Ваша честь» (Без чести) («Your honour» (without honour))

305 *Ibidem*, the case of V.K. (84-year-old pensioner and invalid), investigated 5 times in first instance and 5 times in the «Supreme Court» during 6 years

306 For instance the case of Maxim Belinski, described in chapter 1.5 Right to free movement herein

307 For instance, we can refer to the investigation of administrative cases by habilitated structures other than the judiciary

308 For instance, administrative contraventions related to the violation of the Highway Regulations are investigated by an alleged Administrative Committee, composed of colleagues or superiors of officers who drew up the reports.

believe that such committees cannot be independent and impartial, and the investigation of such causes must be done exclusively by courts.

At the same time, Transnistrian «courts» continue to operate outside the national legal framework. In our opinion we cannot speak of the independence and impartiality of judges performing in such «courts». This fact has been confirmed in numerous cases communicated by the local opposition press, as well as by situations revealed by locals to Promo-Lex legal experts during the assistance offered in year 2006.

We first have to note that the system called «telephone right» is functioning perfectly in the region. Officers have a direct and indirect influence on «court rulings».³⁰⁹ Meanwhile, the population has a negative attitude toward certain courts, which has been proved by the increasing number of persons who file complaints against «court» actions and judges' behavior.

The right to effective recourse is a right with few violations in a democratic state. Because of all problems related to the situation of the Transnistrian region, Promo-Lex registers more and more cases of ignorance of this right by country's citizens and local inhabitants. We believe that most locals are deprived of this fundamental right because the rejection of their complaints and applications filed with constitutional authorities has become a real phenomenon. When Moldovan citizens, inhabitants of the Transnistrian region, address themselves with various problems of legal nature in view of protecting their constitutional rights and interests they usually get one single answer: «the law enforcement authorities do not hold control over the Eastern territory; accordingly, public law enforcement authorities cannot interfere». This category of people cannot therefore benefit from fundamental legal remedies secured to all country citizens and are deprived of the opportunity to protect their rights. We believe that the Government should elaborate a very clear policy regarding state's implication in the promotion and security of human rights in this region and provide for an efficient way to secure such rights.

In our opinion the lack of effective recourse for local inhabitants is the main negative factor. Every time when human rights are violated in this region, victims do not have the full opportunity to make use of an efficient recourse. Constitutional authorities deny any positive obligation of securing the rights in the region, and local separatist authorities are not legally constituted and are, therefore, far from being impartial and having an adequate professional competence.

At the same time, the circumstances of the social, political and legal environment from the region motivates its inhabitants to conform to the existing situation. Thus, when the vehicle of citizen Z. was hijacked, he naturally addressed to the «law enforcement authorities» (local militia), who «recommended» the victim to pay the amount of 1000 USD to the hijackers in order to see his vehicle returned. The offense was not even

309 As consequence of some interventions and pressures from the part of dignitary Y., the judges issued numerous contradictory and obviously illegal decisions. Case brought to Promo Lex's notice by X, the relative of a deceased victim.

registered. More and more cases of domestic burglaries and robberies are also registered, especially when house owners are missing or work abroad. In most of such cases law enforcement agents do not even react.³¹⁰

Right to inquiry in cases of torture. We have previously cited the case of use of degrading treatment against «Hyde Park» association members.³¹¹ Speaking of the inquiry of this case, we believe that the «pre-inquiry» phase applied by the prosecution cannot be regarded as an effective inquiry. The efficiency of prejudicial procedures for verifying the presence of an offense is very low, because only few of the persons involved can participate in a hearing. We cannot speak of the objectivity of case investigation by an institution (Buiuani Prosecutor's Office, Chisinau municipality, in this case) if one of its employees is directly involved in the case. Moreover, if the prejudicial phase is inefficient and the legality of competent structures' actions is unilaterally examined by the instruction judge without hearing witnesses' testimonials and by simply verifying the actions of the criminal investigation authority. In our opinion, a criminal investigation is necessary each time when the complaint includes all constitutive signs of an offense. At the same time, the culpability can be determined or the criminal case closed (ceased) only after the performance of a complete and objective inquiry.

