

# THE AUDIT OF THE DEMOCRATIC SYSTEM OF REPUBLIC OF MOLDOVA

*Anthology of Analysis on Governance*



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**Institute for Development and Social Initiatives (IDIS) “Viitorul”**

# **THE AUDIT OF THE DEMOCRATIC SYSTEM OF REPUBLIC OF MOLDOVA Anthology of Analysis on Governance**

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*IDIS „Viitorul”*

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## PART I

# CITIZENSHIP, LAW AND RIGHTS

## 1. NATIONHOOD AND IDENTITY

*Ion Guzun*

### ***Foreword***

Nationality and identity have always been sensitive topics on the international arena, particularly after the development of the first documents related to them. Even today the states interpret the terms, such as „nation”, „nationality”, „ethnic minority”, „ethnic group” etc. differently in their domestic laws. In fact, the definition of these terms describes the policies adopted by states concerning these issues. Lacking tradition and experience in this area, the Republic of Moldova has easily taken over and passed legal acts according to which all people living on the territory of the Republic of Moldova were considered national minorities<sup>1</sup> and became automatically subjects to protection by specialized international treaties and mechanisms.<sup>2</sup>

The process of borders demarcation between the Republic of Moldova and its two neighboring countries (Romania and Ukraine) has not been finalized yet. No areas or parts of the territory are claimed in principle, but negotiations and the necessary measurements are at their final stage. So far no decision has been made public about some disagreements on the portion of land along the Odessa-Reni highway, based on the bilateral treaty signed earlier by the Government of Greceanii and the representatives of the Ukrainian Government, which agreed on the status of this portion of land and territories adjacent to the Transnistrian region.

### ***1.1 How inclusive is the political nation with regard to the state citizenship of all who live within the territory?***

In the former Soviet republics citizenship became an instrument of political influence. An example of this is how the Russian Federation, but other states as well, tried to use regions with

<sup>1</sup> Art. 1 of the law on the rights of persons belonging to national minorities and the legal status of their organizations - „... persons belonging to national minorities are people domiciled on the territory of the Republic of Moldova, who are its citizens, have ethnical, cultural, linguistic and religious particularities making them distinct from the mainstream population – Moldovans – and are considered of a different ethnic origin.”;

<sup>2</sup> E.g. Framework-Convention on the Protection of National Minorities (STE.157-1995); European Charter for minority languages, UN Charter, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, etc;

an uncertain status to enhance its influence and increase its number of citizens beyond national borders, granting citizenship to all people who had lived in the former USSR and its descendents by a simplified procedure. As a result of these policies, Russia can use the argument of defense of its citizens even in other countries, amending meanwhile its National Security Strategy, according to which the Russian state can intervene anywhere outside its borders if the interests of its citizens are jeopardized.<sup>3</sup>

Granting of the Russian Federation citizenship based on *jus sanguinis* principle to ethnic population living in other countries has become a sensitive issue particularly after the Russian-Georgian war of 08.08.2008.<sup>4</sup> There are over 300,000 people with Russian citizenship living in the Republic of Moldova, particularly in its Transnistrian region. Under the same legal conditions, regaining of Romanian citizenship raises the concern particularly of the Russian Federation and of the separatist authorities of the Transnistrian region.

The citizenship of the Republic of Moldova was granted automatically to all people living on the territory of the former SSRM when it declared its independence. After joining a range of international organizations, the Republic of Moldova has adopted and ratified a number of standard acts according to international instruments.<sup>5</sup> When Moldova declared its independence, its citizens were not allowed to hold the citizenship of another state. However, on June 05, 2003 the Moldovan Parliament amended the Law on Citizenship, providing for the right to multiple citizenship. According to these changes, Moldovan citizens who also hold the citizenship of other states, enjoy the same rights as those with only one citizenship – of the Republic of Moldova, without any exception. Articles 24, 25 and 26 of the Law on citizenship (Law No. 1024-XIV of 02.06.2000) establish and ensure the double and multiple citizenship, ensuring rights and duties equal with those of the Republic of Moldova. Acquiring citizenship of another state by the citizens of the Republic of Moldova does not imply losing Moldovan citizenship<sup>6</sup>.

Safeguarded by the national laws and international treaties ratified by the Republic of Moldova, the right to identity and the right to private and family life have been violated during the standard procedures of making entries in the civil status documents<sup>7</sup>, during the last population census<sup>8</sup>, during application to a public position,<sup>9</sup> etc.

Nevertheless, several legal acts have been amended meanwhile, imposing certain restrictions in applying to some state positions.<sup>10</sup> During that time, some opposition leaders have filed a complaint with the European Court of Human Rights (hereinafter ECHR). Before the Court, the ap-

3 National Security Strategy of the Russian Federation and International Politics of the Kremlin - <http://www.europalibera.org/content/article/1855412.html>;

4 This is what Russia did in the Southern Ossetia and Abkhazia – issued Russian passports and used protection of Russian citizens as an argument for their entry to Georgia;

5 See the full list on <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

6 Except when the legislation of the other states requires giving up the first citizenship in order to be able to acquire its citizenship (e.g. the Russian Federation).

7 ECHR ruling in the case Ciubotaru v. Moldova - <http://lhr.md/news/188.html>

8 The need for a new population census in Moldova - <http://bataiosu.wordpress.com/2010/01/20/necesitatea-unui-nou-recensamant-in-moldova/>

9 European Court of Human Rights hearings on the case Tanase and Chirtoaca v. Moldova - <http://lhr.md/news/151.html> ;

10 Law no. 273 of 07.12.2007 on the amendment and completion of some legal documents - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327797>;

plicants complained with reference to Art. 3 of the Protocol. 1 to the European Convention for the Protection of Rights and Fundamental Freedoms (hereinafter European Convention), that their right to stand for election was violated. According to them, there was no public interest in limiting the access to Parliament of a large number of Moldovan citizens who held the citizenship of other states and at the same time, in restricting the rights of voters to express their views in elections for the legislative body. In any case, according to applicants, the right to adopt such a law on the eve of legislative elections in 2009 was disproportionate and undemocratic. The applicants also complained under Art. 14 of the European Convention combined with art. 3 of the Protocol to the European Convention about being discriminated against compared to Moldovan citizens living in Transnistria.<sup>11</sup>

In its decision, the ECHR noted that the Republic of Moldova was the only European state allowing its citizens to have double or multiple citizenship, but prohibiting such citizens from acceding to the Parliament.<sup>12</sup> The court was surprised that in 2002 and 2003 the Parliament of the Republic of Moldova had adopted legislation allowing Moldovans to hold double citizenship<sup>13</sup> and it seems that the authorities were not concerned then about the loyalty of those opting for double citizenship.

As soon as the new government was established following the early elections of July 29, 2009, the legislation was amended according to the ECHR decision.<sup>14</sup>

## ***1.2 How far are cultural differences acknowledged, and how well are minorities protected?***

The Moldovan society is multicultural and multi-linguistic. These important factors determine the specific features of the interethnic relations and the structure of the relationship between the mainstream population and the national minorities groups, living compactly in the republic of Moldova. According to the last population census of 2004, 76.1 per cent of the total population were Moldovans/Romanians<sup>15</sup> and 21.8 per cent - Ukrainians, Russians, Gagauzians, Bulgarians; 2.1 per cent - Roma.<sup>16</sup>

The situation of national minorities in the Republic of Moldova is characterized by the absence of virulent ethnic conflicts, though at the level of usual contacts, we can sometimes see some fric-

11 ECHR ruling in the case Tanase and Chirtoaca v. Moldova - <http://lhr.md/news/116.html>;

12 European Court of Human Rights hearings on the case Tanase and Chirtoaca v. Moldova - <http://lhr.md/news/151.html>

13 The law on the citizenship of the Republic of Moldova no. 1024 of 02.06.2000 - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311522> ;

14 Law no. 127 of 23.12.2009 on the modification of some legal documents - <http://lex.justice.md/md/333322/>

15 We have intentionally used the terms „Romanians/Moldovans”, taking into account the fundamental human right to identity. On the other hand, it is well-known that there is no Moldovan nation. The real difference between Moldovans and Romanians is the dialect (regionalism) and not the language spoken by the majority of the citizens of the Republic of Moldova and Romania. There are no differences in terms of culture, traditions, thinking, national symbols, literature etc. The name of the state cannot be used as the main argument for the definition of the spoken language or of the nation;

16 The number of Moldovans increased, according to the last census - <http://social.moldova.org/news/numarul-moldovenilor-a-crescut-potrivit-ultimului-recensamant-2723-rom.html>

tions related to expression of different language groups. Nevertheless, the Republic of Moldova protects and explores the ethno-linguistic diversity in an exemplary manner. An evidence of that is the significant number of schools teaching in ethnic minority languages: Ukrainian, Russian, Hebrew, Bulgarian, Gagauz, even though the curricula in these schools are proportionately related to the degree of cultural and ethnic cohesion of these national groups. The Republic of Moldova has provided a quite generous framework for the opening and state support of higher education institutions, encouraging the emergence of the Slavonic, Gagauzian and Bulgarian universities, along with the many public promoted universities that continue the tradition of providing the academic program for the Russian groups too. Thus, it promotes the study of Russian language, disadvantaging the Romanian language.<sup>17</sup>

Creation of adequate conditions for the teaching in national minorities languages was included on the agenda of many discussions held by the CoE, UN and EU concerning the Republic of Moldova. Though no cases of discrimination among ethnic groups have been documented, this phenomenon is recorded on the background of other criteria related to religious freedom, sexual orientation, social status etc., determining the need of adopting a legal framework on non-discrimination and application of the corresponding sanctions to prevent discrimination and violence based on the criteria of race, nationality, ethnic origin, language, religion, sex, opinion, political beliefs, wealth or social origin.

There have been cases of militant and confessional groups radicalism. Written and electronic media devoted generous space to illustrate the actions taken by certain radical groups of Christian Orthodox inspiration, primarily affiliated to the Metropolitan Church of Moldova, canonically subordinated to the Russian Patriarchate, but registered in the Republic of Moldova as the majority religion. It is to be noted that in August 2009 a group of Orthodox Christians led by the priest Cibric, protested vehemently against the decision of the General Mayor of Chisinau to approve a public concert in the capital, organized by parishioners of the Seventh Day Adventist Christian Church.<sup>18</sup> They were the first to condemn the public nature of these events, warning about possible conflicts between Christian-Orthodox and Protestants following a confessional substrate conflict. To avoid possible conflicts, the latter continued their action, though in another location.

An equally serious incident took place in January 2010 when the Jewish symbol – the Hasidic menorah – was installed in the central part of the capital and destroyed by a group of Orthodox parishioners instigated by the above-mentioned priest. Unfortunately, the law enforcement staff did not take any actions that would have stopped the defiant actions of this group; no results of investigations on this case have been made public so far and it is not known if the case was filed with the court.

Some national groups feel the consequences of social and appellative discrimination (consequences of some race-based stereotypes and incriminations). In the Republic of Moldova such

<sup>17</sup> Qualitative study among experts conducted in November 2010 by CBS-AXA, commissioned by IDIS "Viitorul";

<sup>18</sup> <http://adventist.md/> as of 14.09.2010;

groups are primarily related to the Roma ethnic minority,<sup>19</sup> though violent cases of conflicts and repercussions are not as frequent as in some central-European states.

The Roma in Moldova are subject to violence, harassment and discrimination. They face obstacles in enforcing their right to health care, promised employment and are subject to arbitrary arrests.<sup>20</sup> Roma are the poorest minority group, most of them live under anti-sanitarian conditions, and infrastructure in the locations where they compactly live is underdeveloped. Many children in those communities do not go to school, thus many of them do not hold the secondary or high school education degree. The government does not ensure education in Romani language. According to specialized NGOs, 80 per cent of Roma children are illiterate. According to the study „The Roma in the Republic of Moldova”<sup>21</sup>, 43 per cent of Roma children aged between 7 and 15 years do not attend school, compared to 6 per cent of non-Roma children. About 2800 Roma children did not attend school as of March 24, 2009 because of poverty.

The ombudsman urged, among others, the public authorities to combat homophobia, extremism and intolerance towards LGBT community and to ensure the freedom of assembly by the latter<sup>22</sup>, according to the standards applying for the Republic of Moldova as well.<sup>23</sup>

Initial approval by the General Mayor of Chisinau of public actions, later recalled (self-cancelled) has already become a tradition. During the „parade” of May 2008, the public order officers watched distantly the aggressive actions of several hundred of people blocking the way for the participants from GenderDoc-M.<sup>24</sup> The police did not intervene and did not ask for public order reestablishment, though its duty was to act according to provisions of art. 4, 8, 9, 12 and 14 of the Law on police (Law no. 416 of 14.12.1990). Among the participants in the anti-gay protests were representatives of the confessional groups as well.

### ***1.3 How impartial and inclusive are the procedures for amending the constitution?***

When the Constitution of the Republic of Moldova was adopted on July 29, 1994, it was considered that its provisions met the political and social condition of the Republic of Moldova. Enforcement of the democratic principles and ratification of a number of international documents determined the legislator to introduce some later modifications.<sup>25</sup> However, these

19 According to official statistics, the Roma population in Moldova amount to 11,600 people. However, human right organizations estimate that their real number is 250,000 people. NGOs have stated that many Roma are forced to identify themselves as Moldovans;

20 NGO Report. Replies to the List of Issues. (CCPR/C/MDA/Q2) - [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO\\_IDOM\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO_IDOM_Moldova97.pdf);

21 Study „Roma in the Republic of Moldova” , din 2007, [http://www.undp.md/publications/roma\\_per\\_cent20\\_report/UNDP\\_per\\_cent20Romii\\_per\\_cent20in\\_per\\_cent20Republica\\_per\\_cent20Moldova\\_per\\_cent20\(Chisinau\\_per\\_cent202007\).pdf](http://www.undp.md/publications/roma_per_cent20_report/UNDP_per_cent20Romii_per_cent20in_per_cent20Republica_per_cent20Moldova_per_cent20(Chisinau_per_cent202007).pdf)

22 Anatolie Munteanu urges public authorities to fight against homophobia, extremism and intolerance towards LGBT community - <http://www.ombudsman.md/md/news/1211/1/4632/>;

23 CM/Rec(2010)5 Recommendation, adopted on March 31, 2010 by the Committee of Ministers of the Council of Europe;

24 [www.lgbt.md](http://www.lgbt.md);

25 Law no. 1115 of 05.07.00; Law 351 of 12.07.01 and Law 1471 of 21.11.02; Law 344 of 25.07.03;

modifications did not take into account a possible political instability in the country or the possibility that the parties acceding to the Parliament would not be able to accumulate the necessary number of votes to elect the president or to amend the Constitution. Obviously, the supreme law of the state cannot compel the political class reach a political agreement in order to avoid early elections, when the necessary number of votes for the election of the head of the state cannot be obtained.

The amendment of the Constitution can be initiated at the initiative of a group of 200,000 citizens, 1/3 of the Members of Parliament or the Government. The draft amendment of the constitutional law must be accompanied by the Constitutional Court's approval.<sup>26</sup>

The Republic of Moldova has a modest experience in Constitution amendment, and its revision by the referendum of September 5, 2010 proved to be inefficient due to low participation rate - 30.41 per cent. However, the total number of citizens who had voted, over 87 per cent of voters in the Republic of Moldova, called for the direct election of the president. The low rate of participants is due to insufficient information campaign and to citizens' non-involvement in local government, aggravated by certain national issues and the boycott announced by some political parties.

The republican referendum was preceded by the appointing of the presidential commission for the constitutional reform<sup>27</sup> due to the need of overcoming the constitutional crisis, strengthening the statehood of the Republic of Moldova, and increasing the efficiency of the government act by the society and of the functioning of the public institutions, as well as in order to ensure the expression of the general population will by the Supreme law of the state and under art. 94 par. (1) of the Constitution of the Republic of Moldova. The articles of the Constitution subject to amendment were coordinated and discussed with the representative of Venice Commission.<sup>28</sup>

The failure to elect a president by the parliament and to provide this possibility to people has aggravated the political situation in the country resulting in the parliament dissolution and fixing the date of early parliamentary elections for November 28, 2010. Similarly to previous elections, the early election results did not allow the Alliance for European Integration (DP, LP and LDPM) or the opposition (represented by the Communist Party) to gain 61 seats, necessary to elect the president.

Thus, the rules related to the amendment of the Constitution are explicit and exclude any interfering or dualistic interpretations. The fact is that the failure to amend the Constitution goes beyond the normative and legal contents, which means that the decision depends on political forces.

26 Para. (2) art. 144 of the Constitution of the Republic of Moldova;

27 President decree no. 83 of 01.12.2009 - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=332938>;

28 Web page of Venice Commission - [http://www.venice.coe.int/site/main/presentation\\_E.asp](http://www.venice.coe.int/site/main/presentation_E.asp)



## ***1.4 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

-

There is a general consensus between the politicians and the citizens of the Republic of Moldova on the priorities and responses to challenges related to national minorities. There are no active radical political groups and no inter-ethnic conflicts.

Moldovan legislation provides for opportunities for ethnic groups to education, development and access to public positions. At the first glance, the establishment of administrative-territorial units in order to meet the national needs and to preserve the national identity of the Gagauzia people, the prosperity of the national language and culture, seems to be noble and consistent with the national standards. However, there is an apparent contradiction between the *Law on the special status of Gagauzia*<sup>29</sup> and the Constitution<sup>30</sup>, according to which there is only one nation in the Republic of Moldova – the nation of Republic of Moldova. These provisions have not been challenged yet by any subject with the right of referral to the Constitutional Court.

The access to public service for people who do not speak the Romanian language is basically not limited and art. 27 of the Law on civil service and the status of the public servant<sup>31</sup> does not impose *de facto* any sanction for those who do not speak this language.

The Republic of Moldova can be a good example in terms of signing and ratification of international documents, but there are still some drawbacks in implementation and establishment of mechanisms aiming at enforcing the ratified conventions. This is the example of discrimination. There is no doubt that the activities and procedures aiming at Moldova's approximation to the European Union and its institutions will stimulate and will determine the examination and adoption of the relevant law by the parliament within a short timeframe, although the adoption of legal norms that would include non-discrimination segment has been assumed by the Government in the Actions Plan European Union - Republic of Moldova (2005 - 2007).<sup>32</sup> The only legal provisions covering these issues in general terms would follow from the principle of citizens' legality citizens in the rights inserted in several laws.

Harmonization of norms and standards related to national minorities and non-discrimination imposes the need of our state to implement within a short period of time the previous recommendations, but also those assumed voluntarily after getting the status of member of the UN Committee for Human Rights. However, adoption of non-discriminating norms must be preceded by a wide informational campaign, since the Moldovan society and the statements of some politicians<sup>33</sup> are still dominated by stereotypes, and adoption of a new law will not necessarily mean that the goal has been achieved.

29 Law on the special status of Gagauzia - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311656>;

30 In terms of Preamble provisions, art. 2, 10, 38, 60, 111 of the Constitution of the Republic of Moldova;

31 Law on public service and the status of public servant - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=330050>

32 Guide. Plan of Actions European Union – the Republic of Moldova - <http://www.e-democracy.md/files/ghid-ue-rm-ro.pdf>;

33 The Non-Discrimination Coalition expects apologies from Plugaru - <http://www.info-prim.md/?x=24&y=29314>.

	Very good	Good	Satisfactory	Poor	Very poor
1.1		X			
1.2		X			
1.3			X		
1.4			X		

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# 2. THE RULE OF LAW AND ACCESS TO JUSTICE

*Ion Guzun*

### **Foreword**

The rule of law and free access to justice are the main principles of organization and functioning of any judicial system. These principles are defined in national laws and assumed through the ratification of international conventions. The Republic of Moldova has ratified many such documents within different institutions it is a member of – UN, CoE, OSCE, etc. However, it is the judiciary that is perceived as one of the most corrupt state institutions and that has the lowest credibility in the society.

Though the law must be applied on the whole territory of the Republic of Moldova, it is not applied in the Transnistrian region. The legislation adopted by this breakaway republic reflects to 99 per cent the legal standards of the Russian Federation.

In 2010 the Government took a number of actions aiming at strengthening the judicial power. In September 2010 the Government adopted the Plan of Actions for the Implementation of the Concept of Judicial System Financing in 2010-2013<sup>34</sup>. Also in terms of judicial reform, the Parliament failed to liquidate the economic courts because of the lack of sufficient votes to pass the law, though the bill was supported by the positive opinion of the Superior Council of Magistracy.

The rulings of the European Court of Human Rights concerning the Republic of Moldova have an economic impact on the state budget, i.e. based on accumulated taxes and duties. No research has been conducted so far about the (overall) social impact or the individual impact on the people who have won cases before the European Court. The sectoral legislative changes have a low impact and do not generate any systemic improvements. People who won the case against the Republic of Moldova receive compensation for moral and material damages, but the state's positive actions to take measures necessary to prevent or reduce future violations of the European Convention and the human rights are uncertain.

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34 Government Decision no. 803 of 07.09.2010 - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335971>;

## ***2.1 How far is the rule of law operative throughout the territory?***

Within a relatively small timeframe the Republic of Moldova adopted a series of laws and launched a number of reforms in the judiciary, prosecution, lawyers' practice etc. After 20 years of implementation, the concept of judicial reform was changed significantly, following the visions and aspirations of the governing political class and it will certainly continue under the pressure of European and UN requirements and standards.

The rule of law implies the functioning of a system of written, well-formulated rules, protecting the citizens in the exercise of their fundamental rights and freedoms through the courts and other democratic institutions.

As a result of continuous reform, a considerable discrepancy between the written law and its enforcement has emerged. Even courts take different decisions in similar cases.

Thus, the uniform applicability of the law and the activity of the state institutions have gradually lost their credibility. Different public surveys<sup>35</sup> often reveal a particularly low trust in the police, courts and prosecutors. The average (total or partial) mistrust of over 50 per cent is alarming, since the Republic of Moldova claims to be a country with functional democratic institutions, aspiring to obtain EU membership perspective within a short timeframe. However, the efforts of the Government and other institutions to improve the image of the state institutions cannot be denied. Impunity of judges, prosecutors, police and other officials continues to keep the public confidence in their powers and effectiveness at a low level.

The enforcement of the national law is hindered by the problem of the area excluded from the actual jurisdiction of the country – the “Nistru Moldovan Republic” (hereinafter DMR). This breakaway republic is governed by self-proclaimed structures and it adopted a legislation claimed to be consistent with that of the Russian Federation. Transnistrian region authorities hold the Russian citizenship and many of them served in the former Soviet and Russian armed and security forces.

The efforts of the constitutional authorities to control goods' entry-exit from this territory have failed because of tolerance and permissiveness of the Ukrainian authorities, even though since the establishment of EUBAM the situation has changed. As a result, the efforts of the Republic of Moldova to implement a set of socio-economic integration measures of the Transnistrian region have decreased.<sup>36</sup>

The physical safety of the citizens of the Transnistrian region is not safeguarded and cases of intimidation, arbitrary detention<sup>37</sup> and illegal long-term arrests<sup>38, 39</sup> occur periodically with a pro-

35 <http://www.ipp.md/lib.php?l=ro&idc=156>;

36 Qualitative study among experts conducted in November 2010 by CBS-AXA, commissioned by IDIS “Viitorul”;

37 The investigator in the case of bender hostage is a Moldovan citizen - <http://promolex.md/index.php?module=news&item=277>;

38 Immediate and unconditioned release of the citizen of the republic of Moldova Ilie Cazacu - <http://promolex.md/index.php?module=news&item=273>;

39 MGB: The Journalist Ernest Vardanean was condemned to 15 years imprisonment - <http://unimedia.md/?mod=news&id=27496>;

vocative purpose, their number increasing during the elections period on the right bank of Nistru river, but not only then. Unrecognized by the international community, the Transnistrian region does not apply the European conventions and international commitments, and the legislation of the Republic of Moldova is forbidden by the breakaway authorities. Thus, the people living in this region lack an efficient mechanism of complaint against the committed illegal acts and of punishing those responsible for such acts. Most actions aiming at restoring the legality are rejected violently and categorically by the unconstitutional structures existing in this area on the grounds of their separation from and independence of the Republic of Moldova, claiming alleged equal rights with the Republic of Moldova, but avoiding to undertake the commitment to protect the rights and freedoms in the region. Thus most international monitoring missions can find only discrepancies between the claims of the separatist administration in Tiraspol and the common practice of opposition harassment, schools closing, limitation of the freedom of expression and use of force against the opponents of the regime, taking advantage of the quasi-total support, particularly by some mediators, who have repeatedly avoided getting involved in solving the serious problems of insecurity or restriction of human rights in the region. It should also be noted that the reasons brought constantly by the Moldovan constitutional authorities for numerous flagrant violations of human rights in this territory are questionable in several respects. Thus, the argument that „...*the Republic of Moldova does not hold control over the Transnistrian region...*”, cannot be put forward as long as law enforcement bodies do not undertake any active measures against those culpable for the serious damage to physical or moral health of the citizens of the state on the territory of which they continue to live and thus can only be interpreted as an attempt to tolerate or even to accept the impunity of some self-proclaimed and illegal authorities.<sup>40</sup> The situation in the region might change after the ratification of the Rome statute,<sup>41</sup> targeting the enforcement of investigation and prosecution of genocide, crimes against the humanity and war crimes, irrespective of the politics of the countries or regions where such barbarisms are recorded. However, the International Criminal Court can intervene only when the national authorities are incapable or unwilling to act and filing a case with this court may put the constitutional authorities of the Republic of Moldova into a negative light as well, like in the case of *Ilie Ilascu versus the Russian Federation and the Republic of Moldova*, heard at the ECHR.

So far the General Prosecutor's Office of the Republic of Moldova has provided limited information to the interested public about certain actions or self-apprehensions related to any cases of arrest or illegal detention of Moldovan citizens or cases when Moldovan citizens were made subject to torture, illegal detention, deprivation of freedom and other illegal actions committed on the left bank of Nistru river. With regard to the representatives of the Russian Federation (mediator in the settlement of the Transnistrian conflict), these refused repeatedly to get involved in the settlement of cases of arrest and illegal detention<sup>42</sup>, and the militaries from the peace keeping forces have openly favored the actions of the self-proclaimed authorities of the dmr.

40 <http://jurisprudencedo.com/Ilascu-contra-Moldova-si-Federatia-Rusa-Transnistria-Responsabilitatea-Moldovei-Juridictia-Rusiei.html>;

41 Law No. 212 of 09.09.2010 - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336126>

42 The Russian ambassador refuses to comment on Vardanean case-  
<http://www.europalibera.org/content/article/2012482.html>;

Unfortunately the citizens (including foreign citizens) are persecuted on every occasion by the unrecognized authorities and the enforcement of Moldovan legislation on that territory is suspended until the definite settlement of the Transnistrian conflict. Many court decisions are not enforced as this territory does not observe the Moldovan law and does not consider it necessary to join the multitude of international and European obligations to which the Republic of Moldova is a party after their ratification. An example of this is the much commented case of condemning the Republic of Moldova and the Russian Federation in the case *Ilascu and others* by ECHR<sup>43</sup>, blaming the authorities of the Russian Federation and the Republic of Moldova for the arrest and detention of this group. Therefore, the daily practice does not ensure the safety of people living on or transiting this territory, controlled by militia, border guards and security forces of some internationally unrecognized structures, which have however a number of pseudo-state elements and symbols.<sup>44</sup> A common practice of the left bank of Nistru river regime is the harassment of the political opposition and arrest of people suspected of cooperating with or serving the interests of the Republic of Moldova, as in the case of some citizens of the Republic of Moldova, journalists, local authorities, people living in the proximity of this region.

As of the day when this study was published, the tax inspector Ilie Cazac and the journalist Ernest Vardanean were still under the custody of the separatist authorities, the latter having been condemned to 15 years imprisonment. The alleged authorities do not ensure the basic rights, including to a lawyer of their choice in the Republic of Moldova or the Russian Federation.

On July 22, 2010, the delegation of the Committee for the Prevention of Torture of the Council of Europe (CPT) was informed that, unlike during the previous visits of the Committee, it would not be allowed to interview in private the people detained under remand in Transnistrian region.<sup>45</sup> The CPT delegation decided accordingly to suspend its visit to places of detention in the region as long as the exercise of this right is not guaranteed.<sup>46</sup>

Cases of death of some soldiers in the so-called army of the dmr have not been investigated.<sup>47</sup> An example of this is the case of Serghei Verbitkii, who was living in the Transnistrian region<sup>48</sup> and according to dmr „laws” was enrolled in the secessionist army as well, where he died under circumstances which have not been elucidated so far.<sup>49</sup> The constitutional authorities did not investigate the death of the young man, while the separatist authorities have not reported on this case anymore.

Numerous violations of religious freedoms are also recorded in this breakaway region. Thus, the separatist authorities continue to refuse the registration of several congregations of Jehovah's Wit-

43 [http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Moldova per cent20| per cent20+ilascu&sessionId=61526408&skin=hudoc-en](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Moldova+per+cent20+per+cent20+ilascu&sessionId=61526408&skin=hudoc-en);

44 Promo-LEX Statement - [http://www.comunicate.md/index.php?task=articles&action=view&article\\_id=2859](http://www.comunicate.md/index.php?task=articles&action=view&article_id=2859)

45 This reaction is against one of the basic characteristics of prevention mechanism applied by the CPT, i.e. the possibility to interview any person deprived of freedom in private;

46 The Committee against Torture of the Council of Europe suspends its visit to the Transnistrian region of the Republic of Moldova - [http://www.coe.md/index.php?option=com\\_content&view=article&id=200:cpt-stop-td-visit&catid=40:press-releases-&Itemid=55&lang=ro](http://www.coe.md/index.php?option=com_content&view=article&id=200:cpt-stop-td-visit&catid=40:press-releases-&Itemid=55&lang=ro);

47 BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR- 2009 Country Reports on Human Rights Practices - <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136046.htm>;

48 As a citizen of the Republic of Moldova, Serghei Verbitkii served in the constitutional army of the Republic of Moldova;

49 A case of filing criminal prosecution for the refusal to be enrolled in the so-called Transnistrian army involved the citizen Aleksandr Iakovlev from Rabnita town. He filed an appeal against the decision. No final decision had been taken as of the publication of this report;

nesses and harass the members of this religious group by organizing house searches and detentions of their leaders. Since this religion prohibits its adherents to use weapons and to enroll in the army, they are subject to criminal liability and are held in prison for failure to observe the order of the unrecognized military commissariat.

The authorities of the Transnistrian region of the Republic of Moldova continue to discriminate the Romanian-speaking people and to persecute the intellectuals, who promote the school curricula approved by the Ministry of Education of the Republic of Moldova in Romanian-language schools. Uncertainty generated by the unrecognized authorities persists for those about 7700 pupils in eight schools teaching in the Latin script under the jurisdiction of the Moldovan authorities. Schools hosting these pupils are the favorite target of law enforcement and security bodies of the separatist regime, which do not allow their proper functioning, raise barriers to receiving books in Romanian language with Latin script, often using blackmail and intimidation to discourage the parents to send their children to these schools<sup>50</sup>. The administration of these schools has been repeatedly detained and interrogated illegally by the representatives of the unrecognized authorities, including on the ground of cooperating with NGOs on the right bank of the Nistru River, or of alleged conducting of suspicious anti-state actions, inappropriate for the separatist ideology regime on the left bank of Nistru river.

The conditions under which the Romanian-language schools activate remain negative - the teaching process takes place in four shifts, there are cases of hooliganism (breaking of windows, intimidating force interventions of law enforcement agencies, urgent summoning of the school directors by the specialized Department/Ministry from Tiraspol), while the pupils and their parents are intimidated by the authorities to abandon the school program and choose another school, which implements the ideological line of the system. In this context, the plaintiff Caldare and others 42 v. Moldova and Russia (application no. 8252/05), Catan and 27 others v. Moldova and Russia (application no. 43370/04) and Cervaschi and 98 others v. Moldova and Russia (application no. 18454/06) complained to the European Court about being continuously intimidated by the separatist authorities for their willingness to continue teaching in schools in Romanian language with Latin script, according to the curriculum approved by the Ministry of Education of the Republic of Moldova.<sup>51</sup>

## ***2.2 To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?***

According to citizens, the most violated rights are the right to employment (9.7 per cent), to

50 ECHR will hear the problem of teaching in Romanian language based on Latin script in Transnistrian schools - <http://karadeniz-press.ro/kara/cedo-va-examina-problema-predarii-in-limba-romana-cu-grafie-latina-in-scolile-transnistrene/>;

51 On July 2, 2010, the fourth Section of the European Court of Human Rights published the admissibility decision unanimously adopted in cases Caldare and other 42 v. Moldova and Russia, Catan and other 27 v. Moldova and Russia and Cervaschi and other 98 v. Moldova and Russia (application no. 18454/06) - [http://www.comunicate.md/index.php?task=articles&action=view&article\\_id=3232](http://www.comunicate.md/index.php?task=articles&action=view&article_id=3232);

life (7.5 per cent) and to expression (6.1).<sup>52</sup> However, the Prosecutor's Office and the courts have not investigated cases convicting former or current decision-making public servants. No prosecutor, judge or policeman has been held liable for ECHR condemnations by over 130 rulings ordering the payment of over 15,000,000 EUR as compensation, excluding the amount of money that the Government has committed to voluntarily pay them based on mutual agreements.

In connection with the tragic events of April 2009, no officer from the MIA, SIS or other state institutions has been held liable for the actions or inactions in connection with which over 700 cases of illegal arrests, torture and application of administrative sanctions within police stations have been documented. Mr. Zubic, Head of Police General Staff at that time, does not appear in any criminal proceedings in connection with April 2009 events. In the case of the former member of parliament Valentina Cusnir, she complained that two policemen assaulted her and dragged her by hair, although she was subject to parliamentary immunity, meaning that she could not even be arrested. So far only court hearings have been held, without a single officer being held accountable. It should be noted that Valentina Cusnir stayed at the Emergency Hospital in Chisinau during April 9 -24, 2009.

The public opinion has not been informed and the actions of the prosecution and other institutions concerning the 200 kilograms of heroin found in the center of the capital in April 2008 remain unknown. After about two years, the six defendants were acquitted by the Court of Appeal judges. The last accused were two former policemen and two Turkish citizens. They were sentenced to various prison terms between three and 13 years. However, the prosecutors demanded a harsher punishment. Two other Moldovan policemen involved in the case were acquitted. The Court of Appeal judges decided at the last hearing that the two other Moldovan policemen in "Heroin" case were innocent.

According to the briefing note of the CECCC,<sup>53</sup> during the period January - October 2010, 1046 crimes were detected (960 in 10 months of 2009), including 343 acts of corruption and related crimes (194 in 10 months of 2009), 387 economic and financial crimes (459 in 10 months of 2009), and 316 crimes belonging to other categories (307 in 10 months 2009). This information does not contain any data on court decisions, applied sanctions remaining in force or decisions of acquittal. Most people against whom prosecution is initiated do not hold high positions, and the amounts of money involved in the acts of corruption mainly range between 5,000 and 10,000 lei. However, most people are reinstated in their positions because of procedural violations and poor quality of evidence managed by the court.

The decisions of the Court of Accounts are inapplicable, and the Prosecutor General's Office apparently takes the necessary steps to identify and punish those responsible for the use of the allowances contrary to destination, irregular use of budgetary funds, purchase of goods worth over 50

52 The presented data have been collected within an omnibus study based on a population sample of 1518 people in 88 localities, with a margin of error of 2.6 per cent, during the period October 25, 2010 – November 2, 2010, by CBS-AXA, commissioned by IDIS "Viitorul";

53 CECCC. 09.12.2010 Briefing Note - <http://www.ccecc.md/news/?nid=f50afaec751e99e9cb33b6ebd69edd92>;



million lei<sup>54</sup>. The lack of feedback on CA decisions results in repeated misconduct found previously at the same institutions that violate the same procedures. Purchase of luxury goods (e.g. mobile phones worth 12,000 lei) continues to be a practice, just like impunity for the abuse of power or illegal use of public money.

Though they are not part of the judicial system, the Constitutional Court judges were suspected by the public opinion of corruption by the president of the R. Moldova. They received watches worth over 3,000 Euro as a gift.<sup>55</sup> This event took place during the period when the parliamentary elections of April 2009 were validated. The Prosecutors or the Center for the Combating of Economic Crimes and Corruption have not made public any information about the investigation of this case.

The dignitaries holding wealth the origin of which cannot be explained or those who hide their properties cannot be held accountable in front of citizens, since the only punishment they can be subject to is a disciplinary sanction at their place of employment. Since they are basically free to make their fortune on the account of the influential positions they hold, they do not rush to adopt amendments to the law on income tax statements to make it functional. According to the Center for Combating Economic Crimes and Corruption, every sixth official, paid from public money, does not declare his/her income. According to the law on declaration and control of income and property of the state officials, the person who has not submitted the statement within the prescribed period without a valid reason is subject to disciplinary or administrative liability. Currently, the Criminal Code does not provide for criminal liability of individuals for tax evasion, but only of legal entities.

There are no legal rules adopted that would allow qualitative assessment of the activity of certain categories of civil servants and people holding positions equivalent to those of the civil servants. The existence of some quantitative criteria (e.g. number of cases filed, the degree of crime detection, the number of cases prosecuted etc.) fosters corruption and hinders the systemic reform, particularly of the Prosecutor's office and the Ministry of Internal Affairs.

The transparency of decisions in the scoring of future judges is not clear and is thus questionable. There is no regulation containing rules and criteria of candidates' assessment, an effect of which might be the fact that candidates will win the case in challenging the examinations' results.

Unlike the Parliament and the Government, the courts submit statistical information on civil, administrative and criminal cases<sup>56</sup> to the Ministry of Justice and not to the public. The latter path would be a way of courts opening about their activity through direct communication, which would facilitate the growth of confidence in these institutions.

54 Court of Accounts of the republic of Moldova, decision no. 58 of July 09, 2010 on adopting the Report on Administration and Use of Public Financial Resources and Public Patrimony (Annual Report 2009) - [http://www.ccrm.md/file/raport/H58\\_rap.pdf](http://www.ccrm.md/file/raport/H58_rap.pdf) ;

55 One of the Swiss watches given by the President Voronin to Constitutional Court judges as a present is sold on the internet - <http://unimedia.md/?mod=news&id=13741>;

56 art. 54 of the Law on the organization of the Judiciary - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312839>;

## ***2.3 How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?***

The law guarantees the independence of the courts' activity, while pressures and corruption remain an unsolved problem. Judges and prosecutors often provide "subtle hints" in exchange for reduction of fines and penalties, of course through intermediaries. Otherwise, no relevant and credible arguments can be found for the fact that the assets they own have exclusively legal origins (e.g. a car bought for 20,000 EUR (approx. 320,000 lei), while the monthly salary ranges between 4.200 and 6.000 lei etc.). Moreover, the criminal law does not criminalize the tax evasion by individuals, but only by legal entities (see art. 244 of the Criminal Code of the RM).

The pre- and post-election period in April and July 2009 highlighted the persistence of a whole series of shortcomings in the existing mechanism of ensuring the separation of state powers.<sup>57</sup> In February 2009, the UN Special Rapporteur, Manfred Nowak, expressed his concern over the lack of courts objectiveness, of the freedom of prosecutors in cases investigations, lack of lawyers' professionalism and independence, police brutality and prison authorities' inaction.<sup>58</sup>

Although the judiciary has not complained about cases of political influence or control, the political power still plays an important role in appointing judge candidates. Unfortunately, national and international reports (e.g. Freedom House) reveal the fact that judges are appointed and promoted on the basis of subjective, non-transparent factors. Besides the fact that young judges initially appointed for a term of five years may be influenced by or vulnerable to the executive power, in each competition for judge position with an initial salary of about 4,200 lei there is a high number of candidates.

The underfunding of the judicial, law enforcement and prosecuting (and others) systems affects the judicial independence, the quality of investigation and criminal prosecution. At the same time, professional associations (trade unions) which must represent the interests of these professional groups have not presented any requirements to improve the working conditions, to raise the wages and have not threatened by actions (e.g. strike), as the trade unions in other industries (such as teachers) do.

Claims of attempts against the independence of the activity of the judiciary have been pronounced and apparently supported only by the Chairman of the Supreme Court, referring to his dismissal.<sup>59</sup> Subsequently, the dismissal of the Chairman of the Supreme Court was declared unconstitutional by the Constitutional Court ruling.<sup>60</sup>

### **Involvement of certain judges in the legalization of illegal actions of law enforcement bodies**

57 Nations in Transit Ratings and Averaged Scores, 2010 - <http://www.lhr.md/rapoarte/general/freedom.house/freedom.house.2010.pdf>;

58 UN Human Rights Council. Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Mission to the Republic of Moldova, February 12, 2009, <http://www.unhcr.org/refworld/docid/49a55fea2.html>;

59 Decision of the Parliament of the Republic of Moldova no. 30 of 04.03.2010 - <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=333907>;

60 Decision of the Constitutional Court no. 11 of 27.04.2010 - <http://lex.justice.md/md/334469/>;



continues to affect the image of justice. Though judges must abide by the law only, some judges are subject to administrative obedience. The judges have said repeatedly that they had to observe the orders of the courts chairmen or members of the Superior Council of Magistracy (e.g. the judge Anatol Galben<sup>61</sup>, Mihai Drosu<sup>62</sup>).

## ***2.4 How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations?***

After proclaiming its independence, the Republic of Moldova has committed itself to reform and democratize the police, the prosecution, the courts, prisons and other components of the criminal justice system. Unfortunately, on the long run, the promised reforms failed to achieve their aim because of unclear national priorities promoted by the political class irrespective of those governing the country and their instability in holding their position. Thus, the citizens continue to report the earlier negative habits and practices even after accession to power of the new governance<sup>63</sup>, particularly: perception of the high crime rate, high rate of acceptance of prosecutor's requests for arrest warrants; application of torture and ill-treatment by police; prosecutor's inefficiency in investigating allegations of torture; poor performance of inspection bodies, impunity of judges, prosecutors and other senior officials etc.

More than half of the citizens of the Republic of Moldova do not feel safe<sup>64</sup>, though according to par. (1) Art. 2 of the Criminal Code of the Republic of Moldova "the criminal law provides protection against crime ... aims at preventing new crimes ..." and the prosecution bodies and courts are obliged to act in a way ensuring that no person can be arbitrarily or unfoundedly suspected, accused, subject to procedural measures of constraint or convicted.

Regarding the prosecution influence by the political power, cases of filing of criminal cases against the opposition leader Serafim Urechean for abuse of power during the period when he was the mayor of Chisinau and accused of involvement in a murder attempt against the Vice-President of the Parliament Iurie Rosca have been highlighted relatively recently. Although in October 2009 the new General Prosecutor apologized through a letter for this accusation, as of the time of writing this study, Serafim Urechean had not been rehabilitated and no compensations for illegal criminal prosecution actions (including wiretaps without judge authorization, which later proved to be illegal and groundless) had been paid. No prosecutor was had been liable for the filing of criminal cases on political grounds.

A number of other national standards and international acts and international conventions rati-

61 Muruianu: „The media is a mad dog, dangerous to the society”. Minister of Justice: „The Justice goes through a moral crisis, generated by corruption!” - <http://unimedia.md/?mod=news&id=16714>;

62 See note 144 on page 102 - <http://www.jurnal.md/ro/news/vezi-aici-raportul-integral-al-comisiei-nagacevschi-doc-186025/>;

63 An NGOs argues that torture in Police Stations continuous, and those guilty remain free - <http://www.infotag.md/reportaje/584878/>;

64 Criminal Justice performances seen through the lens of human rights. An assessment of the criminal justice transformation process in the Republic of Moldova, p. 82- [http://www.soros.md/docs/Raport\\_Criminal\\_per\\_cent20Justice2009.pdf](http://www.soros.md/docs/Raport_Criminal_per_cent20Justice2009.pdf);

fied<sup>65</sup> by Republic of Moldova guarantee the personal freedom and safety while the recommendations of the international fora on the abovementioned segments are applied partially. The CPT report developed after the visit in April 25 – 28, 2009 reiterates a number of recommendations previously addressed to the government, as the Government had not implemented them by then (e.g. failure to examine the health condition of detained persons, indifference of prosecutors towards alleged torture, poor detention conditions)<sup>66</sup>. At the same time, international rapporteurs and experts in torture received and documented credible and consistent complaints of frequent application of physical force and other forms of ill-treatment and torture in police detention institutions, in most cases during the interrogation, but also during arrest.<sup>67</sup> More serious cases were documented by several national NGOs<sup>68</sup> involved in provision of assistance to torture victims following April 05, 2009 events, which besides strong punching, beating with the gun bed and blackjacking, mentioned cases of sexual aggression.<sup>69</sup> At least 60 children aged between 13-18 years were mistreated by the „men of the law” following the events of April 2009. So far no policeman has been held liable and only one case of a minor – victim of police has been filed to court.<sup>70</sup>

Because of the lack of adequate experience of the criminal investigation officers and senior officers’ permissiveness, criminal prosecution remains based on confessions, and confession is often obtained under pressure, despite the fact that art. CPC 94 provides that evidence obtained by illegal means should be excluded by the judge in court. Independent reports of the European Commissioner for Human Rights and civil society<sup>71</sup> also condemn the persistence of torture in the Republic of Moldova and the low quality of criminal prosecution.

Among the documents issued by the Prosecutor General and the Ministry of Internal Affairs, the stimulation of the activity of prosecutors and police depending on the number of investigated cases remains in force. According to information above, the report is disproportionate of criminal cases filed, orders of refusal to file criminal cases and cases sent to court.

The law allows judges to issue arrest warrants based on evidence collected by prosecutors. The authorities must inform immediately the person about his/her arrest and explain the evidence underlying the accusation. Suspects can be detained without arrest for a term of up to 72 hours. Even if the law gives the right to appear in court to prove innocence on the grounds of detention or arrest, this right is not always enforced.

Concerning the quality of examining the cases, particularly those concerning April 2009 events,

65 Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention against Torture and other Cruel Treatments or Punishments; European Convention on Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, etc.;

66 <https://wcd.coe.int/ViewDoc.jsp?id=1469277&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>;

67 § 26, of the report presented by the Special Rapporteur for Torture and other Cruel, Inhuman or Degrading Forms of Treatment or Punishment, Manfred Nowak, A/HRC/10/44/Add.3 after the visit in July 4-11, 2008;

68 IDOM, CReDO, CRVT „Memoria”, Promo-LEX, CNR;

69 Bureau of Democracy, Human Rights, And Labor. 2009. Country Reports on Human Rights Practices - <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136046.htm>;

70 Marked by „April 2009”. Children, victims of policemen revenge - <http://www.investigatii.md/index.php?art=430>;

71 Alternative report to the 2nd Report of the Republic of Moldova on the Stage of Implementation of the United Nations Convention Against Torture (UN CAT) - [http://www2.ohchr.org/english/bodies/cat/docs/ngos/CReDO\\_IDOM\\_CNR\\_Moldova43.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CReDO_IDOM_CNR_Moldova43.pdf);

NGO Report Replies to the List of Issues (CCPR/C/MDA/Q2) - [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CReDO\\_IDOM\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CReDO_IDOM_Moldova97.pdf);

it should be noted that these are delayed. It is obvious that these criminal files had to be started immediately when the information about mass torture in police stations and other places where the acts of torture were committed appeared (particularly on the night between April 07 and 08, 2009 (and not during the period December 2009 – February 2010, after the new Government appointed by the Parliament was established and started operating.

## ***2.5 How much confidence do people have in the legal system to deliver fair and effective justice?***

Justice is administered on behalf of the law by courts only. Justice is ensured through the Supreme Court, courts of appeal, trial courts and specialized courts.

Although access to justice was facilitated by introducing state taxes ceilings,<sup>72</sup> according to the Public Opinion Barometer, 68 per cent of respondents say they have little or no confidence in the judiciary.<sup>73</sup> This is explained including by the fact that 40 per cent of decisions related to Government condemnation by the ECHR, refer to the quality of justice.<sup>74</sup> However, citizens continue to refer to the court even for minor cases that can be amicably settled by paralegals.<sup>75</sup> However, according to recent amendments, the right to represent in court will be given to lawyers elected or appointed by the coordinator of the territorial office of the National Council of State Guaranteed Legal Assistance or another representative.<sup>76</sup>

Distrust in the judiciary is determined, among other reasons, by the involvement of judges in corruption, issue of illegal decisions, inappropriate conduct towards citizens and the media, etc. Few of the perpetrators of corruption have been punished. The case of two former judges (Mihail Drosu and Sergiu Crutco)<sup>77</sup> cannot be given as an example, as long as the non-renewal of the term prior to reaching the age limit has not been established and there has been no ordinance of the criminal prosecution under facts alleged in SCM decisions themselves.<sup>78</sup>

So far only one judge has been dismissed in connection with offenses committed within the examination of cases<sup>79</sup> as a result of a partnership established between some NGOs<sup>80</sup> and the media. However, the former Judge filed an appeal against the decision of the Superior Council of Magistracy, which is currently heard by the Court of Appeal.

72 To guarantee the access of justice the ceiling of taxes paid for court trial applications was introduced. It cannot exceed 25 thousand lei in case of individuals and 50 thousand lei in case of legal entities - <http://www.info-prim.md/?x&y=33094>

73 Public Opinion Barometer- May 2010 - <http://www.ipp.md/libview.php?l=ro&idc=156&id=552&parent=0>

74 „Corruption in the judiciary is one of the two main impediments in Moldova's accession to the European Union” - <http://unimedia.md/?mod=news&id=16726>;

75 See art. 2, art. 16 of the law no. 198 of 26.07.2007 on state guaranteed legal assistance;

76 Art. 8, 75, 77, 79, 80, 81, 96, 97, 304, 316 of the Code of Civil Procedure, Code no. 225 of 30.05.2003. These provisions will enter into force on 01.01.2012;

77 See the decisions of the Superior Council of the magistracy no. 8/1 and no. 9/1 of 12.01.2010 - [http://www.csm.md/index.php?option=com\\_content&view=article&id=76&Itemid=98&lang=ro](http://www.csm.md/index.php?option=com_content&view=article&id=76&Itemid=98&lang=ro);

78 E.g. the actions of judges noted in the rulings of the European Court of Human Rights; hearing of cases related to the events of April 07, 2009 within the general Police Commissariat etc.,

79 9½ weeks with «the judge from hell» - <http://www.zdg.md/stiri/9½-saptamani-cu-judecatorul-din-iad>;

80 IDOM urges the Superior Council of the Magistracy to abandon double standards - <http://idom.md/index.php/ro/noutati/166-supreme-magistracy-chamber.html>

Based on the monitoring, the OSCE reported that of the thousands of hearings at all levels courts, legal safeguards related to the access to justice had been observed only partially. Although legal rules give the parties the right to an interpreter, cases of lack of knowledge of legal terminology and the trend of mixing terms in Romanian and Russian have been reported. About 40 per cent of the court interpreters have not provided satisfactory translations. In other cases, judges have ordered the examination of the case in Russian, although the participants complained about not understanding this language. A group of interpreters have been authorized for court interpreting only recently.<sup>81</sup>

Justice includes not only the issue of a decision, but also its enforcement. According to ECHR rulings in at least 52 cases (or about 30 per cent of the total) the Government was sanctioned for the failure to enforce the judicial decisions. In this respect, the decisions enforcement system has been amended<sup>82</sup>, by establishing a system of private executors.<sup>83</sup> The private executors will conduct a free activity, similar that of lawyers and notaries, aiming mainly at ensuring the enforcement of judgments.