Cases of use of torture against detainees or fixed-term militarymen from the Transnistrian region are not very accessible to the public opinion. Separatist «authorities» usually take efficient measures for preventing such situations from being made public. The cases investigated by Promo-Lex legal experts and presented in this Report prove that the use of torture is often left without examination and investigation. Here we would like to remark a situation that occurred in the Transnistrian «army». One of the recruits was forced to wear boots of a smaller size, because of which in a while he became disabled. We believe that this case can be qualified as a case of torture; as to the testimonies of the relatives of the victim, the «authorities» did not investigate the case and did not apply any sanctions upon the persons responsible for it.

310 Cases communicated to Promo-Lex

311 Detained in inhuman conditions within the penitentiary for over 40 hours, deprived of food, water and minimal personal hygiene conditions.

CASES AGAINST MOLDOVA AT THE ECTHR, DECISIONS ISSUED IN 2006

The European Court of Human Rights delivered 18 judgments in 2006 and held that Moldovan authorities had infringed certain rights guaranteed by the European Convention. Despite the fact that Moldova had previously been made responsible for violating human rights and was bound to pay the amount of 311368 Euro only in year 2006 (for material and moral damage, costs and expenses), the situation did not register any remarkable positive evolution in view of liquidating the legal gaps and problems that lead to frequent and obvious violations of human rights.

Find below European Court rulings in cases, in which the court examined the merits of case.

1. 14.02.2006 – the **DEMOCRATE POPULAR CHRISTIAN PARTY vs MOLDOVA** (application no.28793/02). In 2002 the Ministry of Justice suspended DPCP's activity for a period of time as consequence of the peaceful meetings held between 18.01.2002 - 08.02.2002, which involved minors as well. Chisinau Mayor's Office did not authorize such meetings. The Court held that article 11 of the Convention (freedom of assembly) had been infringed, because the suspension of DPCP's activity was irrelevant. The Court did not consider necessary to examine the alleged violation of article 10 (right to free expression) in a separate hearing since it ruled in case of article 11 of the Convention and decided the payment of a recompense in the amount of 4000 Euro for costs and expenses.

2. 21.03.2006 - **JOSAN vs MOLDOVA** (nr.37431/02). In 2001 Mrs. Josan received a positive court decision, which constrained the Local Council of Hagimus settlement, Causeni district, to pay a compensation amounting to 155.868 lei for demolishing a property. The decision turned definitive by the decision of the Court of Appeal of 11.07.2002. The General Prosecutor filed a recourse action of annulment of the definitive decision. The Supreme Court of Justice, however, repealed the decision and remitted the cause for reexamination. The ECtHR held that article 6 paragraph 1 (security of legal relations) and article 1 of Protocol no.1 (protection of property) had been infringed and decided for the payment of material damage amounting to 16,000 Euro, moral damage of 2.000 Euro and 1.250 Euro for costs and expenses.

3. 21.03.2006 - **LUPACESCU and OTHERS vs MOLDOVA** (nr.3417/02 etc.). 8 persons complained of the impossibility to execute certain court decisions pronounced in 2001 against state authorities. The Court held that article 6 paragraph 1 (reasonable

time) and article 1 of Protocol no.1 (protection of property) had been infringed, implying the failure to execute 15 executory court decisions regarding the payment of certain amounts of money by state authorities. The Court ordered the payment of material damage in the amount of 2,188.64 Euro, moral damage - 9,000 Euro and 1,500 Euro for costs and expenses.

4. 04.04.2006 - CORSACOV vs MOLDOVA (nr.18944/02). În 1998, at the age of 17 the applicant was arrested being charged with robbery. He complained of the fact that police officers treated him with hostility and violence. Such actions continued in the police department and were meant to determine him to confess. The medical examination proved that the applicant suffered several blows. Applicant's mother filed a complaint against the abuses committed by the police officers. Subsequently, the applicant was repeatedly hospitalized with a sudden diagnosis of deafness of perception. Until 2002 the criminal investigation of police officers was repeatedly ceased. When the ECtHR qualified the application as admissible, on 7.11.2005 the General Prosecutor decided the reinitiation of the criminal procedure against the applicant. The ECtHR recognized that article 3 (prohibition of torture) was infringed by the ill-treatment of a minor by the police (applicant's lengthy hospitalization, partial loss of the hearing capacity and 2nd degree of invalidity are qualified as torture); article 3 (investigation of complaints of ill-treatment) was infringed – the complaint of ill-treatment was examined during more than 3 years; article 13 (right to effective recourse) combined with article 3 were infringed – the persons responsible for subjecting the applicants to torture were never identified, and according to the Civil Code the applicant can demand compensations only for illegal actions. The Court ordered the payment of 20.000 Euro for moral damages and 1.000 Euro for costs and expenses.

5. 25.04.2006 - MACOVEI and OTHERS vs MOLDOVA (nr.19253/03 etc.). 6 applicants received a definitive decision in 2001 and 2002, which constrained the ASITO company to pay the pensions fixed by certain agreements signed by the applicants. The General Prosecutor filed a demarch in the interests of the law with the Supreme Court of Justice that admitted the recourse in favor of ASITO. Having examined the case the Court held that article 6 paragraph 1 (security of legal relations) and article 1 of Protocol no.1 to the Convention (protection of property) had been infringed – the lack of effects of the irrevocable court decisions that constrained the ASITO company to execute the insurance agreements, by further upholding ASITO's application of dissolution of such agreements for hardship reasons as a result of the decision of the Supreme Court of Justice on General Prosecutor's demarch in the interests of the law. The Court ordered the payment of material damage in the amount of 6,896 Euro, moral damage - 12.000 Euro and 2.463 Euro for costs and expenses.

6. 09.05.2006 - LUNGU vs MOLDOVA (nr.3021/02). In 1997 the applicant – a former officer of the Ministry of Internal Affairs, together with other fellow colleagues filed a court appearance application regarding the payment of alimony. On 18.08.1997 the Chisinau Tribunal ordered the payment of a compensation amounting to 1.407 lei. The decision turned irrevocable by lack of appeal and remained unexecuted until 2003 because of insufficiency of funds. The Court held that article 6 paragraph 1 (reason-

able time) and article 1 of Protocol no.1 to the Convention (protection of property) had been infringed – failure to execute a court decision within several years, and ordered for the payment of material damage in the amount of 98 Euro, moral damage of 1,000 Euro and 300 Euro for costs and expenses.

7. 13.06.2006 - ISTRATE vs MOLDOVA (nr.53773/00). In 1998 the applicant filed a court appearance application against a third person regarding the payment of compensation for the failure to execute an agreement. On 21.07.1998 the court ordered the payment of an amount of 1,500 lei in favor of the applicant. When the decision came into force on 5.08.1998 the applicant requested its execution. On a specific date in year 2000 the decision was partially executed, so that the applicant received the amount of 500 lei. In its preliminary notes, the Government stated that when the case was communicated the Chisinau Tribunal examined the appeal filed by the third person on 10.12.1998 and repealed the irrevocable decision of 21.07.1998. The Government also declared that on 27.11.1998 the third person was notified of the decision of 21.07.1998.

The Court considered that the file included an appeal signed by the third person dated the 10.12.1998, which included 2 stamps – one of unknown origin affixed on 10.12.1998, but without a number, and the second one belonging to the Court and being dated the 15.05.2002, registration number 2304. The file does not refer to the causes of non-examination during this period of time. On 11.07.2002 the Chisinau Tribunal examined third person's appeal in the absence of the applicant and repealed the decision of 21.07.1998, having subsequently remitted the case for reexamination. On 27.12.2002 the court removed the case from the list of pending actions because of applicant's absence from the court session. Having examined the case, the Court held that article 6 paragraph 1 (reasonable time and security of legal relations) and article 1 of Protocol no.1 (protection of property) had been infringed – failure of state institutions to comply with their obligation of executing an irrevocable decision; the repeal of an executory court decision pronounced in favor of the applicant by admitting an appeal after over 3 years from the said decision, when its non-execution was contested before the Court and when the application was communicated to the Government. The Court ordered the payment of material damage - 258 Euro, moral damage - 1.500 Euro and 100 Euro for costs and expenses.