One of the provisions of the government program for the years 2009 - 2013 is related to liquidation of the specialized courts – the economic and military courts. This reform of the courts has been approved by the Superior Council of Magistracy,<sup>84</sup> but the bill was not passed because it had not met the required number of votes.<sup>85</sup> One reason for the liquidation of specialized courts is corruption among the 19 judges who examine all economic disputes across the country. It should be noted that the most important decisions against the government of the Republic of Moldova by the ECHR have been delivered as a result of the activity of economic courts.<sup>86</sup>

The behavior of judges at courts of different levels affects the image and confidence in justice. A judge should benefit of the highest moral consideration and trust from the society, and his/her speeches and behavior should be balanced and well thought to increase the trust of the population in the judiciary. However, the current Chairman of the Supreme Court of Justice, Ion Muruianu, called journalists „*mad dogs dangerous to society*”<sup>87</sup> and lawyers “*...for advertisement ... slander at any of other magistrates and intentional defamation of the entire judicial system*”.<sup>88</sup> This speech was read on paper at the annual meeting of judges and subsequently posted on the website of the Supreme Court of Justice ([www.csj.md](http://www.csj.md)). Not even in this case the person holding a senior public position responded for actions undermining the image seriously and the judicial body did not dare to react<sup>89</sup>. This confirmed, *inter alia*, the corporate resistance of the judiciary<sup>90</sup>, including against facts that seriously discredit the image and generate the lack of trust in justice.

81 Announcement issue of authorizations to translators and interpreters - <http://www.justice.gov.md/ro/news-ministr/10484/>

82 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=335333>;

83 Law no. 113 of 17.06.2010 on judiciary executors - <http://www.justice.gov.md/ro/news-ministr/10476/> ;

84 Decision on approval of the Draft Law no. 1533 of 10 December 2009 amending and supplementing certain laws (Code of Criminal Procedure, Code of Civil Procedure, Constitutional Jurisdiction Code, Law on the Prosecutor's Office, State tax law, the Law on the Constitutional Court, the Law on Free Economic Zones, Law on International Commercial Arbitration)

- [http://www.csm.md/files/Hotaririle/2010/39\\_3\\_per\\_cent20din\\_per\\_cent201012010.pdf](http://www.csm.md/files/Hotaririle/2010/39_3_per_cent20din_per_cent201012010.pdf);

85 Though it does not attend the sessions of the Parliament, the Communist party of the republic of Moldova declared it would vote for judiciary reform by liquidation of the specialized courts - <http://unimedia.md/?mod=news&id=21124>;

86 The Superior Council of the Magistracy approved the liquidation of the economic and military courts - <http://unimedia.md/?mod=news&id=16109> ;

87 Ion Muruianu – clean as a tear, journalists – „mad dogs” - <http://www.hotnews.md/articles/view.hot?id=2653>

88 Appeal as response to the declaration of Mr. Ion MURUIANU, Chairman of the SCJ - <http://lhr.md/news/174.html> ; „Muruianu case must make the system of judges' punishment work” - [http://www.vedomosti.md/news/Sluchai\\_Muruyanu\\_Dolzhen\\_Zastavit\\_Rabotat\\_Sistemu\\_Nakazaniya\\_Sudei](http://www.vedomosti.md/news/Sluchai_Muruyanu_Dolzhen_Zastavit_Rabotat_Sistemu_Nakazaniya_Sudei);

89 The Face of Justice - <http://www.timpul.md/articol/obrazul-justitiei-10802.html>;

90 Justice reform versus corporate solidarity and corruption - <http://www.europalibera.org/content/article/1980113.html>

The cases of judges' impunity emphasized the need of total adjustments of the powers of the Disciplinary Board of the Superior Council of the Magistracy for the direct enforcement of disciplinary sanctions by excluding the decisions' validation procedure.

## ***2.6 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

Enforcement of Moldovan law on the left bank of the Nistru River would not be possible until political and socio-economic reintegration of the country. Efforts to promote human rights in the Transnistrian region are often ineffective, since certain parties involved in dialogue format have their interests in the area. Though several steps have been taken in the negotiation of several issues related to the regime of movement of goods and transport, the people living in the Eastern region still do not feel safe and recognize the incapacity of the state to protect its own citizens in cases of abuse by unrecognized authorities. In terms of the official policy for citizens' inclusion, a few steps have been taken to facilitate the access of people living in the eastern region to education, providing certain tax facilities etc. However, the Government and other state authorities are unable to file criminal cases and impose criminal liability of the separatist leaders, who hold the citizenship of the Russian Federation.

Though most violations of rights complained against by citizens are related to judicial authorities and the judiciary reform has always been a priority of all governments, this system has remained basically unchanged. Amendment and adopting of laws have not fostered the reduction of protectionism, corruption and interferences in adoption of court decisions. An institutional reform must obviously be carried out by increasing the salaries of the judiciary, though the adopted illegal decisions cannot be justified by poor working conditions.

The political class and the citizens have supported the sanctioning though dismissal of the Chairman of the Supreme Court of Justice who was reinstated in this position by the decision of the Constitutional Court no. 11 of 27.04.2010. Nevertheless, Ion Muruianu is mentioned in eight decisions of the European Court for Human Rights stating at least one violation of the provisions of the European Convention.<sup>91</sup>

The enforcement of legal amendments on public acquisitions procedures and on submitting of public servants' income statements is only simulated. There are basically no sanctioning mechanisms, including by criminal liability.

91 Lists of people responsible for the condemnation of the RM by ECHR - <http://www.lhr.md/2/94.html> .

	Very good	Good	Satisfactory	Poor	Very Poor
2.1				X	
2.2				X	
2.3			X		
2.4			X		
2.5			X		
2.6			X		

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15. Decision of the Superior Council of the Magistracy no. 9/1 of 12.01.2010 *on the expiry of the powers of Mr. Sergiu Crutco, judge at Centru Court, Chisinau*.



### 3. CIVIL AND POLITICAL RIGHTS

*Marin Gurin*

#### ***Foreword***<sup>92\*</sup>

Human rights and fundamental freedoms are the powers conferred by the national law and recognized by international law to each individual in his relations with the community and the state, expressing the fundamental social values. Recognition and protection of individual freedoms seeks to ensure the human condition and meet the basic needs on the basis of legitimate aspirations and according to the socio-economic, political, cultural, and historical context of the modern society.

Protection of human rights by legal instruments of transposing these rights into legal provisions has become an imperative for the Republic of Moldova, which, after declaring its independence and sovereignty has ratified numerous universal human rights documents, paving the way for an international human rights protection system. Although international instruments prescribe minimum standards of human rights protection, these do not preclude the state to regulate some broader rights or freedoms.

The human rights situation in the Republic of Moldova has recorded a noteworthy development during the recent years in terms of regulatory framework development, though the efficient enforcement of human rights remains a challenge that requires considerable efforts. Respect for human rights is an essential component and a prerequisite to a sustainable development. Thus, human rights issues are the focus of the global public opinion and to a certain extent one of the main concerns of the government.

#### ***3.1. How free are all people from physical violation of their person, and from fear of it?***

The Republic of Moldova has ratified the major UN treaties on combating and preventing torture: *the International Covenant on Civil and Political Rights (ICCPR)*, *Optional Protocols I and II to the ICCPR*, *Convention against Torture and other cruel, inhuman or degrading treatment and punishment (CAT)*, *Optional Protocol to the Convention against Torture (OPCAT)*, *Convention on*

92 \* The author would like to thank Mr. Igor Dolea, expert, Institute for Criminal reforms and Ms. Daniela Puica, Legal Counselor, Public Association „Promo-Lex”

*the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women. Also, the RM is a party to the Geneva Conventions of 1949 and the Optional Protocols I and II thereof.*

As a member of the Council of Europe, the Republic of Moldova has ratified the main regional human rights instruments, *the European Convention on Human Rights and its protocols, including protocols 6 and 13* abolishing capital punishment, both in peacetime and during an armed conflict, *the Convention on Action against Trafficking in Human Beings, European Convention against torture and inhuman or degrading forms of treatment or punishment*, within which the Committee against Torture has made several visits to Moldova<sup>93</sup>.

The person's physical integrity is guaranteed at the constitutional level, in particular Articles 24 and 25 of the Constitution of the RM. The Republic of Moldova cannot adopt laws that would suppress or diminish the fundamental human and civil rights and freedoms, and the exercise of rights and freedoms cannot be subject to other restrictions than those stipulated by law, in compliance with the universally recognized rules of international law and necessary in the interests of national security, territorial integrity, economic welfare of the country, public order, for the prevention of mass disorder or crime, protection of rights, freedoms and dignity of other persons, for the prevention of disclosure of confidential information or to guarantee the authority and impartiality of justice.

The right to use force, special means and firearm is provided in the *Law on Police* and Parliament Decision *on approval of special means and rules of their use by the staff of the Ministry of Internal Affairs and military troops of the Ministry of Internal Affairs*. According to the Constitution of the RM application of such means must be consistent with the principle of proportionality. The Law on "Intelligence and Security Service of the Republic of Moldova" stipulates only a few legitimate purposes of the use of a weapon (such as release of hostages or rejection of an attack), which do not allow us to assert that its use is within this principle.

According to the Enforcement Code of the RM the convict shall have the same rights and freedoms as other citizens of the Republic of Moldova, with the restrictions provided by the law. The limitation of rights and freedoms provided for in art. 20 to 24 of the Constitution of the RM is prohibited. The detainee has the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment and to any medical or scientific test which endangers his/her life or health, irrespective of his/her consent, benefitting, as appropriate, of state protection measures.

The Criminal Procedure Code also provides, in its general part, that no person shall be subject to torture or other cruel, inhuman or degrading treatment, no person may be detained in humiliating conditions, and the responsibility to ensure the non-application of torture and other cruel, inhuman or degrading treatments belongs to the authority in whose custody the person is deprived of freedom, placed at the disposal of a state body or based on its indication, or based on tacit consent or agreement. Following the recommendations of the Committee against Torture of May

93 <http://www.cpt.coe.int/en/states/mda.htm>



2005, on June 30, 2005 the Republic of Moldova criminalized torture by introducing a new article in the Criminal Code, 309 (1), which provides sanctioning by two to five years imprisonment and formal suspension from official position for a period of five years. Other provisions may also be applied to acts of ill-treatment by persons holding responsible positions, particularly illegal arrest or detention (art. 308 CC), compulsion to testify (art. 309 CC) and most often abuse of power or excess of duties (art. 328 CC). The same provisions related to the prohibition of ill-treatment are contained in the Code of Contraventions of the RM, which entered into force on 31.05.2009.

To prevent and combat ill-treatment two mechanisms were established in the Republic of Moldova, one with a national competence over all detention institutions and another one with only local jurisdiction over prisons. They are: - *National Torture Prevention Mechanism* (NTPM), established under the Optional Protocol to the Convention on the Prevention of Torture (OPCAT) in force for the Republic of Moldova since July 24, 2006. OPCAT implementation practice does not identify a strictly defined formula of mechanisms, although most European countries that have signed and ratified the Protocol have opted for national human rights protection institutions.

The same path was chosen by the RM too, where an advisory board was established within the Human Rights Center in Moldova (HRCM), designed to advise and assist in the exercise of ombudsmen duties as a National Torture Prevention Mechanism, as well as having direct responsibilities in monitoring the phenomenon of torture and other cruel or inhuman punishment or treatment.

In general terms, certain results generated by NTPM can be identified. At the same time, because of many factors, such as lack of financial autonomy, non-recognition of the NTPM by the staff of detention institutions and others, these results are lower than they might be.

- Under the Law no. 235 of 13.11.2008 on civilian control over the observance of human rights in institutions that provide detention of persons<sup>94</sup>, *monitoring committees have been established in each administrative-territorial unit of level 2*, where the detention facilities are located. These committees carry out monitoring visits, after which they report to the Prosecutor's Office and the Center for Human Rights, sending copies of reports to prison administration or to the hierarchically superior body (DPI - Department of Penitentiary Institutions, MJ - Ministry of Justice). Given the lack of information on the activity of these monitoring committees, it is not known if they were established in all administrative-territorial units or how functional they are.<sup>95</sup> It is worrying however that their members have to work on volunteer basis. Despite an adequate legal framework to prevent and combat torture and certain efforts by the Moldovan authorities for this purpose, the ill-treatment continues to be widely used in detention facilities in the RM. The European Court of Human Rights took note of the violations of Article 3 of the European Convention on Human Rights - prohibition of torture and inhuman or degrading forms of treatment or punishment - in eighteen decisions delivered since 2005.

94 [http://www.penitenciar.gov.md/ro/upload/acte\\_per\\_cent20interne/LPO235.pdf](http://www.penitenciar.gov.md/ro/upload/acte_per_cent20interne/LPO235.pdf)

95 The Regulation of the activity of these monitoring committees was developed by GD no. 286 of 13.04.2009 [http://www.penitenciar.gov.md/ro/upload/acte\\_per\\_cent20interne/HGO286.pdf](http://www.penitenciar.gov.md/ro/upload/acte_per_cent20interne/HGO286.pdf)

Ill-treatment during the initial period of police custody is widespread. While the situation in prisons has improved, cases of abuse, mainly cases of violence between inmates still occur. International organizations reports<sup>96</sup> attest a decrease of ill-treatment in prisons. However, a persisting problem is violence between inmates.<sup>97</sup> Basically all reports of international and national organizations working to prevent torture and other cruel or inhuman punishment mention the need to transfer Temporary detention ward from MIA subordination into the subordination of the MJ, the basic argument used being that the MIA plays a dual role, that of prosecution body and one of enforcement of sentences, resulting in inmates' pressure to confess their guilt.

According to information provided by the Ministry of Internal Affairs of the Republic of Moldova, following IDIS Viitorul action, during 2005, 40 complaints against application of ill-treatment by the staff of the internal affairs bodies were filed with the General Directorate for Public Order of the DP of the MIA, of which 12 were confirmed, 6 were submitted for further examination by the prosecutor's office and 22 were not confirmed. In 2006 there were 18 complaints, of which 2 were confirmed, 14 were not confirmed or sent for examination according to the relevant competence. In 2007, 27 applications were registered, of which 5 were confirmed, 20 cases were not confirmed and 2 were sent for examination according to the relevant competence. In 2008, 18 applications were received for consideration, of which 6 were confirmed, 9 were rejected and 3 were remitted to the prosecutor. In 2009, 13 complaints were registered, of which 2 were confirmed, 6 were rejected and 5 were remitted to the prosecutor's office. In the nine months of 2010, 17 complaints were filed, of which 8 were not confirmed and 9 were remitted to the prosecutor's office.

In terms of the number of criminal cases brought on ill-treatment by staff of the MIA, during 2005, 3 criminal cases were filed on application of torture and 86 criminal cases on abuse of power or application of physical force, in 2006 - 21 criminal cases of torture and 60 on the excess of power with application of violence; in 2007- 33 criminal cases of torture and 52 of excess of power with application of violence; in 2008- 16 criminal cases of torture and 39 for the excess power with application of violence; in 2009 - 45 criminal cases on torture and 54 on the excess of power and in the first seven months of 2010, 26 criminal cases of torture and 31 criminal cases on the excess of power with application of violence.

Although there has been a certain improvement in the prevention and combating of torture, the events of April 2009 showed the fragility of the situation in the observance of human rights in the RM. As a result of abuses committed by law enforcement officers, 106 complaints about torture crimes committed by police officers were filed. Among those who have complained of ill-treatment, eight were minors. On 42 complaints about prosecutors ordered the criminal prosecution of police officers according to art. 309-1, 328, 152, 187 of the Criminal Code, in 59 cases decisions not to initiate the prosecution were taken. By the end of 2009 six criminal cases were remitted to court.

96 Report to the Government on the visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Republic of Moldova between July 27 – 31, 2009 (p. 11)

97 Report to the Government on the visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the Republic of Moldova between September 14 – 24, 2007 (p. 8) and Manfred Nowak, „Promotion and protection of human rights, civil, political, economic, social and cultural rights, including the right to development”, Report of the Special rapporteur on Torture and other Forms of Cruel, Inhuman or degrading Treatment or Punishment, para.25

Talking about the international and regional obligations of the Transnistrian region, by the Resolution 226 of the so-called „Superior Council” of the „Transnistrian Republic” of September 22, 1992, the Transnistrian region of the Republic of Moldova undertook „independently as a member of these international organizations to consider the mentioned international acts (Convention on crime prevention and punishment of genocide, the ICCPR, the European Convention on Human Rights, ICESCR) in force on the territory of Transnistria. Provisions on the prohibition of torture are contained in the so-called Constitution of Transnistria, the Criminal Code and Criminal Procedure Code. However, many human rights violations arise from the legislation in force, which, for example, requires solitary detention of persons sentenced to capital punishment and life imprisonment, and which prescribes severe restrictions regarding contact with the outside world. The current legislation which does not violate human rights is not respected either, several complaints on torture having been filed<sup>98</sup>.

In terms of personal security in case of hospitalization in a psychiatric inpatient treatment facility without free consent of this person or his/her legal representative, the law stipulates that it is possible without the issue of a court order only in two cases: direct social risk and serious danger for the health of the patient. The psychiatrist commission sends its opinion within 24 hours to the court of territorial jurisdiction, which must issue a decision within three days, on forced keeping of the person in the psychiatric inpatient treatment facility or release. A person hospitalized in a psychiatric inpatient treatment facility without his/her free consent shall be examined at least once a month by the psychiatrists’ commission of the hospital to decide on the extension of hospitalization, and upon expiry of 6 months after hospitalization without free consent, the administration of the psychiatric health facility shall send to the court the opinion of the psychiatrist committee on the need to extend the term of inpatient treatment. The decision on the prolongation of hospitalization is adopted by the judge on yearly basis.

These legal provisions are not observed in practice, people are hospitalized without any court decision, since the administration of the psychiatric care facility does not send the necessary documents to the court. The supervision of its activity must be carried out by the prosecutor’s office, but there are serious gaps in this respect.

In early 2000’s, Moldova became an important source of trafficking of human beings, mainly women and minors. It is difficult to find out the exact number of trafficked persons, above all because this is a hidden problem and because Moldova lacks a unique system of collecting information about cases of trafficking in human beings. However, an indicator that might be used is the number of people assisted by IOM and the Centre for Victims’ Assistance and Protection. Between 2000-2008, the total number of persons assisted was 5,183, including 2,443 victims of trafficking and 1016 children of these victims, 50 migrants and 1,674 risk cases. The main forms of exploitation are: sexual (85.5 per cent), employment (6.5 per cent) and begging (3.1 per cent). The major

98 Manfred Nowak, „Promotion and protection of human rights, civil, political, economic, social and cultural rights, including the right to development”, Report of the Special Rapporteur on Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, par. 28 and 29

destination countries are: Turkey (32 per cent), Russia (22.8 per cent), Moldova (20.2 per cent), United Arab Emirates (5.7 per cent) and Cyprus (4.4 per cent).

According to analytical estimates of the U.S. State Department<sup>99</sup>, annually about 7,500 Moldovans become victims of trafficking in human beings (about 1 per cent of 750 thousand Moldovan citizens working abroad). According to IOM<sup>100</sup>, at least 70 per cent of the victims of trafficking come from families defined as “poor” and “very poor”, 65 per cent say unemployment is the main reason of leaving abroad, and 70-95 percent have suffered from domestic violence before becoming the victim of trafficking. Domestic trafficking is also a problem.

Because this phenomenon had become very serious, Moldova ratified within three years (2004-2007) all major international conventions in this field.<sup>101</sup>

An important step in combating human trafficking was also the passing of the *Law on Preventing and Combating Trafficking in Persons* in 2005. The provisions of the Criminal Code concerning the sanctions applied for trafficking in humans, trafficking in children and illegal taking of children abroad were also harmonized with this Law. The punishment for trafficking in human beings was hardened, even life imprisonment being possible. However, those convicted for trafficking are often young women or men who want to help their relatives, friends and acquaintances who want to emigrate abroad, as it is difficult for the court to differentiate between a migrant and a trafficker. For this reason, victims are often those who become convicted. Another problem is that even the former victims of trafficking become traffickers.

As part of the European integration process in order to harmonize local laws with the European Union (EU) standards, the government amended the Criminal Code in May 2009, reducing the duration of any criminal punishments imposed for trafficking.

The amendments reduce the minimum and maximum punishments for human trafficking, from prison term of 7 years to life imprisonment, to imprisonment for a term of 5 to 20 years.

According to Trafficking in Persons Report 2010, performed by the US Government<sup>102</sup>, despite the continuous efforts of the government to improve the statistical data on trafficking in humans, there are still some doubts concerning the accuracy of the reported data. The Government reported filing 206 investigations on trafficking in people, which is less than 246 reported in 2008. In 2009, authorities tried 70 individuals for trafficking in people for sexual exploitation purposes, compared to 127 similar hearings in 2008. The courts condemned 65 criminals for trafficking in humans in 2009, which is an increase compared to those 58 cases reported in 2008. 43 criminals were condemned to imprisonment for terms between 5 and 10 years. The other 22 convicts have been

99 US State Department, “Trafficking in Persons” Report, June 2008, p. 182, <http://www.state.gov/g/tip/rls/tiprpt/2008/>

100 See, e.g. „Trafficking as It Is” [http://iom.md/materials/brochures/3\\_ct\\_traff\\_eng.pdf](http://iom.md/materials/brochures/3_ct_traff_eng.pdf)

101 a) UN Convention against Transnational Organized Crime of 15.11.2000 and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing that Convention (ratified in 2005 by the Laws of the Republic of Moldova no. 15-XV of 17.02.2005 and no.17-XV of 17.02.2005);

b) Council of Europe Convention on combating human trafficking of 03.05.2005 (ratified by the Law no. 67-XVI of 30.03.2006);

c) The Optional Protocol to the Convention on the Rights of the Child, with respect to child trafficking, child prostitution and pornography approved by the UN General Assembly on May 25, 2000 (ratified by the Law of the Republic of Moldova no. 29-XVI of 22.02.2007).

102 Trafficking in Persons Report 2010, by the US Government

released with imposing their supervision or paid fines, but have not been imprisoned. The same report says that the government failed again to prove its sufficient efforts for the trial, condemning and punishment of any government officials involved in the trafficking in human beings, which remained an important hinder for efficient anti-trafficking reforms – which is why Moldova was placed for the second year consecutively among the „Group 2, Countries under observation”.

Since early 2000's significant institutional efforts have been made, among which establishment of the National Committee for the Combating of Trafficking in Humans – an interdepartmental body responsible for the overall coordination of the activities of trafficking prevention and combating. The National Committee is led by a Deputy Prime-minister of the RM. For the purpose of examining the problems and preparing solutions to problems related to the activity of the National Committee, several permanent commissions of experts were created within this body (see the table below). In all rayons territorial committees for the combating of trafficking in humans were established and in 2008 the Framework Regulation of territorial committees for the combating of trafficking in human beings was approved<sup>103</sup>. The Government approved three national Action Plans for the prevention and combating of trafficking in human beings<sup>104</sup>.

Since 2005 a specialized unit has been operating within the Ministry of Internal Affairs of the Republic of Moldova – the Center for Combating Human Trafficking (the only specialized body of this kind in Europe). A specialized department responsible for the combating of human trafficking was established within the General Prosecutor's Office. Also within this institution the Coordinating Council of Law Enforcement Bodies was established, responsible for the combating of trafficking in human beings. During the recent years the number of criminal cases filed and of people condemned for human trafficking has increased considerably.

The Republic of Moldova has signed bilateral and multilateral agreements for the combating of human trafficking with some states (Turkey, CIS, Romania, Slovakia, Italy etc.).

In 2008, by the Government Decision the establishment of the Center of Assistance and Protection of trafficking victims<sup>105</sup> was approved. According to this decision, the MSPFC concluded the Agreement on joint activities in partnership with the International Organization for Migration Mission in Moldova in order to define the duties of joint management and financing of the institution. The Center provides temporary shelter and a range of services: medical, psychological, social, legal, educational and recreational. The Center also provides services to potential victims of trafficking in human beings (persons at risk). Although the Government of Moldova has made considerable efforts to combat trafficking in human beings<sup>106</sup>, including through the development and implementation of the National Referral System for the assistance and protection to victims and potential victims of human trafficking<sup>107</sup>, which had

103 Decision of the Government of the RM no. 234 of 29.02.2008

104 Decision of the Government of the RM no. 1219 of 09.11.2001, no. 903 of 25.08.2005 and no. 472 of 26.03.2008

105 Decision of the Government no. 847 din 11.07.08

106 <http://romanian.moldova.usembassy.gov/tip-2010-ro.html>

107 For a more detailed analyses see: [http://www.lastrada.md/publicatii/ebook/CIMN\\_machet\\_rom.pdf](http://www.lastrada.md/publicatii/ebook/CIMN_machet_rom.pdf)



874 beneficiaries between 2006 and 2009, of which 582 cases of trafficking prevention, the most important anti-trafficking activities are implemented by international organizations, Moldova still remaining dependent on external donor funds.

The domestic violence phenomenon is widespread in the RM, though there are no accurate statistical data on the victims of domestic violence. According to available data, one of 4 women suffered of domestic violence at least once. The RM ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2006. Following CEDAW recommendations, the RM adopted in 2007 the Law no. 45 on combating and preventing domestic violence, entered into force in 2008. This law introduced the issue of a protective order for immediate protection of victims of domestic violence. The request of the protection order is made by the victim or by another person if the victim is unable to do it. The court shall decide within 24 hours since the submitting of the application, stating the obligation of the aggressor to leave the house, not to contact the victim, not to commit aggression etc. as protective measures.

On 3 September 2010 the Law no. 167 on amending and supplementing certain legal acts entered into force. This law completed a number of laws on prevention and combating of domestic violence. The order on protection of victims of domestic violence shall be issued both within the criminal proceedings and within the civil ones. In both procedures the court may require the abuser to leave the common residence, to stay away from the victim at a distance that would ensure the safety of victim, not to contact the victim, not to visit her at the workplace and place of residence and may prohibit the keeping and carrying of firearms. Additionally, in criminal proceedings the court may require the abuser to pass a medical examination to determine abuse of alcohol and/or drugs and to be subject to a forced medical treatment or to participate in a special treatment or counseling for aggressors. In civil proceedings, the aggressor may be imposed to pay the costs related to repair of the damaged property, reimburse the medical treatment costs or assist in supporting children under the age of 18.

Though the legal provisions on domestic violence prevention and combating are quite good, their enforcement remains a problem.

***Non-execution of protection order*** –one of the problems most often encountered in cases of domestic violence is non-execution of protection, both by the aggressor and the authorities, who are required by law to enforce it. In most cases the local social worker and the police do not even know about the existence of a protection order, not to mention ensuring its enforcement. Another situation is when the police know about domestic violence and even about the protection order, but their actions are limited to bringing its existence to the knowledge of the aggressor, even when the protection ordinance requires the abuser to leave the house. The reason most often cited is lack of space where the abuser could go.