8. 11.07.2006 - BOICENCO vs MOLDOVA (nr.41088/05) – violation of article 3 (prohibition of torture) – applicant's ill-treatment by employees of the Center for Combating Economic Crimes and Corruption; violation of article 3 (lack of medical assistance) – during the entire period of detention (more than 3 months) the applicant had never received the necessary medical assistance, which was in a stuporous state; violation of article 3 (investigation of complaints of ill-treatment) – the same prosecutor, who documented the criminal case against the applicant, rejected the complaints of latter's ill-treatment without having previously carried out an inquiry; violation of article 5 paragraph 1 (legality of detention under arrest) – applicant's deprivation of liberty between 23.07.2005 – 23.12.2005 without a legal warrant when the criminal case was addressed to the court for examination; violation of article 5 paragraph 3 (guaran-

tees within liberty deprivation procedures) – substantiation of decisions regarding the issue and extension of a warrant and decisions of rejecting the defense recourses against such decisions by reproducing the relevant legal grounds, by failing to explain how they shall be applied in applicant's case and without arguing the arguments cited by the defense; violation of article 5 paragraph 3 (presumption of liberty) – due to the gravity of charges, provisions of article 191 of the Criminal Procedural Code set forth applicant's detention; violation of article 34 (right to file an application with the Court) – authorities' refusal to grant access to the applicant and his medical record to latter's lawyers, preventing them from producing to the Court their claims for material damage. The Court decided to examine the issue regarding the payment of material damage in a separate hearing, and ordered the payment of moral damage - 40,000 Euro and 6,823 Euro for costs and expenses.

9. 11.07.2006 - GUROV vs MOLDOVA (nr.36455/02). By the decision of the Court of Riscani sector, Chisinau municipality, of 5.10.2001 the applicant won the case in an action filed against ASITO company meant to constrain the latter for accomplishing its contractual obligations of paying a pension. The company appealed the decision of the ordinary court; the appeal was rejected by the decision of the Chisinau Tribunal of 27.02.2002. ASITO filed a recourse action. Meanwhile, at an uncertain date General Prosecutor's Office filed a demarch in the interests of the law with the Supreme Court of Justice regarding the dispute between ASITO and the persons who were parties to such agreements. On 11.03.2002 the Supreme Court of Justice decided in favor of the insurance company. On 16.04.2002 a composition of the Court of Appeal, including judges V.D. (court president), T.D. and V.B., repealed the decision of 5.10.2001 and the decision of 27.02.2002, and decided in favor of the insurance company. When the applicant was notified of such decision he learned that the mandate of judge V.D., court president, had expired in 2000, and the said person had been ousted from office in July 2002.³¹² The Court held that article 6 paragraph 1 (right to instance instated by law) had been infringed – repeal in recourse of a court ruling in favor of the applicant by a chamber led by a judge with an expired mandate. The Court collected 1,200 Euro for costs and expenses.

10.08.08.2006 - ERMICEV vs MOLDOVA (nr.42288/02). On 11.06.2001 the Court of Centru sector, Chisinau municipality, decided in favor of the applicant in an action against a third person regarding latter's eviction from the apartment that he had sold and rejected third person's application of qualifying as null the sale-purchase agreement. The decision of the ordinary court was supported by the decision of the Tribunal of 17.10.2001 and by the decision of the Court of Appeal of 7.02.2002. The decision had, therefore, turned irrevocable. The third person filed numerous complaints and demarches with state institutions (the President, Parliament, Government etc.). On 22.04.2002 Mr. V. Mişin, vice-president of the Parliament, requested the General Prosecutor to reopen the case in the Superior Court of Justice. On 5.05.2002 the General Prosecutor filed an application of recourse for annulling all aforesaid decision. On 10.07.2002 the Supreme Court upheld General Prosecutor's recourse and remitted

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the actions for reexamination. On 4.12.2002 the Centru Court upheld and reconventional application of the third person and declared the sale agreement as null, having rejected applicant's application of eviction. The said decision was supported by a decision of the Tribunal of 12.02.2003 and a decision of the Court of Appeal of 8.05.2003. The Court held that article 6 paragraph 1 (security of legal relations) and article 1 of Protocol no.1 (protection of property) had been infringed – the repeal of an irrevocable court decision. The Court ordered the payment of material damage - 31,465 Euro, moral damage - 2,000 Euro and 300 Euro for costs and expenses.

11.10.10.2006 - LOZAN and OTHERS vs MOLDOVA (nr.20567/02). The applicants, who are former employees of the Academy of Science of Moldova, resided in a hostel during their studies for a Doctor's degree (1990-1997). On 16.05.1996 by a decision of the Chisinau Municipal Council the status of the hostel changed, and it became a dwelling house. The Academy of Science refused to issue repartition orders and draw up lease agreements. The applicants filed an action against the Academy of Science in view of establishing their status of tenants. The applicants continued to reside in apartments. By a decision of the Court of Centru sector of 4.11.1999 the Academy was constrained to establish lease relations with the applicants. On 31.01.2000 the Chisinau Tribunal decided to uphold the appeal filed by the Academy of Science; consequently, the decision of 4.11.1999 was repealed and applicants' action was rejected. On 6.06.2000 the Court of Appeal rejected applicants' recourse. Following applicants' application, on 18.08.2000 the General Prosecutor filed a recourse of annulment with the Supreme Court of Justice, which upheld it on 25.10.2000 and repealed the decision of Chisinau Tribunal and the decision of the Court of Appeal. Consequently, the Academy of Science was constrained to issue a repartition order to the applicants. Subsequently, following a demarch of the Academy of Science, the General Prosecutor filed a recourse of annulment of the decision of 25.10.2000 with the Supreme Court of Justice. On 25.06.2001 the chamber of the Supreme Court rejected General Prosecutor's recourse. Starting from January 2001 the applicants filed an application with the officer of justice for enforcing the court decision, which was executed only on 4.12.2003, when the application filed with the Court was communicated. The Court held that article 6 paragraph 1 (reasonable time) and article 1 of Protocol no.1 to the Convention (protection of property) had been infringed – the failure of the Academy of Science of Moldova to execute an irrevocable court decision for more than 3 years. The Court ordered the payment of moral damage - 1,500 Euro and 500 Euro for costs and expenses.

12.31.10.2006 - DRAGUTA vs MOLDOVA (nr.75975/01). By a decision of 10.10.1995 the CMC was constrained to improve the conditions of life of the 5 members of applicant's family as consequence of the destruction of their real estate because of an accident. On 21.10.1995 the applicant requested the officer of justice to enforce the execution of the said decision. Since the CMC refused to execute the decision, the applicant requested the court to change the execution manner by ordering the payment of an amount equivalent to the value of the apartment. Based on a decision of 29.09.1998 the Chisinau Tribunal held that the CMC should pay in favor of the applicant an amount of 146.440 lei, i.e. the market value of the apartment. On 27.10.1998

the decision turned irrevocable. The applicant filed an application of execution with the officer of justice; however, because of the lack of financial funds, the decision was executed only on 11 January 2002. The Court held that article 6 paragraph 1 (reasonable time) and article 1 of Protocol no.1 to the Convention (protection of property) had been infringed – CMC’s failure to execute 2 executory court decisions during 4 years and 3 months. The Court ordered the payment of material damage in the amount of 10.724 Euro and of 3.000 Euro as moral damage.