***Criminal prosecution delay by the criminal prosecution bodies*** – though since September 3, 2010 domestic violence has been considered a crime, included in the Criminal Code, the ap-

proaches of prosecutors in the interests of domestic violence victims have not brought any results so far. Though several applications have been submitted, none of them has been answered.

***Refusal to issue protection ordinance or its late issue*** – in some cases the courts refuse to issue protection ordinance for the victim of domestic violence, as the aggressor denies committing acts of violence and brings some witnesses who plead in his favor. Victim's words are not considered. The essence of the protection ordinance is to provide emergency protection to the victim, which means that issue of ordinance after 2 weeks makes this ordinance useless.

### ***3.2. How effective and equal is the protection of the freedoms of movement, expression, association and assembly?***

#### ***Right to Free Movement***

Though the right to freedom of movement is generally ensured and respected, some problems still persist, particularly in the eastern region of Moldova.

Article 27 of the Constitution guarantees the freedom of movement in the country and ensures the right to all citizens of the Republic of Moldova to establish his/her domicile or residence anywhere in the country, to leave, to emigrate and return to the country.

The ruling of the Constitutional Court No. 16 of 19.05.1997 establishes that provisions requiring obtaining of "residence visa" (or "visa of domicile") is in contradiction with the principle stated in art. 27 of the Constitution. Also, restrictions, established by the minimum living space for the registration of citizens cannot be legally binding, as they are some remnants of the Soviet control system and law. However, the Law on the exit and entry into the Republic of Moldova<sup>108</sup> raises some legal questions, particularly art. 8 (Refusal to issue the passport or the travel document – in case of citizens of the RM) and art. 9 (Refusal to issue the invitation and the residence permit - for foreign nationals and stateless persons). The provisions of these articles are quite broad, confusing and perhaps even unconstitutional.

Certain problems are generated by the Government Decision on additional measures of national passport system implementation<sup>109</sup>, namely section 33 of the Regulation adopted by this decision. According to this provision, the Ministry of Information and Communications Technologies requires all citizens, regardless of age, to submit a statement (notarized) signed by his parents that they consent to his departure abroad. Failure to submit such a declaration is a ground for suspending the procedure of issuing permanent residence, return of documents, or more specifically non-acceptance of documents necessary to move abroad. In fact: such a requirement often creates difficulties caused by simple *de facto* situations or by inter-

<sup>108</sup> Law no. 269 of 09.11.1994

<sup>109</sup> Government Decision no. 376 of 06.06.1995

human relations: the principle parents' refusal to accept the departure of their "child" abroad, difficulty or impossibility to obtain the consent of the parents who are already abroad, the difficulty or impossibility to obtain the consent of divorced parents, where one or both parents are abroad, but the domiciled abroad has not been registered with the Moldovan authorities etc.

In many cases the need of such a consent is an additional possibility of blackmail from the malevolent parent.

It also remains unclear why the authorities do not require parental consent when parents leave Republic of Moldova - taking into account the fact that they, like children, still remain citizens of Republic of Moldova.

Similarly to torture or illegal detention, the most serious violations of the right to freedom of movement occurred during the events of April 7, 2009. A number of foreign journalists were not allowed to enter the country then and some journalists were asked to leave the country, despite of the legal credentials they held<sup>110</sup>. Also, according to some representatives of the civil society in the territory, the free movement of young people between April 6 to 12 was restricted, numerous cases of preventing young people from coming to Chisinau having been recorded<sup>111</sup>.

### *The Right to Free Movement in Transnistria*

The guarantee and enforcement of the right to free movement on the left bank of Nistru river is even more difficult<sup>112</sup>.

Although the territory of the Republic of Moldova is internationally recognized as including the Transnistrian region, *de facto* Moldova does not control the territory on the left bank of Nistru river. Moreover, various problem arise from the existence and operation of two different legal systems in these territories. It should be noted that the right to free movement is guaranteed by the national legislation of both the Republic of Moldova and the Russian Federation (the legal system model of Transnistria is based on that of the Russian Federation). For this reason the text of the Agreement on the principles of peaceful resolution of armed conflict in the Transnistrian region included a separate article which stated that "parties to the conflict consider any sanctions or blockades inadmissible. In this context any obstacles to the movement of goods, services and people will be promptly removed...". However, the mechanism for implementation of these formulations has not been established. Moreover, under the current situation instead of freedom declared in the Agreement multiple checkpoints have been created, creating obstacles to free movement.

*De jure* there is no "border" between the Transnistrian region and the rest of Moldovan territory. However, this boundary exists on the Nistru River except some villages on the left bank of Nistru river (Corjova, Cocieri, Malovata Noua, Vasilievca, Pohrebea, Dorotcaia and Cosnita,

110 <http://www.seemo.org/activities/pressfreedom/09/press0920.html>.

111 See Promo-Lex Report „Human Rights and Democratic Institutions during the Post-Elections Period in Moldova: April 6 – July 1, 2009”

112 See Promo-Lex Study „Enforcement of the Right to Free Movement in the Eastern Region of the Republic of Moldova”



controlled by the constitutional authorities) and some villages on the right bank controlled by secessionists (Bender, Proteagailovca, Gasca, Merenesti, Chitcani and Cremenciug). This *de facto* “border” is defined by placing military checkpoints by both sides. These checkpoints are made up of police officers, customs etc. The inhabitants of these villages and towns, and some other localities at a very short distance from this “border” have to visit the Transnistrian region very often or to maintain economic ties with this region. Many people are even employed in this region and work for Transnistrian economic entities.

These economic relations are influenced by the existing customs checkpoints. Upon carrying some goods purchased or acquired in the Transnistrian region to areas controlled effectively by the constitutional authorities, it is necessary to pass the customs control and to pay various taxes. This has often been a source of public dissatisfaction and generated large public protests.

Another problem encountered by the people living on the left bank of Nistru river is the requirement to submit oral and written customs declarations upon crossing internal customs posts. People consider this procedure humiliating and illegal as they do not leave or enter the customs territory of the Republic of Moldova.

This problem most often affects the villagers of Pohrebea, Dorotcaia, Cosnita and Parata, who are forced to cross the internal customs checkpoint daily. The internal customs post is located in the immediate proximity to the bridge over Nistru on the route Chisinau - Cosnita and isolates these villages, controlled by the constitutional authorities, on the right side of Nistru. Other customs posts of secessionist bodies are located at the entry to Dorotcaia and Pohrebea villages. The population of these four villages is thus isolated by customs checkpoints on two sides.

Any transportation of goods requires the passage of specific control procedures that limit the right to free movement. While the settlement of the problem related to withdrawal of the customs checkpoint established by the secessionist bodies is currently impossible, as it does not depend on the will of the constitutional bodies, the existence of the internal customs checkpoint of the Republic of Moldova outrages all citizens living in these villages.

Moreover, in spring 2008 on the territory adjacent to this customs checkpoint some moveable constructions were places, used as offices for the staff of the customs and police.

The same situation is in other areas of villages and towns of the Republic of Moldova in security areas, such as those in Floresti, Soldanesti, Rezina, Orhei, Criuleni, Anenii Noi, Causeni, Stefan Voda and Dubasari rayons<sup>113</sup>.

### Freedom of Expression

Article 32 of the Constitution of the RM guarantees the freedom of thinking, opinion, as

113 Promo-Lex „Enforcement of the Right to Free Movement in the Eastern Region of the Republic of Moldova”

well as the freedom of public expression through words, image or another possible means to all citizens. This freedom is also protected by international rules and the law on freedom of expression, in force since 09.10.2010<sup>114</sup>

According to the report on World press freedom, published by Freedom House in May 2009, the Republic of Moldova ranks 148 of 195 countries, which means that it does not have a free press. Among the countries of Central and Eastern Europe, as well as former Soviet republics, Moldova ranked 19 of 28, being outrun by Georgia and Ukraine - countries where the press enjoys a partial freedom. Among the countries of Central and Eastern Europe that do not have a free press, Moldova ranks first with the lowest score, which means that although the press is not free, it is still better in Moldova compared to Armenia, Kyrgyzstan, Azerbaijan, Russia, Belarus and other former Soviet republics. Concerning the “press situation,” Moldova outranks Russia by six positions in the list of countries in Central and Eastern Europe and by 26 positions in the table of the media situation in the world. Also by six positions Moldova is outranked by Romania, which has a partially free press in the table of Central and Eastern Europe countries and by 56 positions in the table with all countries in the world.

The situation has not changed significantly in Freedom House report 2010, where press is characterized as not free, Moldova holding the same position as Iraq.

**Table 1 „Freedom of press in the world”**

Rank 2010	Country	Rating	Statute
139	Angola	62	Not free
140	Jordan	63	Not free
141	Algeria	64	Not free
141	Malaysia	64	Not free
141	Zambia	64	Not free
144	Iraq	65	Not free
144	Moldova	65	Not free
146	Armenia	66	Not free

**Source :** <http://freedomhouse.org/images/File/fop/2010/FOTP2010Global&RegionalTables.pdf>

Another report reflecting the press situation at the international level is „World Press Freedom Index - 2009”, published by „Reporters sans frontières” (RSF) in October 2009. This report ranks Moldova 114th of 174 countries in terms of press freedom. As in the previously mentioned report, Moldova is ahead of countries like Russia, where four journalists were killed in 2009, Belarus, Tajikistan, Kyrgyzstan and other former Soviet republics concerning the situation of the media. Reporters from RSF noted that despite the adoption in 2006 of the New Broadcasting Code, the heated discussions about the editorial policy of Teleradio-Moldova have not ceased. According to the report, in 2009, “Moldova 1” continued to provide more airtime within the news to the first

114 Law no. 64 of 23.04.2010 on freedom of expression, published in Monitorul Oficial nr. 117-118

three state officials compared to other political characters. Also, the rapporteurs noted that political tensions after April 5 parliamentary elections had an impact on the media too, which was treated as an enemy by the security forces.

Both the Freedom House report and the report published by RSF show a decline in press freedom in Moldova in 2009. In RSF report, Moldova has fallen by 16 positions compared to 2008, a steady decline being recorded in the country in recent years. The fact that in 2009 Moldova yielded 16 positions in media freedom compared to 2008 and 17 positions from 2007 to 2008, allows us to conclude that the worsening of the media situation is not caused mainly by post-election events of April 2009 when there were serious violations of journalists' rights, but this is rather a trend of the recent years, when democracy has regressed continuously.

The conclusion is that the media situation has worsened considerably in recent years. But the worst situation was probably recorded in the second and third quarter of 2009. During this period there were multiple serious violations of journalists' rights. Over 60 local and foreign journalists became victims of abuse or ignorance by the public authorities. Eight media outlets were subjected to constant intimidation, threats and discriminatory treatment, 33 foreign journalists were detained, interrogated, deported or prohibited the access to R. Moldova. Journalists had to carry out their activity in difficult situations, dangerous to their life and degrading in terms of their role in the society, becoming the target of many attacks. The split between the media outlets deepened.

However, in the last months of 2009, the Moldovan media market has entered into a natural process of democratization, there have been important reforms, a healthy competition between media outlets emerged and favorable climate for media business has developed. Also, in 2009 the public broadcasting reform began. At the end of the year Teleradio-Moldova was subject to significant changes, which will continue in 2010. It can be said that the national public broadcaster opened a new chapter in its history.

In the Republic of Moldova censure is forbidden by Constitution, but in reality it exists, directly or disguised at all levels, particularly in mass media belonging to the state. We are not speaking only about the thematic „guiding” of subjects disadvantaging the governing power, but also about the staff policy, which fosters political partisanship, the feeling of self-censure or better said fear. The self-censure also exists in many private media outlets, belonging to certain political parties, where the broadcasted materials are often stopped or edited to please the sponsors, the groups of influence, particularly during the elections campaigns<sup>115</sup>.

The law on the freedom of expression is being developed, providing for a set of basic regulations, including prohibiting censure, exercising the right to be informed, the freedom to criticize the state or the public authorities, right to disclaimer. The law on the freedom of expression is a synthesis of European standards on the freedom of expression and protection of privacy. It aims

115 Media and Legislation. Analysis, Opinions. Proposals, center for the promotion of the freedom of expression and access to information „Acces-info”

at establishing guarantees to ensure the right to the freedom of expression and information, as well as ensuring a fair balance between the right to the freedom of expression and information and the right to defend honor, dignity, professional reputation and private and family life.

The need for the law was dictated by the complexity of legal disputes concerning the exercise of freedom of expression in cases when it violates honor, dignity and professional reputation and privacy of others. By adopting this law, the social relations were regulated in general terms by the Constitution of the Republic of Moldova (Art. 28, 32, 34, etc.), Civil Code (art. 16, 1422-1424), the Code of Administrative Offences (Art. 47 / 2 and 47 / 3), the Broadcasting Code (art. art. 14, 16, 52, etc.), the media law (art. art. 4 and 27) and other laws, but the existing legislative framework needed to be complete in order to improve its harmonization with the case law of the European Court of Human Rights. Due to imperfection of the national legislation, although very complex in their essence, disputes related to the exercise of the freedom of expression (defamation) were usually examined without due attention to important elements.

The Press Law<sup>116</sup> is old and although it has been repeatedly amended over the years, it no longer meets the current requirements, dictated by developments in the media sector<sup>117</sup>. The legislation on the appointment of the members of the Coordinating Broadcasting Council and the management of Teleradio-Moldova should also be adjusted, in order to ensure the independence of both institutions, the majority of members of both institutions being assured by truly non-affiliated representatives of the civil society and the experts in the field, with a minimum participation (total 1-2) of representatives of political parties or government agencies. In this context it is important to ensure real independence and transparency of granting frequencies, which has not been the case since the adoption of the Code and the functioning of CBC so far on grounds of political dependence of CBC members.

During all these years analyzed in terms of democratic development of our society in this study, the freedom of the press continued to be the focus of international organizations and civil society. In this context, the Republic of Moldova must take decisive steps to exercise fully its commitments to international organizations concerning the freedom of press and expression.

### *Freedom of Association*

Freedom of association and the right to establish or to join trade unions are protected by art. 41 (freedom of parties and other socio-political organizations) and 42 (right to establish and join trade unions) of the Constitution, as well as art. 20 UDHR, Art. 22 ICPCR, art. 11 of the ECHR. However, the Constitution of the RM still does not have any special provisions on the right to free association, Article 41 providing for the freedom of citizens to freely associate in parties and other social-political organizations. These shortcomings should be removed, according to the draft

116 The Press Law no. 243-XIII of 26.10.94

117 Independent Journalism Center „The Relations between the Media and the State Authorities – towards Transparency and Responsibility”

National Action Plan on Human Rights for 2010-2013, by initiating the procedure for completing the Constitution of the Republic of Moldova with provisions to ensure freedom of association.

## Public Associations

The law on public associations<sup>118</sup> of 1996, republished in 2007, provides the conditions of establishment, activity and suspension of the activity of a public association. The activity of the trade unions, religious groups and political parties is regulated by other laws, separate for each of the mentioned categories. The public associations are divided in associations aiming at achieving public benefit and those aiming at achieving mutual benefit. Public associations aiming at achieving public benefit are the associations the subject of the activity of which is exclusively protection of human rights, education, acquiring and promotion of knowledge, health care, social work, culture, sport, liquidation of natural disasters' consequences, protection of the environment and other socially-useful activities. Public associations aiming at achieving mutual benefit are established for the purpose of meeting individual and corporate interests of their members.

Foreign citizens and stateless people living in the Republic of Moldova can establish public associations under the same conditions as the citizens of the Republic of Moldova.

Control over how the activity of the public associations meets the statutory targets and tasks is performed by the body that registered the association. The decision makers at this body have the right to obtain information on all aspects of the association, to inspect the documents of the association and to attend all its actions. If any violations of law are detected and the association does not remedy them, the activity of the public association, at the proposal of the body that registered its bylaws may be suspended by court decision for a term of up to 6 months. Control over sources of income, the amount of resources obtained, payment of taxes and other financial activities of a public association is carried out by financial and tax authorities of the state. The ways of controlling the financial activity of public associations are established by law. Any other interference in the activity of public associations is prohibited.

In general, we may conclude that the right to freedom of association is sufficiently protected in the Republic of Moldova, both in terms of legislation, and its implementation by the authorities. However, our state may be characterized by the existence of a civil society with relatively small capacity given the lack of effective institutional capacity and technical needs critical for its activity<sup>119</sup>.

Though the number of NGOs in the Republic of Moldova is quite big, few of them are truly active and functional.

According to estimations<sup>120</sup> made by the major donors in the Republic of Moldova, about

118 The Law on Public Associations no. 837-XIII of 17.05.1996

119 Nations in Transit 2007, p. 483, <http://www.freedomhouse.org>

120 Opinion of the European Economic and Social Committee "EU-Moldova Relations: the role of the organized civil society", (2008/C 120/19), p. 5

1,000 NGOs are active. In general, the state protects the rights of the civil sector. They enjoy relatively simple conditions for registration and do not face excessive pressure from the authorities. The major problems of the NGOs are related to lack of resources for their own institutional development. The small number of active organizations is due to low civic culture and modest support from private donors in the Republic of Moldova. Local business environment is an important source for NGOs, but usually only in terms of philanthropy. Thus, external donors remain the largest donors for Moldovan civil society. According to „*Consolidation of the Civil Society in the Republic of Moldova*” study<sup>121</sup>, the widest spread form of organization of non-government organizations in Moldova is public organization (91 per cent). Most non-governmental organizations have been working for 1-3 years (37 per cent) and 1 year (19 per cent), which shows a small tradition of civic activism in Moldova. Human resources available to the Moldovan civil society also influence their degree of functionality and efficiency. Over 59 per cent of surveyed non-governmental organizations do not have any employee. Organizations with a number of five employees account for about 24 per cent. In case of temporary employees we can see a share of 76 per cent of non-governmental organizations that do not use their services. These estimates identify another serious problem faced by the Moldovan civil society related to human capital and its quality.

The institutional capacities of the organizations can also be influenced by potential employees’ selection procedure. Only 22 per cent of the approached organizations use competition as an employment tool. These are followed, paradoxically, by organizations that select the future employees among their members (19 per cent), among volunteers (17 per cent) or by personal approach (17 per cent). This leads to the fact that non-governmental organizations turn into closed civil entities, amorphous because of their limited competitiveness and limited openness in the hiring process. Another indicator of the limited operational and managerial capacity of non-governmental organizations in Moldova is the fact that 14 per cent of those discussed above establish cooperation relations, 13 per cent are able to identify a specific problem, and 12 per cent possess knowledge and skills in projects development and implementation. The passive nature of Moldovan non-governmental organizations is proven by the fact that 22 per cent of them have not developed projects for two years in general, while 15 per cent of them developed 1-2 projects. In terms of the number of implemented projects, 36 per cent of organizations have not participated in such actions for two years.

## Trade Unions

The activity of the trade unions is regulated by the law on trade unions of 2000<sup>122</sup>. According to this law, the citizens of the Republic of Moldova, as well as foreign citizens and stateless persons staying legally on the territory of the republic have the right to establish and to join, at their own choice, trade unions, according to their bylaws, without the prior approval by public authorities.

121 Denis Cenusă, study „Consolidation of the Civil Society in the Republic of Moldova”, 2007

122 Law on Trade Unions no.1129-XIV of 07.07.2000



Also, the citizens of the Republic of Moldova staying abroad can be members of trade unions operating in the Republic of Moldova. Though statutory particularities must be taken into account, this law applies for military units and law enforcement bodies as well.

In 2000, a group of members of the Confederation of Trade Unions of Moldova (CSRM) detached and created “Solidaritatea” (Confederation of Free Trade Unions (CSLS)), which in 7 years became much bigger than the initial group from which it detached. In 2007 “Solidaritatea” had over 400,000 members and 28 branch unions. At the same time, CSRM had 300,000 union members and seven branch unions, including the majority of union members in education, healthcare and small business.

In mid 2007, these two confederations merged, creating the National Confederation of Trade Unions of Moldova (CNSM). However, it has not changed the situation radically, the unions continuing to remain a weak structure, which does not have enough power of pressure on political forces, the reverse situation being recorded.

### *Freedom of Assembly*

The freedom of assembly is regulated by art. 40 of the Constitution of the RM and the Law on assembly<sup>123</sup>. The development of the new law was determined by the fact that the old law was not meeting the standards of the European Convention for Human Rights on holding assemblies.

Under the new law, the assembly can be held based on a notification, not an approval. To conduct a meeting it is enough to submit a statement in advance of the meeting to the local public administration, while spontaneous meetings with a number of participants less than 50 people, do not require such notification. Under the new legal provisions the local government and police cannot intervene to prohibit the assembly or change its date, place and time. A serious problem is that the law does not apply throughout the Republic of Moldova. It is inapplicable in the territory controlled by the Tiraspol separatist regime and the monitoring of meetings in the region is not possible.

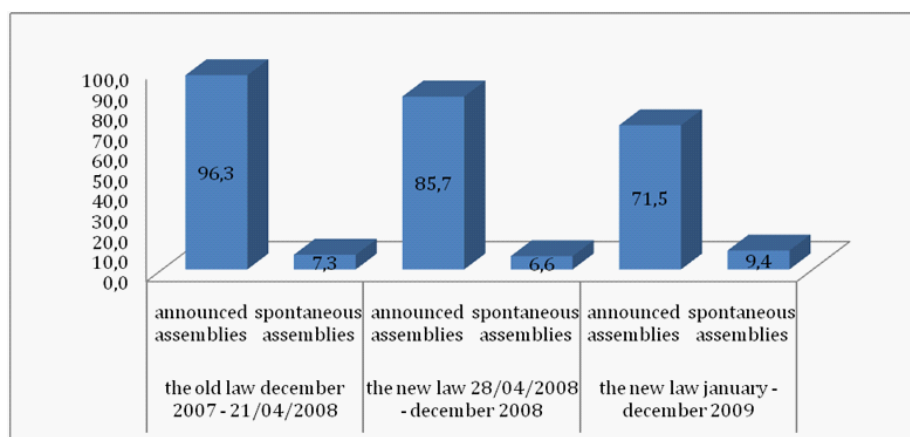
Since the new law entered into force, there has been an improvement of assembly organizations conditions, one of the indicators being the increased number of meetings. The average number of meetings under the aegis of the new law during non-elections periods was 47, which was by 50 per cent more than the monthly average during the period when the old law was in force.<sup>124</sup>

123 Law no. 26-XVI on Assemblies of 22.02.2008

124 CReDO report on the Freedom of Assembly during January – December 2009 [http://credo.md/arhiva/documente/Raport\\_per\\_cent20Mon\\_per\\_cent20ian-dec\\_per\\_cent202009\\_per\\_cent20v6.pdf](http://credo.md/arhiva/documente/Raport_per_cent20Mon_per_cent20ian-dec_per_cent202009_per_cent20v6.pdf)



**Chart 1 „Spontaneous and announced assemblies”**



**Source:** CReDO Report on the Monitoring of the Freedom of Assembly in the RM during January – December 2009

Despite the quasi perfect legal framework, there are gaps in its enforcement by authorities. There have been cases when police prohibited the organization of peaceful assemblies<sup>125</sup> or did not ensure the security of participants at a gathering<sup>126</sup>.

The most serious example of non-observance of the freedom to assembly are the events of April 7, 2009. Because of violent actions committed by a group of protesters, many peaceful protesters suffered because the police did not ensure the peaceful holding of the gathering. April 7 events showed how unprepared the authorities are to face a crisis situation.<sup>127</sup>

Another example, from 2010, is the case of „GenderDoc-M”. After the failure of the authorities to ensure the safety of the participants in 2008, as they were exposed to real risk of being aggressed by individuals, in 2009 the members of this organization decided not to hold any gathering because of insecurity. In 2010 they submitted a notification to Chisinau mayoralty about the intention to hold a peaceful assembly in support of the anti-discrimination law. Chisinau Mayoralty submitted a request to court to forbid the gathering because a number of religious organizations filed appeals against such events. According to the law on assemblies, the local government can dispose the prohibition of a gathering or change its place though a court decision, if the purpose of such gathering contradicts the law. In this cases there were only appeals from the church. Moreover, the city council notified the Court of Appeal within the administrative procedure, a procedure that is used when the local government is entitled or required to allow the assembly, which is not the case. The Court of Appeal examined the complaint and accepted it, though there were plenty of violations of the legal provisions. The decision of the Court of Appeal was cancelled by the Supreme Court of Justice (SCJ), including on the grounds that consideration of such cases in the administrative proceeding is not within the competence of the Court of Appeal.

<sup>125</sup> See e.g. [http://www.curaj.net/?page\\_id=509](http://www.curaj.net/?page_id=509)

<sup>126</sup> <http://www.lgbt.md/rom/story.php?sid=450> Gender Doc case

<sup>127</sup> Promo-LEX Report “Human Rights and Democratic Institutions during the post elections Period in the Republic of Moldova between April 6 – July 1, 2009” and CreDo Report „Freedom of Association in the Republic of Moldova – a summary of the events of April 6 - 7”.

Unfortunately, when the decision of the Supreme Court was delivered, the meeting could not take place, as the date set for it had already passed. This case is currently examined by the ECHR, for restricting the right to free assembly and discrimination.

Despite the progress recorded after the adoption of the new law on assembly, the free conduct of meetings is sometimes affected by several factors, which ultimately generate limitations of the exercise of this fundamental right by the individual. There are some shortcomings that will ultimately be removed by the joint effort of all involved stakeholders - policy makers and civil society. The current situation can be improved by extending the constructive dialogue between authorities and civil society, exchange of opinions, identification of best solutions and implementation of optimal joint programs, which would at the same time influence positively the maturity of the community. The position of authorities should also change as they must recognize that everyone has the right to assembly, without discrimination based on race, sex, language etc.

### ***3. 3 How secure is the freedom for all to practise their own religion, language or culture?***

The Constitution of the Republic of Moldova recognizes and guarantees the right of all citizens to preserve, develop and express their cultural, linguistic and religious identity. The state language of the Republic of Moldova is the Moldovan language based on Latin script. The state recognizes and protects the right to preserve, develop and use the Russian language and other languages spoken in the republic and facilitates the study of languages of international circulation.