13.07.11.2006 - HOLOMIOV vs MOLDOVA (nr.30649/05).³¹³ Starting from 26.01.2002 the applicant found himself under police custody, being charged with committing a criminal offense. Since the applicant suffered from a renal impairment, he complained that he did not receive the necessary assistance during his detention. The Court held that article 3 (prohibition of torture) was infringed, because of the failure to provide the necessary medical assistance to a detained person, who suffered from a renal impairment. The Court held that article 5 paragraph 1 (legality of detention under arrest) was also infringed - applicant’s deprivation of liberty for more than 3 years without the existence of a legal warrant; that article 6 paragraph 1 (reasonable time) was infringed – investigation in one instance of the charges brought against a severely ill culprit for more than 4 years, with extremely long intervals between court sessions. The Court ordered the payment of 25.000 Euro of moral damages in favor of the applicant, as well as the payment of 800 Euro for costs and expenses.

14.14.11.2006 - BRAGA vs MOLDOVA (nr.74154/01). By a decision of the Court of Appeal of 21.11.2000 the applicant received a compensation for moral damage in the amount of 20,000 lei and 951 lei for material damage, as consequence of illegal institution of criminal proceedings against him. On 18.01.2001 the General Prosecutor filed a recourse of annulment for the decrease of the amount of moral damages. On 21.02.2001 the Supreme Court of Justice upheld the recourse of annulment and reduced the amount of damages to 2.000 lei. The decision was executed in August 2002. The Court held that article 6 paragraph 1 (security of legal relations) had been infringed by reducing the amount of damages from 20.000 to 2.000 lei together with upholding the recourse of annulment. The Court ordered the payment of material damages in the amount of 1.767 Euro, moral damages of 2,000 Euro and 600 Euro for costs and expenses.

15.4.11.2006 - MELNIC vs MOLDOVA (nr.6923/03). By a decision of 2.03.1999 the applicant was entitled to receive an amount of 345491 lei at the expense of the Ministry of Finance as a result of the decease of her husband, a former judge. The said decision was upheld by the decision of the Chisinau Tribunal of 11.05.1999 and a decision of the Court of Appeal of 17.08.1999. On 13.01.2000 the Ministry paid the compensation. The late execution of the decision determined the applicant to request the payment of the inflation rate, which was rejected by the Ministry. The applicant filed a court appearance application regarding the payment of the inflation rate. On 14.09.2001 the Ministry was constrained by the court to pay an inflation rate amounting to 244.953 lei. On

313 The case was represented in the ECtHR by a Promo-Lex legal expert

5.02.2002 the Tribunal upheld the decision contested by the Ministry of Finance. Since the Ministry did not file a recourse application within 15 days, the decision turned irrevocable. On 8.04.2002, 47 days after the expiry of the legal term of filing a recourse, the Ministry filed a recourse and requested the repositioning of the application with the legal term without any legal grounds. On 9.07.2002 the Court of Appeal upheld Ministry's recourse and reduced the amount of damages to 118.848 lei. The Court of Appeal did not substantiate its actions in any way. The ECtHR held that article 6 paragraph 1 (security of legal relations) was infringed, because of the fact that in a damage recuperation case the court upheld a recourse filed with delay (of 47 days), without ever answering to applicant's objection regarding the late recourse. The Court collected an amount of 21.007 Euro as material damage and 2.000 Euro as moral damage.

16. 12.12.2006 - NISTAS GMBH vs MOLDOVA (30303/03). The Court held that article 6 paragraph 1 (security of legal relations) and article 1 of Protocol no.1 (protection of property) had been infringed, as consequence of the upholding of 2 recourses of annulment, which led to the decrease of applicant's amounts receivable based on 2 irrevocable court decisions, and because of the partial rejection of applicant's petition for the collection in his favor of the state duty paid by him for the investigation of actions in court (the total amount of damage on the date of the said decisions constituted 63.045 USD). The Court ordered the payment of material damages in the amount of 60.597 Euro, moral damages of 2.000 Euro and 2.400 Euro for costs and expenses.³¹⁴