During the Soviet times, in almost all the territory of the Soviet Union the Cyrillic script was used, except Latvian, Lithuanian, Estonian, Karelian and the languages of the West-European nations, which used Latin script, the Georgian and the Armenian kept their traditional script, while the Arabian script gave its place up to the Cyrillic script. Therefore, for many ex-Soviet republics the „linguistic revolution” implied not only reinstatement of rights of the national language, but also its return to traditional script, or even to a different script.

In the Republic of Moldova, already in early 90's, the Government supported the „rebirth” process of the Turcophone population, for the purpose of its „de-Russification”, accepting the „cultural assistance” provided by Turkey. While in 1989, when the language law of Moldova<sup>128</sup> was adopted, the Gagauzian leaders sought the support of Moscow, already in 1991, deceived by the ambiguous attitude of Russia, they turned their face towards Turkey, which had adopted the role of political mediator, supporting Moldovan integrity and the autonomous status of the Gagauzia region, gaining thus the trust of Moldovan government and the majority of the turkophone population of the republic. Turkey also committed to provide the Gagauzians „cultural assistance” in education, promotion of the national language and the media. However, the process of identity

<sup>128</sup> Law no. 3465 of 01.09.1989 on the functioning of languages spoken on the territory of Moldovan SSR

building of the turkophone population of the Republic of Moldova proved to be difficult as, though they acknowledged the Turkish origin of their language, the Gagauzians insisted on their distinct identity, which is first of all based on Orthodox Christian religion. This trend of supporting their own identity made the Gagauzians develop their own script based on the Latin one.

The Republic of Moldova was the first of the former Soviet states to adopt the shift of its national language from Cyrillic to Latin script. For the national elites of the National Movement in the late 80's of the last century, the shift to the Latin alphabet implied reconfirmation of the national language and its identity with the Romanian language, which was confirmed by the Law on functioning of languages in the Republic of Moldova. While the problem of the status of national language served as a unifying factor for the republic's Romanian-speaking population and managed to help the new politicians and intellectuals reach an agreement, the same cannot be said about the name of the language, determined by the identity issue. The problem of the name of the official language of the state, determined by the problem of the linguistic identity of the holding nation, caused a deep split in the population of the republic. This discrepancy occurs at the highest level, causing a deep gap between Moldovan political and intellectual elite.<sup>129</sup> The inconsistency of some Moldovan politicians taking truly contradictory positions concerning the name of the official language of the Republic of Moldova is remarkable.

Lack of dialogue with national minorities, the ambiguous national policy, as well as the imperialist attitude of a minority resulted in a split of the Moldovan society, a fact confirmed by public opinion polls conducted in the Republic of Moldova. According to 2001 survey data, 58 per cent of respondents believe that people can speak any language, but Moldovan/Romanian must remain the only state language, while 33 per cent support two official languages, Moldovan/Romanian and Russian, which is promoted by 71 per cent of Russians. The same discordance prevails in the problem of mandatory study of the Russian language. According to a survey carried out in spring 2002, the share of those who have opted for a single state language and those who have called for the formalization of the Russian language are equal (46 per cent).

Foreign researchers who studied the socio-political realities in the Republic of Moldova - M. Bruhis, W.P. van Meurs, D. Deletant, K. Heitmann, E. Coseriu, Ch. King, Gary C. Fouse. - suggest that one of the most serious problems is the Moldovenism doctrine, the strongest impediment in finding the democratic path in this space is the confusing identity of the majority of its population. These scholars also say that the ideology of Moldovenism, as a project of Soviet identity, was based from the outset on establishing a false antinomy - ethnic, historical and linguistic - between the Moldovans and the Romanians. In fact, "Moldovan" identity was manufactured by heterogeneous cultural practices, frequently used in Western Europe at the end of the 18<sup>th</sup> and during the 19<sup>th</sup> centuries, which in the former R.A.S.S.M. were assembled in a totally different historical context, animated by building a culture driven by proletarian culture opposing earlier cultural tradition. Thus, the Moldovan identity was designed for representatives of the proletarian class, for which

129 Oteanu Elena, „Linguistic Policy and State Construction in the Republic of Moldova», IPP, all publications, 2003.

the Soviet system had to build a culture and an identity distinct from that of the intellectual elite, qualified as bourgeois and therefore opposing the new communist society. The role assigned to the language in this project was a basic one: to observe the internal logic of the project of building a proletarian culture, the “Moldovan” language as a proletarian one (developed in the former MASSR in 1924) was opposite to the Romanian literary language, labeled as a bourgeois language. This “Moldovan” language, spoken by the new proletarian class, had to be simple or rather simplified compared to the Romanian language spoken in “Bucharest halls” and intellectual elite, interpreted as a language too complicated for the workers and peasants.

Since 1989, the official language has made significant progresses in expanding areas and frequency of use, which helped to raise its prestige. As a result, 93.2 per cent of survey participants are aware of the unifying role of the official language as the nation’s symbol, 91.2 per cent of them expressing their agreement with its mandatory knowledge by all citizens of the state. One of the main factors hindering this process is the promotion by Moldovan authorities, of the idea of social bilingualism, which does not motivate, at all, the ethnic groups to study the state’s official language: only 28.6 percent of Gagauzians, 29 percent of Ukrainians, 33 percent of Bulgarians and 47.9 percent of Russians would like to have more Romanian language classes at school (high school).

As an important aspect of the linguistic identity of the person, the State committed by law to recognize the right of every individual who belongs to a minority to use his/her last and first name in the minority language and to be officially recognized as such, according to legal provisions, art. 16 par. (1), as well as the right of such person to expose signs, inscriptions or other private information in the minority language, visible to the public.

Despite the recognition of the identity of Moldovan and Romanian language by scholars, as well as most politicians, the language remains a political argument in favor of legitimating the new Moldovan state, as well as an elections argument and a ground for increased tension in the society.

So far the Charter for Regional or Minority Languages<sup>130</sup> has not been ratified, though it is an important document for the operation of minority languages in the R. Moldova and one of the conditions mentioned in the Action Plan on Human Rights for 2004-2008, as a basic element of implementing the Action Plan European Union - Republic of Moldova. It is believed that the government has not ratified the Charter because of hesitations over the status of the Russian language and the lack of desire to take on clear obligations to ensure the functioning of Ukrainian, Bulgarian and Gagauzian languages in Moldova. Thus, the knowledge of official language by minority representatives would create conditions for their full integration into society, and this would be possible only at official level by promoting policies to support, expand and encourage the language learning. The Charter does not contain explicit recommendations for the conditions of adoption of a bilingual or multilingual system at the level authorities or the imposing of any ethno-linguistic minorities at the national level, to the detriment of the state language of each Member States of the Council of Europe.

130 <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>

The European countries that had ratified and applied this tool of the Council of Europe established local bilingualisms, which implies the knowledge and parallel use by representatives of ethno-linguistic minorities both of the official state language and their mother tongue. In case of the Republic of Moldova we deal, in specific locations, with local Romanian-Ukrainian, Romanian – Russian, Romanian - Gagauzia, Romanian - Bulgarian etc. bilingualism. For the first time in the history of the Republic of Moldova the Russian, among other languages, would acquire the official status of a minority language and would be deprived of the special, privileged status of the “language of interethnic communication”.

Any state party to the Charter must approve, upon ratification, a List of localities or regions specifying exactly which minority language will be used along with the official state language of the republic<sup>131</sup>.

In 2011, the Government plans to conduct a study on the desirability of ratifying the European Charter for Regional or Minority Languages of the Council of Europe. Also, the law on the functioning of languages spoken in the Moldavian SSR is extremely obsolete, which is shown even by its name. A new law regulating this issue is necessary, as well as the ratification of the European Charter for Regional or Minority Languages.

In the absence of concrete measures, some minorities could lose their national identity. The subject and challenges in linguistic integration of ethnic minorities remain insufficiently addressed by state authorities.

### *Freedom of Conscience*<sup>132</sup>

The Constitution provides for freedom of religion in its Article 31 (Freedom of religion) and Article 10 (Unity of the people and the right to identity), while our state is a secular state.

The new law on religion, which entered into force in 2007, simplifies in theory the registration procedures and facilitates the access of religious groups to public places for the purpose of carrying out religious activities. At the same time the law provides for restrictions that at times hindered the activities of religious groups.

The prevailing religion in terms of the number of parishioners and social influence is the Christian Orthodox religion. According to various estimates, over 90 percent of the population nominally belong to one of the two Orthodox Metropolis, Moldovan (BOM) or Bassarabian (BOC).

Moldovan orthodox Church (MOC) – (Metropolis of Chisinau and all Moldova), subordinated to the Russian Orthodox Church, has 1,281 parishes, monasteries, seminars and other entities; the Bassarabian Orthodox Church (BOC) – Bassarabian metropolis, subordinated

131 <http://cubreacov.wordpress.com/2010/09/20/de-ce-refuza-aie-ratificarea-cartei-limbilor-regionale-si-minoritare/>  
132 <http://romanian.moldova.usembassy.gov/irf-ro2009.html>

to Romanian Orthodox Church, has 309 such parishes, while the Old Russian orthodox (old-style church) has 15 parishes<sup>133</sup>.

Adherents of other religious groups, which together account for less than 10 per cent of the population, include Roman Catholics, Baptists, Pentecostals, Seventh-day Adventists, Muslims, Jehovah's Witnesses, followers of the Baha'i Faith, Hebrews, followers of Reverend Sun Myung Moon (Unification Church), Molokani (a Russian group), Messianic Hebrew, Lutheran, Presbyterian and other followers of some charismatic and evangelical Christian groups. No information is available about the number of parishes or parishioners of the Moldovan True Orthodox Church (also known as the Russian Orthodox Church Abroad). Jehovah's Witnesses have 239 congregations, including 31 in the breakaway region of Transnistria. According to the World Baptist Alliance, the Union of Christian Evangelical Baptist Churches of Moldova has 313 churches and 20,391 members. In November 2008, the European Baptist Federation said that hundreds of native missionaries were engaged in building 40 new Baptist churches in the country.

In Transnistria, the largest religious organization is the BOM. Other groups include Roman Catholics, Old Style Orthodox, Baptists, Seventh-day Adventists, evangelical and charismatic Protestants, Hebrew and Lutherans.

The law on religion recognizes the role of the Orthodox Church in the history of the republic, simplifying the registration procedures and facilitating the access of religious groups to public places, the only requirement for this being the prior notification of local authorities about such places. All groups, whether registered or not, are free to hold religious rites and all reported to have free access to public places for their activities. Since in October 2007 the responsibility for the registration of religious groups was transferred from the State Service for Religions (SSR) to the Ministry of Justice, three Muslim groups have tried and failed to register.<sup>134</sup>

The registration confers legal status to religious groups, enabling them to have property, to open bank accounts and hire employees. Individual churches or branches of registered religious organizations are not required to register with the Ministry of Justice as long as they do not perform official transactions and do not receive donations as local legal entities. For such local unregistered subsidiaries, the parent organization must exercise its authority in these areas. Unregistered groups cannot own property, cannot obtain authorization to build churches and seminaries, cannot open bank accounts, cannot recruit employees and cannot get places in public cemeteries on their behalf.

The procedure for registration of a religious organization is the same for all groups.

When adopting a new law on religion, the parliament did not take into account the concerns of the Council of Europe (CoE), which recommended the adoption of legislation that would clearly define the rights of religious groups to register as official religious community and rights to appeal in case of refusal. The CoE also asked the parliament to clearly define the right to registra-

<sup>133</sup> <http://romanian.moldova.usembassy.gov/irf-ro2009.html>, p. 2

<sup>134</sup> item



tion, including the right to obtain full legal personality, for all religious communities, even those with less than 100 members and recommended the parliament to specify the conditions under which the Ministry of Justice may ban, by court decision, the activities of certain religious communities.

Amendments to the law, which could be used to limit religious freedom, include the following: the requirement to have at least 100 founding citizens to be able to register as a religious organization (some members of religious groups object to disclosure of their data in the official document registration, based on an article which states that “any request for mentioning of the religious affiliation in official documents is illegal”); existence of a more detailed definition of “abusive proselytism” (including “psychological manipulation or various subliminal techniques”), as well as the state recognition of “exceptional importance and fundamental role of the Orthodox Christian religion, particularly the Moldovan Orthodox Church in the life, history and culture of the people of the Republic of Moldova.”

The dominance of the orthodox religion and implicitly of the Orthodox Church resulted in a series of abuses by its representatives, e.g. abuse against the Adventist cult, which was not allowed to organize the event entitled “the Bible Day” on the Great National Assembly Square, followed by the desecration of a Jewish cultural object. Moreover, there have been considerable pressures from the church for introduction of religion as a compulsory subject in school, which if approved would violate several provisions of national and international law rules (including constitutional).

In general, the government has respected in practice the religious freedom, but continues to deny registration to some groups trying to obtain legal status. In Transnistria authorities have generally respected the rights of registered groups, but continued to deny registration of some minority religious groups and persecute their members.

### ***3.4 How free from harassment and intimidation are individuals and groups working to improve human rights?***

The first human rights initiatives were launched in the early 90s, after the RM gained its independence. The first organizations of this kind (such as the Helsinki Committee) were established in 1992-1993, after which this process has gradually intensified. The state has not supported this process by any measure, but did not hinder it either.

Non-governmental organizations active in human rights protection field work based on the same principles as other non-governmental organizations. This area has been regulated since 1997 by the Law on Public Associations. Under this law, the state can provide support to public

associations through special purpose financing, upon their request, to social, scientific and cultural programs. Also, the state promotes preferential tax policy towards public organizations pursuing the public interest.

The law was substantially amended and republished in 2007. It was developed taking into account the experience and the legal rules of other states and suggestions provided by foreign experts.

Since April 1998, under the Law on Ombudsmen, no.1349-XIII of October 17, 1997, the Institution of Ombudsmen – Human Rights Center of Moldova (HRCM), which is an institution similar to European and international institutions of ombudsmen and which acts as an important non-judicial mechanism has functioned as an important non-judicial mechanism of human rights protection in the Republic of Moldova.

Established as an independent public authority to ensure the observance of human rights and fundamental freedoms by central and local public authorities, institutions, organizations and enterprises, associations and individuals in positions of responsibility at all levels, the Institution of Ombudsman is the authority which promotes a balance between public authorities and the society, contributes to protection of human rights by preventing their violations and restoring the rights, to improvement of the legislation related to the field and legal education of the population. In practice, the basic activity of this institution is the examination of submitted complaints, submitting of reports to the Parliament on human rights in the Republic of Moldova and making visits to various institutions. According to international reports<sup>135</sup>, the institution should be equipped with adequate resources to ensure the gradual and progressive improvement of the organization and implementation of its mandate; the budget of the Human Rights Center should provide for a separate line for the funding of the National Torture Prevention Mechanism.

According to the general opinion,<sup>136</sup> this institution remains quite passive and chooses not to intervene in flagrant cases of human rights violations. It might be explained by the fact that ombudsmen have previously worked as public employees, or plan in the future to continue their career in state institutions such as the prosecutor's office or police, which discourage them from taking some strict measures against their former or future colleagues. During the press conferences the ombudsmen do not submit relevant information on human rights violation, preferring to deliver a superficial message.

So far the state has not imposed any limitations or restrictions on local and international organizations active in human rights protection, it also fulfills its international obligations, such as accepting visits by the Committee against Torture or other organizations. Non-governmental organizations have been able to undertake various activities to monitor the activity of prisons, other state institutions considered "closed", some partnerships being established between these institu-

135 Report on Human Rights in the Republic of Moldova in 2009, Human Rights Center of Moldova, p. 55, <http://www.ombudsman.md/md/analale/>

136 Qualitative study among experts conducted in November 2010 by CBS-AXA, commissioned by IDIS "Viitorul".

tions and the civil society, contributing to the increase of state officials awareness of the respect for human rights. NGOs had the opportunity to submit alternative reports within UN agreements and treaties to which the RM is a party.

But mostly, despite the actions taken by the state to strengthen human rights observance (most often under the pressure from international bodies), many good reforms carried out in the legislation remained only on paper, their implementation being poor.

A separate issue are the events that took place after the parliamentary elections in April 2009. In the post-election period many human rights violations committed by police, prosecutors, judges and other state bodies against ordinary citizens but also the media or civil society have been recorded. On April 16, at least 7 NGOs received letters from the Ministry of Justice, in which each organization was asked to explain its position on the riots and the measures taken by it to prevent and stop the violence. These seven organizations and four others were asked by tax authorities on April 24 to submit financial reports and income sources for the years 2008 and 2009 before April 2. On April 28 representatives of local tax inspectorate visited the office of Amnesty International in the Republic of Moldova. They asked the organization to submit a copy of the list of members, who had paid member contributions and other documents.

### ***3.5 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

One of the most serious problems still persisting since the RM gained its independence, which in fact is a legacy of the Soviet system, is the waiver of liability of the law enforcement bodies of the republic. The so-called closed systems - the police, psychiatric institutions, prisons etc. are based on a performance assessment system focused on some criteria developed based on internal hierarchy, and not on transparent rules adopted in line with the democratic order. These institutions often take a very formal approach to democratic legal norms, principles and values. Currently, when a problem, such as police violence, is presented to a wider circle of the society, it is reflected in more details than any another problem such as e.g. domestic violence, which is equally important, but less publicized. The political interest in solving these problems is sporadic, and if it is present, it is largely forced by international bodies.

The main concern is the lack of state's interest in establishing independent mechanisms responsible for the supervision of state's repressive authorities and implementation of some actions of preventing human rights violations.

Despite the existing of such mechanisms as internal security of the police bodies, the Centre for Combating Economic Crime and Corruption, prosecutors etc. all these bodies work together

with the institutions they supervise within a system, which raises many questions concerning their independence.

Although there has been openness from authorities responsible for the protection of these rights of the citizens during the recent months towards the civil society and groups that promote and protect human rights, the situation in the area is far from satisfactory. Positive trends towards prevention of the public problems identified in human rights protection were mentioned in other subsections of this chapter and the overall situation can be assessed as unsatisfactory.

*Summary table: Civil and Political Rights*

	Very good	Good	Satisfactory	Poor	Very poor
3.1					X
3.2			X		
3.3			X		
3.4			X		
3.5				X	

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### 4. ECONOMIC AND SOCIAL RIGHTS

*Marin Gurin*

#### **Foreword**

The transition of the Republic of Moldova to a market economy is a slow process, accompanied by many challenges, as well as a number of failures, including land reform, failed privatization of state enterprises and the collapse of industry. A major shock was the territorial separation of the self-proclaimed Transnistria (which accounted for a third of the republic's industrial production and nearly all energy production) as an independent state. Lack of effective economic and social reforms, in addition to political instability characteristic of the first stage of transition, led to economic recession and expansion of poverty, when the Republic of Moldova was classified as the poorest country in Europe.

In the Republic of Moldova, poverty measurement indicators are calculated based on the Household Budget Survey (HBS) conducted by the National Bureau of Statistics. The HBS is a sample survey, which aims at multi-aspectual determining of the living standards in terms of revenue, expenditure, consumption, living conditions and other indicators. Since 1998, poverty in the Republic of Moldova has grown rapidly and achieved one of the highest levels (70 per cent) recorded in the CIS group. Since 2000, poverty began to decline, decreasing by quick steps.

In 2005, despite the economic growth, the level of poverty slightly increased, particularly due to its extension in rural areas. In 2006 about 1 million people (30.2 per cent) lived under absolute poverty line and about 250 thousand people (4.5 per cent) under extreme poverty. In 2007 the number of the poor population decreased by about 16 thousand people.

However, in 2008 the scenario of the 2005 was repeated – poverty rates increased due to its extension in the rural areas following decreased agriculture performances in 2007. In 2009, despite of the economic decrease, absolute poverty did not increase, while the incidence of extreme poverty further decreased. In 2007 / 2009 Moldova reached its intermediate target of extreme poverty reduction for 2010 and the final one for 2015.<sup>137</sup>

137 Second Millennium Development Goals of the RM [http://www.undp.md/presscentre/2010/MDG per cent20Report per cent20II/MDG per cent20Cu per cent20COPERTI per cent20LINKS.pdf](http://www.undp.md/presscentre/2010/MDG%20Report%20II/MDG%20Cu%20COPERTI%20LINKS.pdf)



Poverty level increases together with the increase of the number of household members, though the risk of poverty also persists in households of one person only. The analysis of data according to socio-economic groups shows that poverty incidence is the most pronounced among agricultural workers (42.8 per cent).

According to Household Budget Survey data, population incomes available in the first quarter of 2010 amounted to an average of 1,237.6 lei per person, increasing by 12.2 per cent over the same period of 2009.<sup>138</sup>

Thus, in 2000-2008 the economy experienced a cumulative increase of 62.9 per cent, which still accounts for only 56.6 per cent of total production in 1990. Remittances have contributed to increased household incomes, increasing the aggregate demand and consumption. Consumption is currently covered particularly by imported goods the prices and the quality of which are more competitive, increasing dramatically the trade and the current account deficits. Although wages and pensions in 2000-2008 increased by over 10 per cent, it did not play a significant role in real terms in improving the living standards. The average net salary of 165 euro is currently much lower than the average wage in the EU.<sup>139</sup>

The economic growth due to remittances has contributed to poverty reduction, although the mass migration of population has undermined the domestic labor market. During the transition period, the population number decreased by over one fifth, and the emigration of almost a quarter of the active population has affected the labor market, causing a reduction in the active population and employed population (by almost one-fifth), while the inactive population increased dramatically. At the same time, the unemployment rate is gradually decreasing, mainly due to emigration and to some extent, as a result of Government's incentives to legalize the economy, launched in 2007.

The shadow economy, widespread in the first decade of transition, has been declining in the second stage. According to some data<sup>140</sup>, in 2008 the contribution of the shadow economy to GDP was of 20.8 per cent compared to 34.6 per cent in 2000. During the past eight years, the share of household production in own consumption, which is a component of the shadow economy, fell from 18.5 per cent to 6.7 per cent of GDP - the largest drop being caused by the triple contraction of production generated by the subsistence agriculture.

During Moldova's transition to market economy the education system has been distorted too, affecting both the quality of education and accessibility of educational services. Although increasingly more resources are allocated for education, as they reached 8.7 per cent of GDP in 2008 compared with 5.7 per cent in 2000, the inter- and intra-sectoral distribution of expenditures is not appropriate. There is a big difference between the funds distributed at different levels of education - about half of the funds being allocated to compulsory education, which are used inefficiently.

138 [http://www.statistica.md/public/files/publicatii\\_electronice/Raport\\_trimestrial/Raport\\_II\\_2010\\_rom.pdf](http://www.statistica.md/public/files/publicatii_electronice/Raport_trimestrial/Raport_II_2010_rom.pdf)

139 Study of the Social Protection and Social Inclusion System in the Republic of Moldova, IDIS „Viitorul”, 2009, [http://www.viitorul.org-public/2591/en/Moldova\\_social\\_study\\_final\\_14\\_10\\_09.pdf](http://www.viitorul.org-public/2591/en/Moldova_social_study_final_14_10_09.pdf)

140 Idem

Less than one tenth of the resources are assigned to secondary vocational education. The funds allocated are not sufficient to modernize and prepare specialists for employment. The concept of lifelong learning in general and distance learning in particular is underdeveloped in Moldova. These problems have affected the education indicators. In the past few years the gross enrollment rates in primary and secondary education have been declining. Unlike the school enrolment at these education levels, the gross enrollment rates in preschool education have increased, although the number of preschool education institutions is insufficient, particularly in urban areas.

The Republic of Moldova ranks the 14th in the world by the population aging level and holds a leading place among the aged countries<sup>141</sup>. The aging coefficient in 2005 was 13.6 per cent, in 2008 - 13.7. The Republic of Moldova is falling, with some exceptions, within the European average birth rate (10.6 ‰) and mortality (12 ‰), but the rhythms of the evolution of these phenomena are different. While it developed within centuries in the European countries, in the Republic of Moldova it happened within several decades.<sup>142</sup>

Both the birth rate and the mortality are decreasing, while life expectancy is increasing. According to UN forecasts, the population of the Republic of Moldova might decrease by about 20 per cent by 2050 and each third person will be over 60 years old.<sup>143</sup>

The demographic crisis will have a negative medium- and long term impact, particularly on the labor market and the pensions system. Although it recorded a gradual improvement in the second stage of transition, the global economic and financial crisis affected the development of the Moldovan economy and the living standard of the population. In early 2009 the economic development slowed down. In the first quarter of 2009 exports, imports, industrial production and transport sectors declined, while unemployment and wage debts increased dramatically. At the same time, the budget revenues and official reserves of the National Bank of Moldova (NBM) recorded a steady decline, while budget expenditures increased. Decrease in budget revenues due to contraction of the aggregate demand and decline in remittances by a third affected not only vulnerable population, but also active businesses.

## ***4.1 How far is access to work or social security available to all, without discrimination?***

According to Article 43 (the right to employment and labor protection) of the Constitution, “everyone has the right to work, to free choice of employment, to fair and favorable conditions of work and to protection against unemployment.”

141 Victor Sainsus, „The Impact of Population Ageing on the Pensions System:: subtleties and possible solutions”, Public Policies no. 3, 2010, IDIS „Viitorul”, [http://www.viitorul.org/public/2786/ro/POLITICI\\_PUBLICE\\_Demografie.pdf](http://www.viitorul.org/public/2786/ro/POLITICI_PUBLICE_Demografie.pdf)

142 [http://www.unfpa.md/images/stories/pdf/carte\\_verde.pdf](http://www.unfpa.md/images/stories/pdf/carte_verde.pdf)

143 Gheorghe Paladi, Olga Gagauz, “Population Ageing in the Republic of Moldova: Economic and Social Consequences” p. 65, Chisinau 2009, ASM

Article 47 (the right to social assistance and protection) provides that “citizens have the right to insurance against: unemployment, disease, disability, widowhood, old age or other cases of lack of livelihood as a result of circumstances beyond their control”.

There are no discriminatory rules in other laws, such as for example the Labor Code and others. However, in practice, the situation can be different.