17. 19.12.2006 - MOISEI vs MOLDOVA (nr.14914/03). The court held that article 6 paragraph 1 (reasonable time) and article 1 of Protocol no.1 (protection of property) was infringed, because of the failure to execute an executory court decision regarding the payment of 7.696,23 lei by the Ministry of Finance during 22 months; that article 13 (right to effective recourse), together with article 6 and article 1 of Protocol no. 1 were also infringed, because of the lack of legal remedies for the applicant to oppose to the non-execution of the irrevocable court decision and to receive compensations for such non-execution. The Court ordered the payment of material damages in the amount of 192 Euro, moral damages of 500 Euro and 600 Euro for costs and expenses.

18. 19.12.2006 - OFERTA PLUS SRL vs MOLDOVA (nr.14385/04). The Court held that article 6 paragraph 1 (reasonable time and security of legal relations) and article 1 of Protocol no.1 (protection of property) were infringed, because of the non-execution within at least 38 months of an executory court decision regarding the payment of 20.000.000 lei by the Ministry of Finance and the repeal by review of a court decision in favor of the applicant by the Chamber of the Supreme Court of Justice by an «abusive» decision when the Government learned that the application of non-execution was filed with the ECtHR. The Court also held that article 34 (right to file an application with the Court) was infringed as well – initiation of criminal proceedings against applicant's director based on circumstances that come in conflict with irrevocable court decisions taken in a civil case, in order to discourage him in maintaining his application filed with the Court; the refusal to allow applicant's lawyer in Court to talk to the director of applicant's company in the pre-trial detention center of the Center for Comba-

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ting Economic Crimes and Corruption except through a glass (this is a strong motive to believe that such visits are not confidential). The collection of damages was left to be discussed in a separate court hearing.³¹⁵

As we noted most decisions pronounced by the ECtHR against Moldova in 2006 refer to such problems, as securing a fair trial, protection of property, prohibition of torture and right to effective recourse. These facts come to confirm the real situation that is described and analyzed in this Report. At the same time, in our opinion the number of convictions of the ECtHR against Moldova shall further continue to increase. The cause for these convictions lays in the indifferent, often incompetent, attitude of public officers and authorities' inaction toward these phenomena.

Under such circumstances, we hope that the issues that are brought up in this document and our recommendations shall only serve for motivating the authorities toward ceasing the negative phenomena that exist in the society and stimulating them to take all necessary measures for redressing this situation.

We have to note that Moldova has also failed to execute some decisions of the ECtHR, which contributes to creating a poor image of our state both inside and outside the country. The Committee of Ministers of the Council of Europe (CM of the CoE) discussed the problem of non-execution of ECtHR's decisions in the cases of the Metropolitan Church of Bessarabia vs Moldova and Ilascu and Others vs Moldova and Russia. Thus, on 1.03.2006 the CM of the CoE issued an interim Resolution of execution of the decision of the European Court of Human Rights in the case of Ilascu and Others vs Moldova and Russia (8.07.2004), in which the court required the immediate release of the 2 imprisoned applicants.³¹⁶ This action was also repeated in the motions of Resolution of the European Parliament of 14.03.2006³¹⁷ and 15.03.2006.³¹⁸

The situation of the Metropolitan Church of Bessarabia vs Moldova (27.03.2002) is the same. Moldova has not yet made any efforts; namely, it has not introduced any legal amendments in view of conforming them to the provisions of the Convention, as required in the decision.³¹⁹

It is to be said that for the first time in ECtHR's history a decision of the Grand Chamber was not fully executed. The last 2 political prisoners from the «Ilascu group» had not been released until after the expiry of the «detention term», established 15 years ago by an «illegal court». In our opinion, the two Governments convicted by the ECtHR in 2004 – that of Russia and that of Moldova – are to be held totally responsible for such actions. European institutions must condemn such an attitude assumed by the contracting states in order to prevent the occurrence of such situations in the future.