According to data published by the National Employment Agency, women are discriminated against based on several criteria on the labor market. According to surveys conducted by the agency, women are less favored both in terms of employment and remuneration, training, and hierarchical advancement. In 2008 a study of the situation of women on the labor market highlighted their disadvantaged condition<sup>144</sup>. About 38.1 per cent of the interviewed businessmen believe that women endure worse conditions than men on the labor market. At the same time, 42.5 per cent believe that women face discrimination on the labor market. Respondents admit that they prefer to hire men, even if their qualifications are lower than of women who apply for the same position to prevent possible fluctuations in the human resources in case of maternity leave.

**Table 2 „Population by participation in the economic activity, by sexes and environment”**

Year	2003	2004	2005	2006	2007	2008	2009
<b>Activity rate</b>							
Total	51,6	49,7	49,0	46,3	44,8	44,3	42,8
Men	54,5	51,7	50,4	50,0	47,8	47,3	46,2
Women	49,1	47,9	47,7	43,0	42,2	41,5	39,7
Urban	54,8	52,9	52,5	49,7	47,1	47,1	47,4
Rural	49,3	47,4	46,4	43,7	43,1	42,2	39,3
<b>Employment rate</b>							
Total	47,5	45,7	45,4	42,9	42,5	42,5	40,0
Men	49,3	46,6	46,0	45,5	44,8	45,2	42,6
Women	46,0	44,9	44,8	40,5	40,5	40,1	37,7
Urban	48,1	46,5	46,6	45,2	43,8	44,5	43,6
Rural	47,1	45,0	44,5	41,2	41,6	41,0	37,4
<b>Unemployment rate</b>							
Total	7,9	8,1	7,3	7,4	5,1	4,0	6,4
Men	9,6	10,0	8,7	8,9	6,3	4,6	7,8
Women	6,4	6,3	6,0	5,7	3,9	3,7	4,9
Urban	12,2	11,9	11,2	9,2	6,9	5,5	8,0
Rural	4,5	5,0	4,0	5,8	3,6	2,8	5,0

**Source:** <http://www.statistica.md/pageview.php?l=ro&idc=263&id=2203>, edition 2010

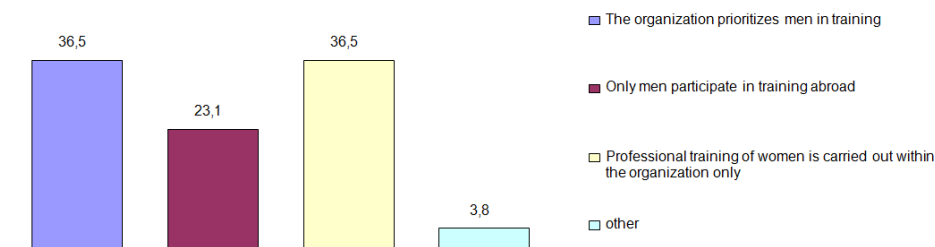
The respondents feel that discrimination of women occurs most often at the moment of employment (56.7 per cent), while one third believe that this phenomenon occurs mainly in hierarchical promotion. Moreover, according to the study “Sexual Harassment in the Republic of Moldova”<sup>145</sup>, over six in ten employed women believe that gender discrimination exists in the Republic of Moldova and that, directly or indirectly, they suffered from various forms of this kind of discrimination by relatives, friends or acquaintances.

<sup>144</sup> „Women on the Labor Market in Moldova”, ASEM, Chisinau, 2008.

<sup>145</sup> [http://www.progen.md/sys/files/Fenom\\_hart\\_sex\\_RM.pdf](http://www.progen.md/sys/files/Fenom_hart_sex_RM.pdf)

The average salary of women is 72.3 per cent of the average salary of men<sup>146</sup>. Discrimination phenomena also occur in professional training.

**Chart 2 „Professional training of women and men”**



National Employment Agency <http://anofm.md/stratstudii>

Thus, in the Republic of Moldova, organizations give priority to training of men (36.5 per cent), training of women is carried out only within the organization (36.5 per cent) and only men participate at training abroad (23.1 per cent). In the same context, 50.3 per cent of Moldovan firms prefer men to hold key positions within the organization, and 8.5 per cent of companies do not allow women to participate in competitions for that. The reason invoked for granting men priority in holding key positions is companies' dissatisfaction when women take the maternity leave.

There have been no estimations of the number of unemployed persons based on the ethnic criteria in the Republic of Moldova, so it is difficult to tell what the situation in this area is, but according to OSCE Report on Roma population in 2002, "... all Roma encounter problems, including widespread and systematic discrimination in education, housing, employment, and access to public places". According to the report "Roma in the Republic of Moldova", developed by UNDP Moldova in 2007, the activity rate of the Roma population is by 2 times lower than in non-Roma population<sup>147</sup>. The active population among Roma is 9.27 per cent compared with 46 per cent among non-Roma population. There are also large gaps between the type of activities where non-Roma and Roma are employed, i.e. 25 per cent of the non-Roma population are employed full- or part-time, while the same figure for the Roma population is of only 6 per cent. There are also differences in the areas of activity, the Roma population is employed mainly in unskilled work. Most of the active Roma are concentrated in three areas of activity, namely journeyman, unskilled workers and self-employed. In the case of non-Roma the situation is different primarily by the fact that activities that require a higher education degree account for higher shares.

<sup>146</sup> [http://www.un.md/UNIFEM/programme\\_areas/policy/gender\\_employment/Gender\\_Studies\\_Conference\\_April08\\_Rom.pdf](http://www.un.md/UNIFEM/programme_areas/policy/gender_employment/Gender_Studies_Conference_April08_Rom.pdf)

<sup>147</sup> UNDP, "Roma in the Republic of Moldova", Chisinau 2007, [http://www.undp.md/publications/roma\\_per\\_cent20\\_report/UNDP\\_per\\_cent20Romii\\_per\\_cent20in\\_per\\_cent20Republica\\_per\\_cent20Moldova\\_per\\_cent20per\\_cent28Chisinau\\_per\\_cent202007\\_per\\_cent29.pdf](http://www.undp.md/publications/roma_per_cent20_report/UNDP_per_cent20Romii_per_cent20in_per_cent20Republica_per_cent20Moldova_per_cent20per_cent28Chisinau_per_cent202007_per_cent29.pdf)

Among the categories of the population exposed to a special risk of unemployment are the young people, some socially vulnerable groups such as people with disabilities, women who, after a certain period of absence due to parental leave return to the labor market, people without a stable place of residence, people released from detention and social rehabilitation institutions, people living in rural areas. Also, people aged over 45 years and persons released from detention are among the disadvantaged people who encounter difficulties or cannot get a new job because of the low level of education or obsolete skills and qualifications, not being able to deal with the positions they hold. This is combined with the impossibility to adapt to new technologies and the new behaviors required by the exigencies of the market economy manifested both in terms of work organization and the lack of opportunities for them to upgrade their skills and qualification level over the active period of life.

In the Republic of Moldova, the immigration of foreign citizens and/or stateless persons for work is possible when the filling of vacancies cannot be assured from the local human resources and only within the labor immigration quota set annually by the Government. The immigration quota for 2008 in the Republic of Moldova was of 1300 people.

Foreign citizens and stateless persons arriving to work under individual employment contracts can be employed by a single employer only and can occupy only the vacancies registered by employers within the territorial employment agency (hereinafter referred to as territorial agency).

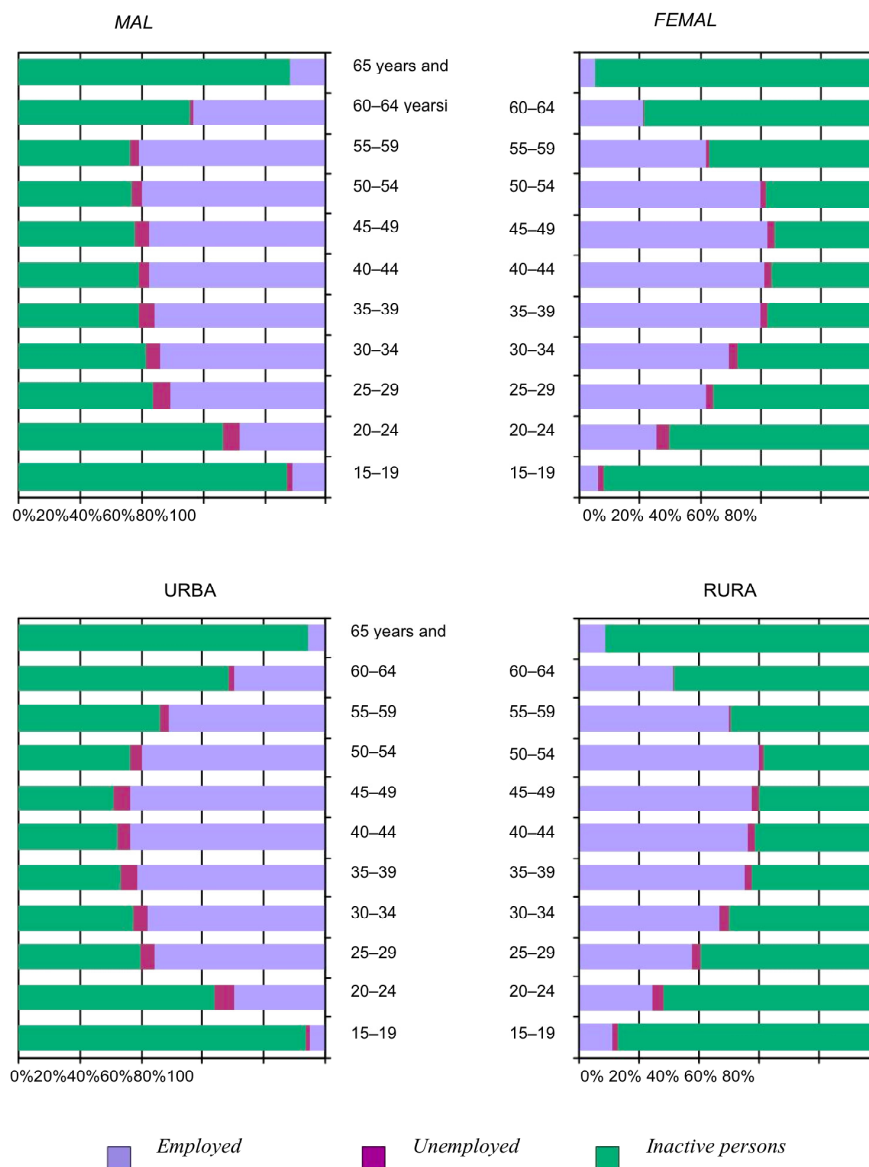
In the Republic of Moldova, foreign citizens and stateless persons carry out their employment activities based on a temporary residence and work permit.

According to the statements of economic units on their vacancies, as of 03/12/2009, 6188 vacancies were registered with the National Employment Agency (NEA). At the national level, 2023 jobs are offered to persons with higher and specialized secondary education degree.

**Table no.3 Economically active population**

**Breakdown of the population aged over 15 years and over by participation in economic life, by age, by gender and area, in 2009**

*Population aged 15 years and over by its participation in the economic activity, by age group, sex and area, in 2009*



## 4.2 How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

The right to a decent living is provided by several international treaties ratified by the RM, including the International Covenant on Economic, Social and Cultural Rights, article 11 of which stipulates the right to a decent standard of living, including food, water, shelter; Universal Declaration of Human Rights provides this right in its Article 25, as well as the European Social



Charter. On January 19, 2009 the Committee of Ministers of the Council of Europe issued a recommendation advising the member states of the Council of Europe to introduce the right to a decent standard of living in domestic legislation.

In the domestic law of the RM, the right to a decent standard of living is provided by article 47 of the Moldovan Constitution, according to which “the State shall take measures to ensure that every person has **a decent living**, that would ensure the health and welfare of such person and his/her family, including food, clothing, housing, medical care and necessary social services.

The standard of decent living depends on the state’s economic development. In the Republic of Moldova, the main policy document governing the poverty reduction is the Strategy for Poverty Alleviation and Economic Growth, adopted by the Parliament on December 2, 2004. This document provided government’s priorities over the medium term 2004-2007. The National Development Strategy sets out priorities for the period 2008-2011.

Low incomes and poverty are leading to inequality. In 2006 (when a new methodology for poverty estimation was introduced), 30.2 per cent of the population lived in absolute poverty, and 4.5 per cent in extreme poverty. Since 2008, absolute poverty rose for the first time in the last three years, reaching 26.4 per cent compared with 25.8 per cent in 2007, mainly due to lower remittances. The most vulnerable social groups affected by absolute poverty are the elderly, those whose sole source of income is employment in agriculture, families with many children and the unemployed, the poverty rate in these categories exceeding 40 percent. Agricultural workers are 2 times more likely to live in poverty than employees in the non-agricultural sector. Another factor influencing families’ poverty level is the education degree of the family members. In households whose members have primary education degree, the chances of extreme poverty are five times higher. The Republic of Moldova is characterized by regional imbalances. Industry and service sector is mainly developed in urban areas, while in rural areas agriculture remains the main type of activity. The RM still has the task of stimulating the economic growth outside the capital. Residents of rural areas are more affected than those in urban areas, with a share of 9 per cent, but this is characteristic to persons under the retirement age only. The absolute poverty rate of pensioners is by 2.3 per cent higher in urban than in rural areas.

According to Millennium Development Goals report, the RM encounters problems in access to quality drinking water.<sup>148</sup> Each second inhabitant of the country consumes drinking water that does not meet the sanitary norms, and eight of ten wells and half of the springs are unacceptable sources of drinking water.

The National Bureau of Statistics provides data on population access to water sources in the Household Budget Survey. Although there are at least three sources of population access to drinking water (centralized water supply, fountain, well, etc.), the National Bureau of Statistics estimates only the access to drinking water, without taking into consideration its quality, which varies depending

<sup>148</sup> Second Millennium Development Goals Report of the Republic of Moldova, Chisinau 2010

on the source and depending on the region. In this context, according to NBS the whole population of the Republic of Moldova has access to sources of drinking water. The data on the evolution of this indicator are also provided by the former Agency of Constructions and Territorial Development (ACTD). At the same time, the ACTD does not provide data on water quality. According to the World Bank,<sup>149</sup> in 2006 about 92 per cent of the population had access to improved water sources.

Another institution that provides data on this indicator is the National Scientific and Practical Center of Preventive Medicine (NSPCPM), which estimates the share of population with access to improved water sources based on water samples obtained during the monitoring of ground- and surface water, performed by the State Sanitary - Epidemiological Service. The water quality monitoring network includes 3500 artesian wells, 113,000 groundwater wells, 744 aqueducts, including 672 in rural areas. Water monitoring is only carried out in public drinking water systems and under GOST standards inherited from the former USSR.<sup>150</sup> Concerning this issue, the MDG report sets the ambitious task of reducing by half by 2015 the share of people without sustainable access to safe water sources. The poor quality water, used for drinking in the Republic of Moldova is the reason of 15 -20 per cent of cases of diarrheal disease and acute viral hepatitis A, mainly in rural areas, 20-25 per cent of somatic diseases, and 100 per cent of dental fluorosis.

By adopting the Law no. 2207-XVI of 29.07.2005 the Republic of Moldova became a party to the Protocol on Water and Health to 1992 Convention on Use of Cross-Border Watercourses and International Lakes.

As a conclusion, we can say that there are inequalities in the access to food/drinking water between urban and rural population and some differences depending on economy sectors where the people are employed, as well as depending on age.

### *The Right to Housing*

The right to housing is stated in many international human rights treaties ratified by the Republic of Moldova.<sup>151</sup>

At the national level the right to housing is provided by art. 47 of the Moldovan Constitution, which says: "The state shall take measures to ensure that every person has a decent living, to ensure the health and welfare of this person and his/her family, including food, clothing, housing, health care and the necessary social services." The Republic of Moldova is one of the states where the right to housing benefits from a less demanding protection, being included in the Constitution only. Although the Republic of Moldova has a Housing Code, developed during the Soviet Union, which in art. 1 guarantees all citizens of the MSSR the right to housing, this document is not applicable, though it is another law that even if has not been repealed, the relations regulated by it are outdated.

149 Millennium Development Goals Report, UN, 2007

150 Millennium Development Goals Report: „New Challenges– New Tasks”, Government of the RM, Chisinau 2007.

151 International Covenant on Economic, Social and Cultural Rights- art. 11, Universal Declaration of Human Rights - Article 25, the European Social Charter;

There have been several attempts to develop a new Housing code, but all bills presented to Parliament have been returned to the Government for modifications. The draft law on housing was developed in July 2010 and after entering into force will become the legal framework regulating the relations in the housing sector. This bill provides for two categories of housing for disadvantaged people, the first category is made up of the social housing, while the second – of the social institutions for the temporary or permanent accommodation of certain categories of people in need.

According to this bill, to qualify for social housing a family or an individual must be registered with the local authority and not have a house in property. The decision on granting the social housing is taken by the local authority and housing will be leased for the period until the material conditions of the family will improve. The rent payment for disadvantaged families in social housing will not exceed 10 per cent of the guaranteed minimum monthly family income, averaged over the last 12 months per family. The difference with the nominal value of the rent will be subsidized from the budget of the local administrative unit in which the social housing is placed.

In the RM a genuine right to housing is not enshrined, it has a rather declarative character. No mechanism to challenge the decision rejecting the provision of social housing has been developed. The Social Housing Fund will be established from building of houses or repair of the existing residential places. No percentage of social housing needed to be provided by the local authority has been established. The criteria of establishing the categories of disadvantaged people who can benefit from social housing have not been clearly defined.

### ***4.3 To what extent is the health of the population protected, in all spheres and stages of life?***

The accessibility and quality of health services are the indicators of the degree to which the health system fulfills its direct obligations to citizens, while the mechanisms of collecting resources, finance, management, correlation between different actors within the system and others are instruments which, in case of their proper management, contribute to the smooth implementation of these obligations by the health system.

Since independence in 1991, the Republic of Moldova inherited an inefficient and costly health system based on inpatient care, which in combination with socio-economic crisis undermined government efforts to ensure a decent level of health services. The health sector had become a burden on the state and health indicators were declining. The funding of the system depended largely on private and unofficial payments, and in this situation, the most affected were those with low income. Under these circumstances, the reform of the health system by redefining the funding mechanisms and rechanneling the financial resources to areas of major importance and efficiency, as well as switching to a new model of relations between the stakeholders seemed to be the only way

to break the deadlock. One of the major changes was the financial reform of the health system by introducing the new system of mandatory health insurance.

The results obtained showed that the initial objectives of the implementation of the new health insurance system in the Republic of Moldova had largely been reached by achieving a relatively satisfactory level of solidarity and increasing the access of the population to health services, particularly for vulnerable groups, improving the quality of services, steadily attracting financial resources to the health sector, gradually increasing the security fund and managing it properly, as well as improving the health status by increasing the health indicators. At the same time, there are some shortcomings in terms of law imperfections in the mandatory health insurance mechanisms, mechanisms of insurance contributions collection, the level of coverage and others.

The accounting mechanisms of the existing system are underdeveloped, the transparency of these mechanisms is very limited.

**Table 4 „Key Indicators for the Years 2004-2009”**

	2004	2005	2006	2007	2008	2009
Number of insured people	2.9	2 411 176	2 498 085	2634 417	2 568 734	2 448 072
MHIF incomes (mil lei)	4	1281.7	1559.0	2036.4	2686.7	2878.9
Share of transfers from the state budget to funds incomes * AOAM ( per cent)	7.7	65.5	64.2	58.7	54.9	50.6
MHIF Funds expenditures (mil lei)	21	1108	1485.4	1894.6	2572	3071.4
MHIF expenditures as per cent in GDP	86.7	2.9	3.3	3.5	4.1	5.2
Insurance prime – percentage ( per cent)	98	4	4	5	8	7
Insurance prime as a fixed amount (lei)	730	684.8	816.0	1209.0	1893.6	2637.6
Labor remuneration fund from which insurance premiums are calculated (bln lei)	937.5	10.1	12.6	15.2	16.7	19.1
Number of contracted health and pharmaceutical institutions	-	200	239	251	307	320
Number of primary health institutions contracted directly by the NHIH	-	21	24	29	72	73
Number of compensated recipes	2 263 489	n-a	732 776	1644088	1 975 626	2 180 557
Expenditures for compensated medications (mil lei)	441.23	7.4	23.8	40.9	55.3	74.1
Average salary in a health institution (lei)	976.9	632	1081	1387	1871	2269

### *Inpatient Care*

In case of secondary health care restructuring by reducing the number of hospitals and liquidating village hospitals, the population access to these services was not much affected. The existence of rayon hospitals, which are located within a reasonable distance, allows providing services in due time and rational amount. The factors influencing the level of access can be geographical, architectural, related to transportation, financial and others. The surface area of the Republic of Moldova is relatively small and the geographical distribution of hospital service providers can be achieved easier. An important factor is the quality of roads and communication systems, but also the presence of transport to access services, which do not depend on the health system only, but on other state structures too, the good cooperation between which facilitates the access to health services.

### *Emergency Health Care*

The emergency health service is the service the result of the activity of which depends directly on the coverage area. The time of access and provision of healthcare within this service plays an important role in achieving good results. Together with the health system reform, the emergency health care service was subject to modifications as well, functioning at pre-hospital stage in case of medical-surgical emergencies. The emergency health care in the country is provided by four regional stations of emergency health care, the emergency healthcare service of Chisinau and two departmental and private health care institutions contracted by NHIC (National Health Insurance Company). Thus, the general coverage with emergency services was ensured, decreasing the problems with the access of the population to these services. Since the early implementation of the CHI (compulsory health insurance), some trends in using emergency services have been recorded. Thus, there has been an increase in the number of visits from 204 per 1000 inhabitants in 2004 to 253 in 2005. The number of visits in rural areas has also increased (159/1000 inhabitants), but is still below the national level. The better access to emergency services is explained primarily by the emerging of real financing sources within the CHI fund, but also by the contracting and payment methods. The emergency services were initially contracted by the principle of “payment for the visit”, when the service providers were motivated to make more emergency visits, which increased the number of provided services. To boost the efficiency of the service and the activity of the service providers within the PHC (primary health care), the contracting principle in emergency health care was modified by currently using the “per capita” principle.

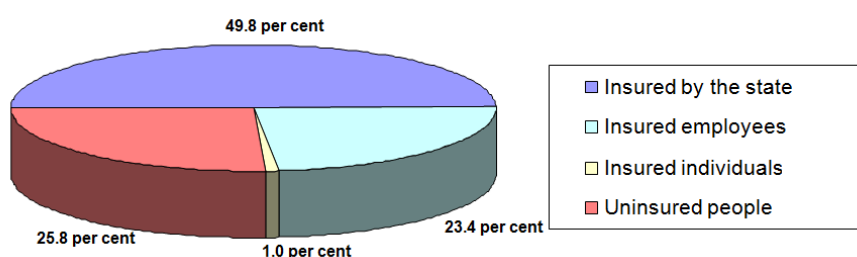
### *Population coverage*

Both in terms of service accessibility, but also of equality and solidarity, the question of population coverage by the CHI remains a major problem. According to some estimates reported by the NHIC in early 2008, the uninsured population accounted for about 23 per cent of the present population or 25.8 percent

of the total population, including those staying temporarily abroad, which shows an increase in CHI system coverage at the country level, compared to the previous years.

An analysis of the uninsured population categories, conducted by the National Bureau of Statistics as part of a nationwide households survey in 2008 revealed that the largest share of unemployed persons, who had not purchased an insurance policy, had a very low level of income. These people are usually members of peasant households, farmers or seasonal employees. These people consider the cost of the insurance policy too high and, therefore, they prefer to remain uninsured. A fairly large share of this group of uninsured people also have a fairly high level of prosperity, but probably prefer to use paid services in case of health problems and they are not willing to prevent the risk of unplanned expenditures for such situations.

**Chart 3 „Moldovan citizens’ insurance status within the CHI in 2008”**



Considering the recent years developments in the most important health indicators, such as life expectancy, morbidity, infant mortality etc., we can see that there is a positive trend in terms of the population health. The factors favoring the improvement of the general health of the population can vary, depending both on changes within the health system, as well as economic, political and other changes. Therefore measuring the individual impact of a reform on the overall population health is quite difficult.

#### ***4.4 How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?***

The official documents of the Republic of Moldova regulating the right to education are fully in line with the United Nations Charter, the Universal Declaration of Human Rights and UN Convention on the Rights of the Child.<sup>152</sup>

Article 35 provides that “the right to education is ensured by the compulsory general education, through secondary and vocational education, higher education, as well as other forms of training...”. The state education is free of charge, and the secondary, vocational and higher education

<sup>152</sup> Study „Basic education in the Republic of Moldova from the perspective of child-friendly school”, Institute of Public Policies, Chişinău 2009” [http://www.unicef.org/moldova/ro/educatia\\_de\\_baza\\_Rom.pdf](http://www.unicef.org/moldova/ro/educatia_de_baza_Rom.pdf)



is equally accessible to everyone based on merit. Also, the State ensures under the law the freedom of religious education. The public education is secular.

The Education Law of the Republic of Moldova, adopted in 1995, establishes the educational policy of the state and regulates the organization and operation of the educational system. Article 4 defines the principles of education. According to the declared principles, the educational policy of the state “is based on the principles of humanity, accessibility, adaptability, creativity and diversity. Education is democratic and humanitarian, open and flexible, formative and universal. The policy of ensuring the universal access to education is stipulated by the Constitution and the Education Law, and embodied in several relevant laws and regulations. The Law on ensuring equal opportunities between women and men, Article 13, “Equal access to education” in its Chapter IV “Ensuring equality between women and men in education and health” states that educational institutions shall ensure equality between women and men. Paragraph (2) of Article 6, Chapter III “Prevention activities among vulnerable groups” of the Law on HIV/AIDS provides for equal rights of children and young people affected by HIV/AIDS to education and prevention programs.

The Republic of Moldova inherited from the USSR a relatively high literacy indicator among the general population, but social inequalities arising during its transition have reduced the access to education services. These changes have worsened the school attendance and enrolment in public education at all levels: primary and secondary. The political and economic transition also raised the issue of structural changes in the educational system, insured and guaranteed by the state.

The current organization of schools in the Republic of Moldova is a reminiscence of the infrastructure of the former Soviet Union; all the significant changes in education, curriculum adjustments, or even changes in levels of education (from the 10-grades middle school to secondary and high school education of 9-12 grades) have not influenced decisively the quality of public education.

The serious negative demographic trends affect the transfers distribution system for the primary and secondary education in the RM, but also the schools’ use of their teaching capacities, and the remuneration and appreciation of the human factor (management and teaching staff of public schools). The demographic decline generates the ageing of the population ageing. It has been noted that the average age of Moldovan population at the national level has increased from 33.4 years in 2000 to 35.6 years in 2007, repositioning our country from the group of “young nations” to the group of countries with “adult population”. The sudden fall in the birth rate has led to a reduction of young population, in absolute and relative terms. In 2007, the share of population aged between 0 – 14 years decreased from 23.8 per cent to 17.2 per cent compared to 2000, while the segment of the population aged over 65 increased from 9.4 per cent to 10.3 per cent.

Since 2000, the average education expenditures have increased by about 28 per cent

annually, ranging from almost 21 per cent in 2003 to 45 per cent in 2004 (min and max). The highest share of education expenditures in GDP was recorded in 1996, when this figure amounted to 10.2 per cent, but the efficiency of the use of funds allocated for education is relatively low. The main causes of this phenomenon are: 1. inadequacy of school financing mechanisms, based on indicators - reported to institutions and not indicators reported by the students, 2. imperfections of the mechanisms of teachers' remuneration, based on work experience rather than performance, resulting in the exodus of young school teachers, 3. low salaries of teachers, which leads to their hiring based on 1.5 to 2.0 work time, with immediate repercussions on the quality of teaching, 4. distortions in the allocation of funds to different categories of expenditures, the share of expenditures that are not directly related to teaching and learning is exceedingly high, 5. decrease in the number of pupils per teacher and number of pupils per non-teaching staff; 6. high share of non-teaching staff in the total number of employees in the education system.<sup>153</sup>

Although an increase in public education spending can be noticed, more government and independent reports show that the resources allocated per capita in schools remain quite low and insufficient to decisively influence the quality of compulsory and post-compulsory education in the Republic of Moldova, compared with education expenditures recorded in the mid 1990's (10 per cent of GDP in 1995).

Although certain reforms have been implemented in curriculum and school organization, no improvement of the school networks and introduction of more convincing budget efficiency increase have been recorded. While access to public education is guaranteed to Moldovan citizens by the Constitution at all levels and all types, many issues remain unsolved. The Constitution stipulates in its Article 35 (1-9) that the general high school and secondary compulsory education is also provided free of charge, while the Law on Education provides that "public institutions of secondary vocational education, post-secondary vocational and university education can provide paid services." However, it is not clear enough what the core package includes, and what citizens should expect from the state, as government documents and strategies say that "public education is a priority in financing."

The structure of the public education system has already been subject to many changes. The education system has been modernized by separating secondary and high schools from the primary schools, establishing of versatile vocational schools, of several education levels and degrees, both compulsory and voluntary. In the context of general secondary education reform, the public education system has made several progresses.

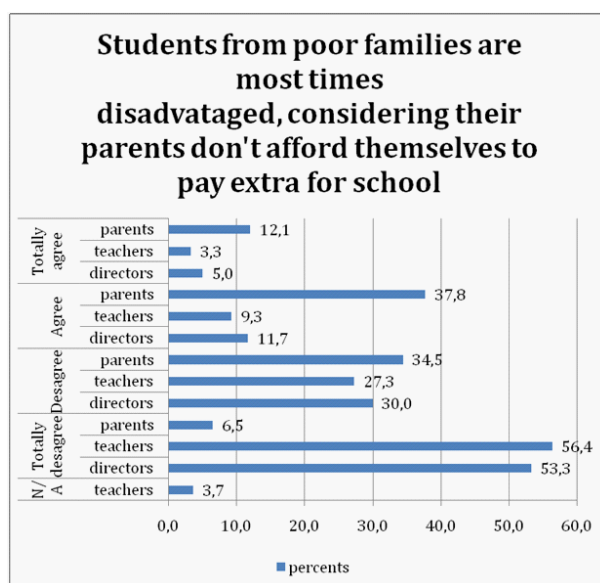
However, the inequalities in access to compulsory education have not been reduced. Lack of adequate resources for the purchase of teaching materials and school equipment, ridiculous salaries of the school teachers, as well as the transfer system existing in the RM have deteriorated significantly the condition of compulsory public education.

<sup>153</sup> Study „Basic Education in the Republic of Moldova from the Perspective of Child-Friendly School”, Institute of Public Policies, Chisinau 2009” [http://www.unicef.org/moldova/ro/educatia\\_de\\_baza\\_Rom.pdf](http://www.unicef.org/moldova/ro/educatia_de_baza_Rom.pdf)

Currently, the vast majority of Moldovan schools receive much less resources than necessary for salaries and maintenance needs (heating, services, child nutrition, education). The low salaries have a negative impact on learning outcomes at all levels. Since resources are allocated to schools based on specific norms, the capacity of local authorities and school managers (directors) to provide quality services to system beneficiaries is quite modest. This situation contrasts sharply with the objective set by the Government for the years 2005 - 2007 in the general context of reforms in the R. Moldova.

The access of children in poor families to public education services remains limited. There are important differences between the rural and urban areas, between households with low and high incomes, resulting in the fact that children in rural areas are among the most vulnerable groups. Because of poverty, over 44 per cent of families with children under 7 years old do not have books in their homes. This indicator is as high as 56 per cent in rural areas compared to 33 per cent in urban. Another factor affecting the access to quality education are the additional payments demanded in schools. Children in poor families are vulnerable because their parents cannot afford making such payments.

**Chart 4 „Educational disadvantages of pupils in poor families”**



Source: IPP, study „*Informal payments in pre-university education and equal access to education – sociological study*”, 2007, [http://www.ipp.md/public/files/Publicatii/2007/Prezentare\\_PIPES\\_2007\\_04\\_16.pdf](http://www.ipp.md/public/files/Publicatii/2007/Prezentare_PIPES_2007_04_16.pdf)

During 2002-2008, the enrollment rate in compulsory general education system declined from 95.1 per cent to 90.9 per cent. The reasons for this decline, as well as for the increased number of school drop-ups should be sought in the high poverty rate, particularly in families with many children, migration of parents and consequent increase in the number of children deprived of permanent parental care, and a very poor school infrastructure. The physical condition of a significant number of schools is inadequate, many schools lack central heating or are in a disastrous sanitary

condition. Despite all these, the overall literacy level of 98.9 per cent and of 99.6 per cent among young people aged 15-24 is relatively high.

The number of children enrolled in pre-school education has been constantly increasing. In 2008, the enrollment rate of children between 3-6 years was 74.4 per cent, compared with 44.1 in 2000. On the other hand, the net enrollment rate in primary education decreased from 93.5 per cent in 2000 to 87.6 per cent in 2006 and in secondary education from 87.0 per cent in 2000 to 86.1 per cent in 2006. At the same time, it is difficult to assess the rate of enrollment in pre-school education among children aged 6-7, because at this age, many of them are already in primary school.

#### *Children with special needs (mental or physical disabilities)*

In the Republic of Moldova the number of children with special educational needs is increasing, thus according to the National Bureau of Statistics, the number of disabled children aged 0-15 years increased from 12.2 thousand in 1995 to 13,200 in 2006. The share of this category in the total number of children almost doubled, from 10.5 people per 1000 children in 1995, up to 18.3 persons per 1,000 children in 2006. Currently, the conventional schools lack the basic logistical conditions, necessary for the integration of children with special educational needs, such as specially arranged places, adapted books, equipment etc.

In terms of gender equality, enrolling in general education system does not show any major misbalances, the enrollment rate of boys is just a little higher than that of girls. In primary education, the enrolment rate is 92.7 per cent among girls and 94.4 per cent among boys. In secondary education, this rate amounts to 88.8 per cent among girls and 89.8 among boys. With regard to pre-school education, the enrollment rate of girls aged between 3-6 years is of 73.8 per cent and of boys - 74.9 per cent.

## ***4.5 How free are trade unions and other work-related associations to organise and represent their members' interests?***

The activity of trade unions is governed by the Law on trade unions of 2000 and the Constitution of the RM, art. 42 - the right to establish and join trade unions, according to which any employee has the right to establish and join trade unions for the protection of his/her interests. Trade unions are established and operating according to statutes, helping to protect the professional, economic and social interests of the employees.

Article 43 of the Constitution says: "Everyone has the right to work, to free choice of

employment, to fair and favorable conditions of work and to protection against unemployment. Employees are entitled to work protection. The protection measures are related to occupational safety and health, working conditions for women and young people, establishing a minimum wage, weekends, paid annual leave, work in dangerous conditions, and other specific situations. The right to employment negotiations and the binding nature of the collective agreements is guaranteed. The Constitution also provides protection of the right to strike and to social services and protection.

These constitutional provisions were transposed in a number of organic and ordinary laws that ensure collective work relations, concerning:

- The freedom of association
- Independence of trade unions and employers' associations one towards another and towards the state
- An area within which the employers/employees and trade unions can negotiate and conclude collective employment agreements excluding any state interference.

Since 2003, when the revised Labor Code entered into force, the social partners decided to negotiate collective agreements at the national level on separate areas, aimed at particular aspects of the employment relationship.

It should be noted that by that time the social partners had negotiated a national collective agreement which covered most aspects of labor relations. The latest national collective agreement was negotiated in 2001 and subsequently extended by an agreement in 2003. During 2003-2010 the social partners negotiated 10 national collective agreements. The first collective agreements entered into force in 2004 and 2005 were focused on employees' salaries and wage supplements and unfavorable conditions (collective agreement on *Remuneration of employees working based on individual employment agreements* of 03.02.2004), employees' work and rest time (Collective agreement no. 2 of July 9, 2004) and a sample individual employment agreement (Collective agreement no. 4 of July 25, 2005 on the sample individual employment agreement). The last negotiated agreement is the agreement no. 10 of August 10, 2010 on amending and supplementing the Collective Agreement no. 2 of July 9, 2004 "Work time and rest time."

It can be noted that in terms of employment agreement conclusion, if we analyze the number of concluded collective agreements, registered with the Labor Inspectorate during the recent years, their number increased considerably in 2008 compared with the previous periods, but it was followed by a decrease (2009-2010).

**Table 5 „Information on conclusion and registration of the employment agreements at the level of the economic entity”**

Years	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	9 months of 2010
no. CEA	1280	1137	586	541	622	507	448	738	670	640	734	1015	781	677

*Source: Labor Inspectorate*

Although some collective conventions and agreements have been negotiated and signed, the situation has remained basically the same, both at the level of economic, social and any other protection of the employee. Like many other regulations, these agreements concluded by trade unions are rather declaratory. One important indicator of the strength and involvement of the trade unions is that no major strike has been organized by these during the last ten years.

#### **4.6 How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?**

The international standards pay significant attention to corporate governance. According to OECD principles of corporate management, the corporate governance involves a set of relationships between the company board, its executive body, shareholders and other related parties (employees, partners, lenders, local authorities etc.).

Currently, these are some authorities in the Republic of Moldova responsible for the supervision of the internal market, namely:

- National Commission of the Financial Market (NCFM), which is an autonomous central government authority, subordinated to the Parliament, responsible for the authorization and regulation of participants on the non-bank financial market, as well as for the supervision of their compliance with the legislation in force.
- National Bank of Moldova (NBM), which is responsible for licensing, regulating and supervising financial institutions, as well as setting and implementing monetary and exchange rate policy in the state.
- National Agency for Electronic Communications and Information Technology (NARE-CIT), which is the central authority responsible for the regulation of electronic communications and information technology, ensuring the implementation of development strategies and overseeing compliance of the legislation in force by electronic communications networks and/or services.
- National Energy Regulatory Agency (ANRE), responsible for the regulation of economic



and trade activities in the areas of electricity, natural gas and petroleum products by issuing licenses, promoting an appropriate tariff policy and protecting consumer rights.

- National Agency for Competition Protection (NACP) promotes the state policy on protection of competition, as it was established to limit and suppress the anti-competitive activity of the economic entities, government authorities and to exercise control over implementation of legislation on competition protection.

However, in several international reports<sup>154</sup>, Moldova was awarded a low grade in terms of a favorable investment climate, fighting of corruption, business launching and development, administration efficiency etc. Although the concept of corporate governance is based on providing equal, non-discriminatory treatment towards all investors, this treatment being enshrined in several laws, including the law on investments in entrepreneurial activity, it does provide for any rules that would refer to corporate governance.<sup>155</sup>

The NCFM has developed a Code of Corporate Governance<sup>156</sup>, compliance with which is voluntary and which contains concrete principles and situations that people involved in the company (members of the executive, the company's board, supervisory boards, shareholders) should pursue in their mutual relations. Virtually all banks in the Republic of Moldova, inspired by this code, have developed their own codes of corporate governance.

*Summary table: Economic and Social Rights*

	Very good	Good	Satisfactory	Poor	Very poor
4.1			X		
4.2				X	
4.3				X	
4.4				X	
4.5		X			
4.6			X		

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154 Moldova Investment Climate Assessment, World Bank, May 2004, [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/10/05/000090341\\_20051005131415/Rendered/PDF/336930MD0ICA.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/10/05/000090341_20051005131415/Rendered/PDF/336930MD0ICA.pdf), Moldova Investment Climate Assessment Report, US State Department, 2010, <http://www.state.gov/e/eeb/rls/othr/ics/2010/138113.htm>

155 McKinsey (The McKinsey Quarterly, 1999-2002) research on the behavior of institutional and private investors on development markets identified that 80 per cent of investors accept to make additional payments for the actions of companies which have an efficient corporate governance system.

156 Code of Corporate Governance, NCFM, 2007, <http://www.cnpf.md/md/codadm/>

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## PART II

# REPRESENTATIVE AND ACCOUNTABLE GOVERNMENT

## 5. FREE AND FAIR ELECTIONS

*Sergiu Lipcean*

*Do elections ensure the people's control over the Government and its policies?*

### ***5.1 How far is appointment to governmental and legislative office determined by popular competitive election, and how frequently do elections lead to change in the governing parties or personnel?***

#### **Legal Framework**

According to the Constitution of the Republic of Moldova, the Parliament is the supreme representative body of the people, consisting of 101 representatives (art.60) who are elected through universal, equal, direct, secret and free voting (art.61). The parliamentary term is 4 years. However, this term can be extended by organic law in case of exceptional situations (art.63). The Electoral Code contains principles, norms and procedures regulating in detail how elections should be organized and held - elections at all levels, including parliamentary. According to the current electoral legislation, only those who accumulate a certain percentage of the valid votes get into parliament: a party or a socio-political organization – 4%; an electoral bloc containing 2 parties and/or socio-political organizations – 7%; an electoral bloc containing 3 and more parties and/or socio-political organizations – 9%; an independent candidate – 2% (art.86).

According to the Constitution, the Government is comprised of the Prime Minister, the First Deputy Prime-Minister, Deputy Prime-Ministers, Ministers and other members (art.97), who administer the internal and external policies of the state and head the public administration (art.96). The Prime-Minister candidate is appointed by the President of the Republic of Moldova after holding consultations with the parliamentary factions. To become functional, the Government needs to be voted in by a parliamentary majority (art.98).

The President of the country is the state leader, elected through secret voting by 3/5 (61 votes) of the Parliament representatives and is elected for a 4 year term (art. 77-78). The Presidency cannot be held by the same person for more than two consecutive terms (art.80).

## An analysis of the current situation

The organization and holding of free and fair elections is one of the fundamental criteria by which a democracy is evaluated. This postulate set forth by R. Dahl in his famous work<sup>157</sup> is very relevant to the current situation in Moldova. The quality of the electoral process is a starting point for structural reforms in other political and socio-economic fields. It is unrealistic to expect large-scale transformations when a fundamental right is not ensured – the right to elect and to be elected. On this criterium, Moldova needs to improve its standing. The monitoring reports of national and international observers have always noted the existence of some lags in the organization and holding of elections. Even if the evaluation reports of the monitoring institutions were generally positive, they did note vulnerable aspects of the electoral system. National NGOs that deal with monitoring certain aspects of the electoral process (voter registration, mass-media behavior, competition among candidates) were generally more critical in their evaluations of the quality and degree of democracy in regards to elections. The explanation can be found by looking closely at the actors and institutions involved in the electoral process. In this regard, civil society evaluations have noted a regress regarding the degree of democratization of the electoral process. This recoil is clearly confirmed by the last Freedom House report on democratic development<sup>158</sup>, which notes a decrease in freedom regarding the organizing and holding of elections in Moldova.

**Table 6 “The degree of democratization of the electoral process”<sup>159\*</sup>**

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Estonia	1.75	1.75	1.75	1.50	1.50	1.50	1.50	1.50	1.50	1.75
Latvia	1.75	1.75	1.75	1.75	1.75	1.75	2.00	2.00	2.00	2.00
Lithuania	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75	1.75
Bulgaria	2.00	2.00	2.00	1.75	1.75	1.75	1.75	1.75	1.75	1.75
Poland	1.25	1.25	1.50	1.50	1.75	1.75	2.00	2.00	2.00	1.75
Hungary	1.25	1.25	1.25	1.25	1.25	1.25	1.75	1.75	1.75	1.75
Romania	3.00	3.00	2.75	2.75	2.75	2.75	2.75	2.75	2.50	2.75
<b>Moldova</b>	<b>3.25</b>	<b>3.50</b>	<b>3.75</b>	<b>4.00</b>	<b>4.00</b>	<b>3.75</b>	<b>3.75</b>	<b>3.75</b>	<b>4.00</b>	<b>4.25</b>
Ukraine	4.00	4.50	4.00	4.25	3.50	3.25	3.00	3.00	3.50	3.50
Armenia	5.50	5.50	5.50	5.75	5.75	5.75	5.75	5.50	5.75	5.75
Azerbaijan	5.75	5.75	5.75	6.00	6.25	6.50	6.50	6.50	6.75	6.75
Georgia	4.50	5.00	5.25	5.25	4.75	4.75	4.50	4.75	5.25	5.25
Belarus	6.75	6.75	6.75	6.75	7.00	7.00	7.00	7.00	6.75	6.75
Russia	4.25	4.50	4.75	5.50	6.00	6.25	6.50	6.75	6.75	6.75
Kazakhstan	6.25	6.25	6.50	6.50	6.50	6.50	6.50	6.75	6.75	6.75
Kyrgyzstan	5.75	5.75	6.00	6.00	6.00	5.75	5.75	6.00	6.00	6.25
Tajikistan	5.25	5.25	5.25	5.75	6.00	6.25	6.50	6.50	6.50	6.50
Turkmenistan	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Uzbekistan	6.75	6.75	6.75	6.75	6.75	6.75	6.75	7.00	7.00	7.00

Source: Nations in Transit. Freedom house.// [http://www.freedomhouse.hu/index.php?option=com\\_content&view=article&id=321:nations-in-transit-2010&catid=46:nations-in-transit&Itemid=121](http://www.freedomhouse.hu/index.php?option=com_content&view=article&id=321:nations-in-transit-2010&catid=46:nations-in-transit&Itemid=121)

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<sup>159</sup> \* Note: According to the Freedom House methodology, the evaluation of the democratic process is done on a scale from 1 to 7, where 1 represents the highest level of democracy and 7 the lowest level. Democracy score/type of regime: 1-2 – consolidated Democracy; 3 – semi-consolidated Democracy; 4 – Transition Government/hybrid regime; 5 – semi-consolidated authoritarian regime; 6-7 – consolidated authoritarian regime.

When comparing Moldova to the other former soviet republics and to some Eastern European countries, several points need to be made:

- Moldova has undergone a decrease in the degree of democratization of the electoral process, registering a decline of one point throughout the last 10 years;
- The main consequence of this decline is the transition from the semi-consolidated democracies category to the hybrid/transition regimes category, one point away from the semi-consolidated authoritarian regime category;

Moldova's performance on this criteria is clearly weaker than that of its neighbors – Ukraine and especially, Romania. Although there is a significant distance between Moldova and the Caucasus countries, Central Asian countries, Russia and Belarus regarding the quality of the electoral process, the same distance exists in relation to the Baltic democracies, Poland, Bulgaria and Hungary, which have considerably better scores.

Although certain declines in several aspects of the electoral process were noted in the 2001 - 2009 period (monopolization of mass-media, limiting of electoral competition, intimidation of opposition candidates, the use of administrative resources in electoral campaigns), Moldova was generally given a positive grade by international institutions dealing with monitoring and evaluation of electoral processes. Pressure from these international institutions (Council of Europe, OSCE, Venice Commission) convinced the authorities to comply with the standards and recommendations in this field, even if these were not always initially written in law. The electoral cycles of Moldova demonstrate the functionality of elections as a mechanism for the peaceful transfer of power.

***Table 7 “Electoral cycles in the Republic of Moldova”***

Early parliamentary elections November 28 <sup>th</sup> 2010
Early parliamentary elections July 29 <sup>th</sup> 2009
Parliamentary elections April 5 <sup>th</sup> 2009
Local elections June 3 <sup>rd</sup> and 17 <sup>th</sup> 2007
Parliamentary elections March 6 <sup>th</sup> 2005
Local elections May 25 <sup>th</sup> 2003
Early parliamentary elections February 25 <sup>th</sup> 2001
Local elections May 23 <sup>rd</sup> 1999
Parliamentary elections March 22 <sup>nd</sup> 1998
Presidential elections November 17 <sup>th</sup> and December 1 <sup>st</sup> 1996
Local elections April 16 <sup>th</sup> 1995
Parliamentary elections February 27 <sup>th</sup> 1994

This period can be divided into two distinct phases. The first phase, from 1991 – 2001, is characterized by a relatively high volatility of the electorate, which has repositioned itself in relation to the political forces after each parliamentary election. This process of electoral migration - the result of changes in voter preferences - reconfigured the composition of the legislature throughout this decade. It is important to mention that the change in the electoral preferences of the citizens

has had an especially strong effect on the dominant party after the 1994 parliamentary elections. Thus, the Democratic Agrarian Party of Moldova (DAPM), which has dominated politics throughout the first parliamentary cycle, was unable to gather enough votes at the next elections to get into Parliament. DAPM's coalition partner – the Socialist Party – had approximately the same fate, as well as the Movement Unity – Единство (meaning “Unity” in Russian). On the other hand, several minority and opposition factions from the first democratically-elected parliament form the “Alliance for Democracy and Reforms” (ADR), a governing coalition created after the parliamentary elections of March 1998. Also, the “Bloc of Peasantry and Intellectuals” is transformed into the “Party of Democratic Forces”, while the “Alliance of the Popular Christian Democratic Front” is part of the electoral bloc the “Democratic Convention of Moldova”. The two parties together with a new party - “For a Prosperous and Democratic Moldova” - form the governing coalition. Also, during this period the Communist Party starts its electoral offensive, brought back into legitimacy by the parties who won the majority in the 1994 elections, after it was banned and dissolved in 1991. Throughout one parliamentary cycle the Communist Party of the Republic of Moldova (CPRM) consolidates its forces and becomes the hegemonic party in Moldova politics after the 1998 elections. Even though as a result of these elections, the CPRM comes first, winning 30% of the vote, equal to 40 seats in the Parliament, it remains in the opposition.

The second phase, from 2001 to the present, is generally characterized by a relatively low volatility of the electorate, which voted massively for the CPRM in the snap elections of February 2001. This radical turn in electoral preferences was the result of a dire combination of external factors (the Russian financial crisis) and internal factors (political battles within the ADR), which decisively affected the capacity of the governing coalition to efficiently manage the socio-economic problems of the country. The phenomenon of electoral volatility is noted in this phase as well. In contrast to the previous phase, this volatility occurs in relation to the opposition parties and less so in relation to the hegemonic party of the system. Consequently, some political parties (the Party of Democratic Forces, the Movement for a Prosperous and Democratic Moldova) that were present in the 1998 - 2001 Parliament, don't cross the electoral threshold in the 2001 elections. The 2005 and 2009 elections continue the trend of reconfiguration of the political field – certain already existing factions reform themselves and other new ones emerge to create a coalition of opposition parties to offer an alternative to the CPRM. The first attempt of this kind was the electoral bloc “Democratic Moldova”, which won 34 seats in the 2005 elections. However, this bloc was eventually compromised because certain components of the bloc voted in Parliament for the election of the head of state, a candidate from the CPRM. The participation in and the voting of the president of the country had grave repercussions for some components of the bloc, which received horrible electoral scores in the April 2009 elections, not crossing the electoral threshold (the Democratic Party of Moldova, the Popular Christian Democratic Party). The second attempt was made after the April 5<sup>th</sup> 2009 elections, an attempt which shows significant fluctuations in the sympathies and voting preferences of the anti-communist electorate. This electorate reorients itself towards the



Liberal Party (13.13%) and the Liberal Democratic Party (12,43%), which for the first time get into Parliament, together with the Our Moldova Alliance (9,77%). The fluctuations of the “opposition” electorate have little effect on the CPRM electorate, which continues to give its vote to the CPRM, quantitatively almost the same as in 2001 (see table above), thus maintaining the status of the CPRM as the governing party.

The April 5<sup>th</sup> 2009 elections prompt a new wave of protests from the opposition and from civil society, through which the election results were contested for the first time. If until now, the results of all the elections – be they parliamentary, presidential or local – were never challenged and were recognized by all political actors and by international organizations as being compliant with minimal standards for free and fair elections, the results of the April 5<sup>th</sup> elections were challenged by the opposition. They accused the governing party of rigging the elections, by falsifying electoral lists, modifying electoral legislation right before the elections and abusively using administrative resources (institutional, financial and mass-media). The conflict reached the Constitutional Court, which validated the election results after a recount of the votes<sup>160</sup> without essentially examining the evidence regarding the alleged rigging of the elections put forward by the opposition. The failure to elect the head of state led to early parliamentary elections on July 29<sup>th</sup> 2009, the result being a victory of the opposition parties, obtaining 53 seats in the Parliament. The coming to power of the parties which formed the Alliance for European Integration (AEI) led to a liberalization of the electoral system and process, creating a more favorable and competitive framework for political actors. However, a series of unresolved issues regarding a better representation of women and ethnic minorities remained. Despite the fact that the access of political actors to mass-media institutions has improved, structural inequalities still prevent minor political actors from having as great an access to mass-media as the big parties have. Finally, one of the biggest issues affecting political competition that hasn't been solved to date is the financing of political parties, an issue which keeps political parties within the influence of economic oligarchies. These deficiencies taken together significantly undermine electoral competition and the equality of access to the political process.