Promo-Lex experts represent numerous victims of the Tiraspol regime in the ECtHR and hope that the failure to execute the court decision in the case of Ilascu and Others vs Russia and Moldova shall not affect in any way ECtHR's decisions on such cases in the future.

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316 In 2006 Moldova and Russia were only compensating the damages <http://politicom.moldova.org/stiri/eng/10221/>

317 www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B6-2006-0178&language=EN#def1

318 www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P6-RC-2006-0168&language=EN

319 Interim resolution of the CM of CoE of 28.03.2006 [https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH\(2006\)12&Language=lanEnglish](https://wcd.coe.int/ViewDoc.jsp?Ref=ResDH(2006)12&Language=lanEnglish)

CONCLUSION

We would have to mention from the very start that the phenomenon of legal illiteracy in Moldova did not register any positive evolution in year 2006, and the situation regarding the information, promotion and defense of human rights in Moldova is practically unchanged. We can note that the same phenomena affect, more or less, all fundamental human rights and liberties.

Thus, even though in its previous report Promo-Lex Association qualified the phenomenon of corruption as a very important issue for human rights situation in Moldova, a year from that moment we are sorry to remark that things have not changed in this direction as well.

In 2006, beside the legal illiteracy and phenomenon of corruption, at the end of a complete study based on situations and cases investigated by Promo-Lex legal experts and specialists, we can also note the following negative aspects, which, in our opinion, contribute to the aggravation of the situation and represent a severe prejudice to the democratization process of the society and of the Moldovan state. They are as follows:

The lack of certain policies, strategies and concepts for various categories of people and fields; the lack of an efficient cooperation between the authorities and active non-governmental organizations (this process is often being merely mimed); insufficient financing and technical and material maintenance, the lack of adequate conditions and access of NGOs to penitentiaries, as well as the lack of detainee rehabilitation conditions; defective management (the lack of professional staff, especially in rural areas) and the mentality of decision factors; the situation of the judiciary; the lack of certain programs including public debates aiming at informing and educating the people on human rights; the lack of certain social protection instruments oriented toward certain categories of people and insufficient labor remuneration, etc.

Meanwhile, we noted that Transnistrian locals are practically deprived of any real mechanism of protection of their fundamental rights and liberties. Constitutional authorities disclaim any responsibility for the situation created in the territory placed under the control of the secessionist regime from Tiraspol and avoid to make any effort for promoting and protecting human rights in the region. Various structures, entities and institutions from the Russian Federation perform illegal activities in the Transnistrian region. Nevertheless, Russian authorities deny that they hold control of the region and, accordingly, disclaim any responsibility for the numerous cases of violation of human rights. On the other hand, the international community is trying to take part in the political negotiations very smoothly without, however, being very much concerned with the protection and security of fundamental rights and liberties of inhabitants of the Eastern region of Moldova.

Taking into account the cases described hereabove, we would like to point out an aggravation of the situation regarding the right to life, the rights to free movement, the rights of recruits and election rights. The discrimination of the population based on ethnic, linguistic or national criteria became a frequent reality in the region.

We have to take into account that due to the circumstances presented in this document a large share of the approx. 550.000 inhabitants of the Transnistrian region, over 400.000 of which are Moldovan citizens, lost their trust in constitutional authorities of the state, in the capacity and efficiency of national and international mechanisms of human rights protection.

Promo-Lex believes that the efforts of civil society and state institutions must be intensified not only through the involvement of the international community, but also through the elaboration of a complex strategy of human rights security and promotion in the territory placed under the illegal control of the separatist regime from Tiraspol. In this sense, Promo-Lex inaugurated a Resource and Development Center for Transnistria in Dubasari district that is focused on contributing to this process, including by informing and developing the civil society from the region.

In conclusion, we would like to bring a positive light in the report on the situation of human rights in Moldova for year 2006 by appreciating the rapid and qualitative development registered by the civil society from both sides of Nistru river. In 2006 the activity of non-governmental organizations became more active, more professional and consistent, which only revives our hope in a dynamic development of the society and of the country in general.