## ***5.2 How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?***

### **Legal Framework**

The Constitution states that all citizens of the Republic of Moldova over the age of 18 have the right to vote, with the exception of those who have been banned by law. It is exercised through universal, equal, direct, secret and freely-expressed suffrage (art.38). The Electoral Code (art. 3 – 7) specifies that: no one can be denied the right to vote and to be voted on account of race, national-

<sup>160</sup> The Constitutional Court: Notice N.1 passed on 22.04.2009 regarding the confirmation of the legitimacy of the election of the Parliament of the Republic of Moldova.// The Official Gazette, Nr. 83-85/7, 30.04.2009

ity, ethnic origin, spoken language, religion, sex, opinion, political views, property or social origin (universal vote); each voter has the right to one vote and each vote has equal judicial weight (equal vote); the citizen votes personally, voting instead of another person being forbidden (direct vote); the voting is secret, excluding the possibility of influencing the voter's choice (secret vote); no one has the right to prevent the voter from expressing freely his/her choice (freely-expressed vote). Voting restrictions are placed on persons who do not conform to Constitutional provisions (art.38), reiterated in the Electoral Code (art.11), as well as on persons who are acknowledged as incapable by judicial decision or persons whose right has been revoked by judicial decision.

Citizens don't need to do anything to be registered to vote. However, the public authorities – central and local – are responsible for maintaining and updating voter lists. Governmental inertia and the presence of corporate interests have put obstacles in the way of this responsibility. The effect was the vocal challenge of the electoral lists and government policies, as was the case after the April 6<sup>th</sup> 2009 elections. Although in 2010 national observers have noted an improvement in voter lists, various reports continue to show a large number of citizens who vote on additional voter lists, showing that great gaps still exist in updating the voter lists and their accuracy. One can vote in the locality where he/she is residing (art.9). Town halls are responsible for drafting the voter lists and for giving two copies to each voting section. These lists include all citizens who have the right to vote and who, at the moment of list drafting, are residing within the town hall jurisdiction. After being drafted, the lists are checked at the residence of registered voters and are made public at least 20 days before election day (art.39). Voter lists can be verified at the voting sections, and are placed on the Central Electoral Commission's (CEC) webpage at least 20 days before election day. A copy of the list is held at town hall. At least 20 days before election day and using every means of communication available (mass-media, telephone, posters, the internet), voters are informed of the voting section where they can cast their ballots. On election day, voting sections are open from 7:00 – 21:00 (art.50). The person responsible for ensuring order at the voting section and within a 100-meter radius is the president of the electoral committee of the voting section. He/she has the authority to issue decrees for this purpose. Representatives of political actors, accredited national and international observers and mass-media institutions have the right to attend the counting and tallying of the votes, all procedures having to do with voter lists, voter ballots, identification documents for voting and the final report drafting, which sums up election results (art.55).

### **An analysis of the current situation**

Voter registration has been a sensitive subject throughout many electoral campaigns. The accuracy of voter lists has often been questioned because a relatively large number of voters were not included on the main lists and had to be written into the additional lists<sup>161</sup>. The numerous

161 Republic of Moldova Parliamentary Elections 22 March 1998: OSCE/ODIHR Election Observation Mission. // [http://www.osce.org/documents/odihr/1998/04/1285\\_en.pdf](http://www.osce.org/documents/odihr/1998/04/1285_en.pdf), Republic of Moldova Parliamentary Elections 25 February 2001, Final Report: OSCE/ODIHR.// [http://www.osce.org/documents/html/pdfhtml/1280\\_en.pdf.html](http://www.osce.org/documents/html/pdfhtml/1280_en.pdf.html), Republic of Moldova Parliamentary Elections 6 March 2005: OSCE/ODIHR Election Observation Mission Final Report.// [http://www.osce.org/documents/html/pdfhtml/14919\\_en.pdf.html](http://www.osce.org/documents/html/pdfhtml/14919_en.pdf.html), Republic of Moldova Parliamentary Elections 5 April 2009: OSCE/ODIHR Election Observation Mission Final Report.// [http://www.osce.org/documents/odihr/2009/06/38185\\_en.pdf](http://www.osce.org/documents/odihr/2009/06/38185_en.pdf)

amendments to the Electoral Code having to do with drafting and verifying electoral lists (art.39 – 40) attest to the imperfection of the legal framework and the political sensitivity of this subject. The growing number of voters that have to be included on additional lists shows that they were not registered before the elections. Voters that change their residency are responsible for registering with the local public administration in order to be included on the voter list. Registering voters abroad is even more muddled. Many voters are not included on the voter lists abroad and this makes it very hard for the embassies and consulates to develop accurate voter lists. Even if citizens abroad agree to register with the diplomatic representative, they usually don't declare their address, which makes drafting accurate voter lists even more difficult.

The relatively high proportion of voters included on additional voter lists and the fluctuation of this number from campaign to campaign (see table below) causes uncertainty regarding the efficient monitoring of the voting process<sup>162</sup>.

**Table 8 “Voters included on the voter lists and fluctuations in their numbers”**

Parliamentary Election Day	Number of voters included in the main voter lists	Number of voters included in the additional lists/ in thousands	Proportion of voters included in the additional lists / % of total
27.02.1994	2 356 614	152 754	6.5
22.03.1998	2 324 295	106 923	4.6
25.02.2001	2 256 241	123 250	5.5
06.03.2005	2 270 668	159 869	7
05.04.2009	2 586 309	117 794	4.5
29.07.2009	2 603 158	105 223	4
28.11.2010	2 645 923	165 546	6.26

The accuracy of voter lists was brought back into public attention after the April 5<sup>th</sup> 2009 parliamentary elections. The election results were challenged by the opposition on the grounds that voter lists were drafted opaquely and imprecisely. The State Registry of voters as the only electronic directory of voters in Moldova has not been created to date – the responsible institutions are the CEC and the Ministry of Informational Development (MID). However, these two institutions did forward voter information to the local public authorities, which in turn drafted the voter lists without double-checking this information<sup>163</sup>. The MID had sent voter information to the CEC, which in turn forwarded this data to the local authorities, without mentioning that this data is only a first draft of the voter lists. This opaque process blurred the responsibility for creating the voter lists between various institutions<sup>164</sup>, although the Electoral Code clearly states that this is the local public authorities' responsibility (art.39). Even more confusion was caused by the fact that the CEC declared different numbers of voters registered on voter lists on different dates<sup>165</sup>. Consequently, the number of voters registered on voter lists had risen by 315,641 persons, representing a 12.2%

<sup>162</sup> Ibidem.

<sup>163</sup> April 5<sup>th</sup>, 2009 parliamentary elections monitoring report. May 5<sup>th</sup> 2005. The Civic Coalition for Free and Fair Elections, The League for Human Rights Defense of Moldova – LADOM.// <http://www.e-democracy.md/files/elections/parliamentary2009/final-report-ladom-elections-2009-ro.pdf>

<sup>164</sup> Republic of Moldova Parliamentary Elections 5 April 2009: OSCE/ODIHR Election Observation Mission Final Report.// [http://www.osce.org/documents/odihr/2009/06/38185\\_en.pdf](http://www.osce.org/documents/odihr/2009/06/38185_en.pdf)

<sup>165</sup> Ibidem.

increase in comparison with the last elections (see table above). Taking into account the total population of the country, this caused further doubts regarding the accuracy of voter lists, something noted by international observers as well<sup>166</sup>.

Post-electoral events have confirmed suspicions regarding the possibility of voter list manipulation and electoral fraud. At the request of opposition parties, on April 9<sup>th</sup> the CEC had allowed 4 days for the verification of electoral lists<sup>167</sup>. However, according to declarations made by the opposition, the free access to voter lists was restricted by the governing party<sup>168</sup>. Meanwhile, the CPRM had sued the CEC on the grounds that it had exceeded its authority and broken the law when it allowed the opposition to verify, scan and make copies of the voter lists. The April 14<sup>th</sup> 2009 Appeals Court decision puts an end to the confrontation in favor of the CPRM and prohibits the further verifying and copying of voter lists<sup>169</sup>. The CPRM's insistence to prohibit the free access to, the making of copies and the thorough verification of all voter lists had heightened suspicions of electoral fraud, as claimed by the opposition<sup>170</sup>.

The issues with the accuracy of voter lists have made the implementation of the state automated Information System concept "Elections" even more urgent. This entails the development of a national Registry of voters with the purpose of collecting, storing, updating and analyzing information about the citizens of the Republic of Moldova that have turned 18 and are not legally banned from exercising their civil rights<sup>171</sup>. Furthermore, the electoral legislation was amended and clarified to include the mentioning of the voter registry and to eliminate existing ambiguities regarding the drafting and verification of voter lists<sup>172</sup>. The implementation of the electronic voter registry by the CEC has revealed multiple legal and technical deficiencies, which affect the credibility and quality of this mechanism, tested during local elections in certain parts of the country. The main deficiencies were the low qualifications of the operators, an underdeveloped infrastructure (few computers, low internet speed, dependence on the GSM operator), a discrepancy between the data in the electronic registry and the voter lists compiled after the elections<sup>173</sup>. The quality of voter lists is currently one of the main priorities of the CEC, which has carried out a series of measures to improve these lists<sup>174</sup>. Despite all the efforts made, the November 28<sup>th</sup> 2010 parliamentary elections showed that the problem with voter lists hasn't been solved. Although the NGOs that evaluated the accuracy of

166 The European Parliament: Parliamentary Elections in the Republic of Moldova. Election monitoring delegation, April 3-7 2009. Report drafted by Marianne Mikko, delegation president. <http://www.europarl.europa.eu/document/activities/cont/200909/20090921ATT60967/20090921ATT60967RO.pdf>

167 LP, LDPM and MNA have 4 days to verify the voter lists used at the elections.// <http://www.e-democracy.md/elections/parliamentary/2009/electoral-news/20090409/>

168 The opposition claims that it is restricted access to the voter lists.//<http://www.azi.md/ro/print-story/2239>

169 The Constitutional Court: Notice N.1 from 22.04. regarding the confirmation of the legitimacy of the election of the Parliament of the Republic of Moldova.// The Official Gazette 30.04.2009, N. 83-85.

170 Ibidem.

171 Law N. 101, passed on 15.05.2008 regarding the Development of the State Automated Informational System "Elections"// The Official Gazette, 04.07.2008, N. 117-119.

172 Law N. 119, passed on 18.06.2010 to modify and supplement the Electoral Code. Published: 29.06.2010 in the Official Gazette N. 108-109, art N: 332.

173 Legal and technical problems are affecting the credibility and quality of the testing of the electronic voter registry by the CEC. The Monitoring of the local mayor elections in the Stefanesti and Semionovca localities.

Stefan Voda Raion, held on November 15th 2009. Report. The Civic Coalition for Free and Fair Elections, Promo-Lex Association.// [http://www.promolex.md/upload/publications/ro/doc\\_1258618169.pdf](http://www.promolex.md/upload/publications/ro/doc_1258618169.pdf)

174 The use of new technologies in the development and application of voter lists. Development and Perspectives. International Conference documents.// [http://www.cec.md/files/3691\\_conferinta\\_noile\\_tehnologii\\_informationale,\\_21\\_aprilie\\_2010.pdf](http://www.cec.md/files/3691_conferinta_noile_tehnologii_informationale,_21_aprilie_2010.pdf)

voter lists declared that they were better at the November 28<sup>th</sup> 2010 elections<sup>175</sup>, a record number of voters were included on additional lists precisely at these elections (see table above). This is mainly due to the fact that students were allowed to vote in the locality of their university, a provision that was criticized especially by opposition parties because of its discriminatory nature. However, the OSCE preliminary evaluation report mentions that additional lists remain a vulnerable point in the electoral process of Moldova and that the majority of issues related to these lists have not been excluded<sup>176</sup>. These findings show that the problem of accurately registering voters still persists.

### ***5.3 How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?***

#### **Legal Framework**

The electoral code states that regarding parliamentary elections, candidate registering starts 60 days before election day and ends 30 days before election day. Parties and political organizations registered before the election day has been declared, electoral blocs registered by the Central Electoral Commission (CEC) and citizens of the Republic of Moldova who want to run for elections as independent candidates have the right to run for elections. Candidates have to give their agreements to run for elections at the CEC (art.41). In order to run for office, independent candidates have to gather a certain number of signatures in order to be registered as electoral candidates (art.42).

In order for the candidates to be registered, they have to submit to the CEC or to the local electoral councils the following documents: the document of candidate appointment/list of candidates, biographic data of the candidate, statement of agreement to run for the office that he/she was appointed for, personal statement regarding the absence of legal bans from running for office, statement of income for the last 2 years, the source of those incomes and the electoral symbol (art.44). Independent candidates also have to submit the lists with the signatures in favor of their candidacy. Persons who hold official positions have to also submit a statement of suspension from the previous activity throughout the campaign. Candidates are placed on the voting ballot in the order drawn by lottery (art.48).

Throughout the electoral campaign, mass-media institutions are obliged to respect the principles of equity, objectivity and equilibrium in covering the elections. They have to grant free coverage, fairly and indiscriminately, on the basis of transparency and objectivity. Also, all mass-media institutions must offer equal and indiscriminate conditions when selling air time for political adds (art.64).

175 IDOM presented the Evaluation of the Accuracy of Voter Lists in the Republic of Moldova at the electoral campaign for the November 28th 2010 early parliamentary elections Report.// <http://alegeliber.md/?p=840>

176 International Elections Monitoring. The Republic of Moldova, early parliamentary elections, November 28th 2010. OSCE/ODIHR// <http://www.e-democracy.md/files/elections/parliamentary2010/preliminary-statementent-osce-elections-2010-ro.pdf>

## An analysis of the current situation

The current legal framework in regards to free and fair access for the registration of candidates is more favorable for collective actors (political parties, electoral blocs) and is more restrictive for independent candidates who want to register to run in the elections. In order to run for office in the parliamentary, as well as in the local elections, independent candidates have to submit long lists of signatures supporting their candidacy. In the opinion of electoral authorities, these lists legitimize independent candidates as “equal” to political parties. For example, in order to have registered to run for office in the April 5<sup>th</sup> 2009 elections, an independent candidate needed 2000 valid signatures. In comparison, to register a political party at the Ministry of Justice, the party needs to only have 4000 members<sup>177</sup>.

The issue of equal treatment of candidates throughout the electoral process has been discussed quite often by European institutions. The main objections have to do with several aspects of the electoral process not meeting European standards regarding holding democratic elections: the intimidation and pressuring of candidates, the lack of pluralism in media institutions, as well as their inability to offer diverse information<sup>178</sup>.

The subjects most discussed in regards to ensuring an equal participation in the electoral process were: the raising of the electoral threshold, minority representation<sup>179</sup>, the procedure of registering a party and various issues having to do with campaign financing<sup>180</sup>. It is important to mention here that recommendations coming from European institutions were generally implemented belatedly, and some of them are not implemented to this day. The most relevant example is the delay in the drafting and passing of a law on political parties that conforms to European standards in this field, a process that has lasted two electoral cycles to date.

The most problematic aspects of the legal framework regarding the registering of candidates were revealed relatively recently – with the adoption in 2008 of amendments to the electoral legislation which prohibited persons with double or multiple citizenships to run for Parliament. This happened considering that in 2003 the authorities had modified the citizenship law offering citizens of the Republic of Moldova the right to multiple citizenships, without differentiating between those who are just citizens of the Republic of Moldova and those who have multiple citizenship. The case was settled by a decision of the European Court of Human Rights (ECHR) issued on November 18<sup>th</sup> 2008, which judged in favor of the plaintiffs in the Tanase and Chirtoaca vs. Moldova case<sup>181</sup>. The Court, as well as other international organizations, were concerned with the modification to the electoral law right before the parliamentary elections and recommended the abolition of the restrictive and discriminatory amendments.

177 Law regarding political parties, N. 294 passed on 21.12.2007. // The Official Gazette N. 42-44, 29.02.2008, art. 8

178 Resolution 1572 (2007). Honoring of obligations and commitments by Moldova.// Parliamentary Assembly. Council of Europe. <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta07/ERES1572.htm>

179 Josette Durieu, Egidijus Vareikis. Honoring of obligations and commitments by Moldova. Report. Doc. 11374, 14 September 2007. Committee on the Honoring Obligations and Commitments by Member States of the Council of Europe. Parliamentary Assembly, Council of Europe.// <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11374.htm#3>

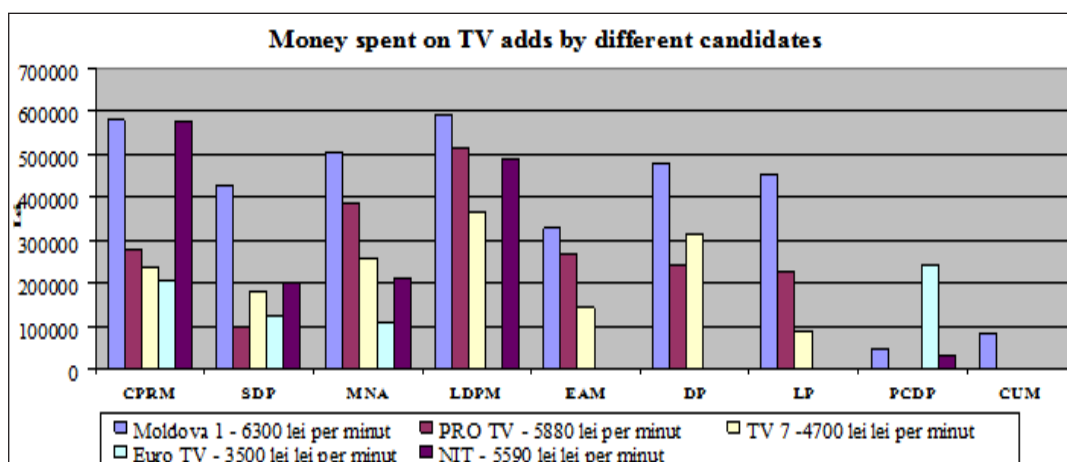
180 Comments on the draft law on political parties of Moldova by Mr. Hans-Heinrich Vogel in Opinion No. 431 / 2007// [http://www.venice.coe.int/docs/2007/CDL\(2007\)013-e.asp](http://www.venice.coe.int/docs/2007/CDL(2007)013-e.asp)

181 The ECHR has decided on the Tanase and Chirtoaca vs. Moldova case.// <http://www.lhr.md/news/116.html>



A similar situation is in regards to the equal and fair access of all candidates to mass-media outlets. The situation had improved as of recently, when amendments to the Electoral Code were passed, meant to ensure a more equal access to mass-media institutions so that all candidates can communicate more effectively with the electorate<sup>182</sup>. Despite the fact that the equal access of all candidates to mass-media institutions, especially to the public ones, is de jure guaranteed, a series of factors are preventing the candidates from benefiting from equal coverage in the mass-media<sup>183</sup>. Differences in the status, institutional, financial, human and logistic resources combined with the lack of specific regulations regarding political party financing and electoral campaign financing have led to the preservation of the status-quo – candidates were not ensured equal representation in mass-media outlets. Even though there are limits on paid electoral adds<sup>184</sup>, they didn't prove functional, even if these limits were respected. This was due to the high prices for TV and radio adds, which gave a structural advantage to rich parties. The tables below illustrate the situation throughout the April 5<sup>th</sup> 2009 parliamentary elections, showing the price for one minute of TV air time and the total costs incurred by the main candidates throughout the campaign to pay for publicity at the local TV and radio stations<sup>185</sup>.

*Chart 5 “Money spent on TV adds by different candidates”*



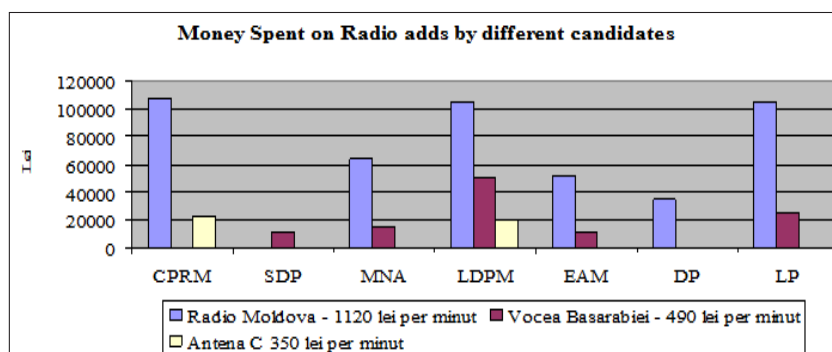
182 Law N. 119, passed on 18.06.2010 to modify and supplement the Electoral Code. Published: 29.06.2010 in the Official Gazette N. 108-109, art N: 332.

183 Mass-media monitoring during the electoral and post-electoral periods: general report January 6th – March 6th 2005. The Civic Coalition for Free and Fair Elections.// [http://www.ijc.md/Publicatii/sondaj/monitorizare\\_rom.pdf](http://www.ijc.md/Publicatii/sondaj/monitorizare_rom.pdf), Mass-media monitoring during the electoral campaign for parliamentary elections: general report February 15th – April 3rd 2009. The Civic Coalition for Free and Fair Elections.// [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_general.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_general.pdf)

184 Until the passing of Law N. 119 on 18.06.2010 to modify and supplement the Electoral Code, which currently ensures, at least legally, a more fair presence of the candidates on the means of mass communication, the previous provisions did not entail any substantial support from the state. Limits on electoral adds were – 2 minutes per day per candidate at one mass-media institution and not more than 2 hours throughout the whole campaign at one institution.

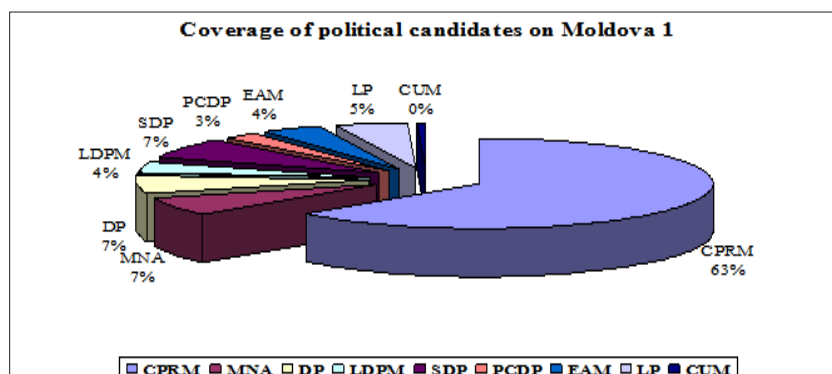
185 Sergiu Lipcean, An analysis of the financing of political parties and electoral campaigns in the Republic of Moldova.//Public Policies N.5, 2009, IDIS „Viitorul”.

**Chart 6 “Money spent on Radio adds by different candidates”**



According to data from the Public Opinion Barometer, television and radio are the main sources of information in the Republic of Moldova. Surveys carried out before the March 2005 and April 2009 parliamentary elections showed a total hegemony of television as the most popular source of daily information (2005 – 83%, 2009– 88%) and the main source of information in general (2005 – 72,3%, 2009 – 77,4%)<sup>186</sup>. Because of this, ensuring the equal and fair access of all candidates to media coverage on public mass-media outlets is even more important. Systematic data on the subjectivity of public mass-media institutions during parliamentary campaigns is available as of 1998<sup>187</sup>, but the de-facto definite monopolization of these by the governing party happens in the latest parliamentary elections, in 2005 and 2009<sup>188</sup>. The graphs below show the amount of coverage given to the main political parties on news programs on public television and radio throughout the electoral campaign of the April 5th 2009 parliamentary elections<sup>189</sup>.

**Chart 7 “Coverage of political candidates on Moldova 1”**



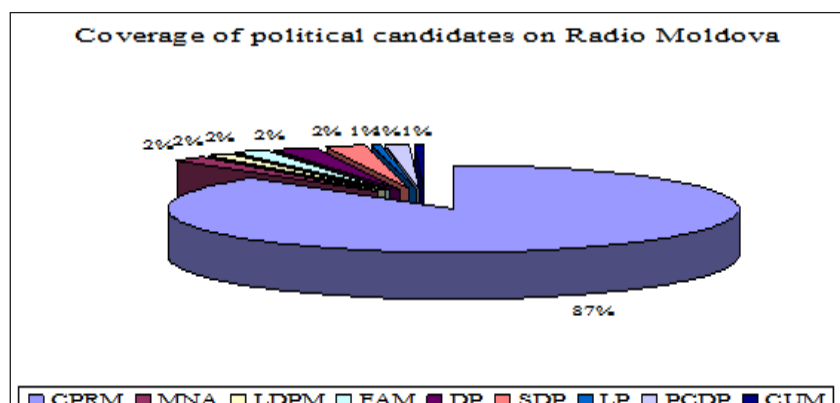
186 The Public Opinion Barometer: January – February, 2005.// <http://www.ipp.md/libview.php?l=ro&idc=156&id=463>, The Public Opinion Barometer: March, 2009.// <http://www.ipp.md/libview.php?l=ro&idc=156&id=454>.

187 Republic of Moldova Parliamentary Elections, 22 March 1998. OSCE/ODIHR Election Observation.// [http://www.osce.org/documents/odihr/1998/04/1285\\_en.pdf](http://www.osce.org/documents/odihr/1998/04/1285_en.pdf)

188 Mass-media monitoring during the electoral and post-electoral periods: general report January 6th – March 6th 2005. The Civic Coalition for Free and Fair Elections.// [http://www.ijc.md/Publicatii/sondaj/monitorizare\\_rom.pdf](http://www.ijc.md/Publicatii/sondaj/monitorizare_rom.pdf), Mass-media monitoring during the electoral campaign for parliamentary elections: general report February 5th – April 3rd 2009. The Civic Coalition for Free and Fair Elections.// [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_general.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_general.pdf)

189 Sergiu Lipcean, An analysis of the financing of political parties and electoral campaigns in the Republic of Moldova.//Public Policies N.5, 2009, IDIS „Viitorul”.

*Chart 8 “Coverage of political candidates on Radio Moldova”*



The graphs show very clearly the subjectivity of public mass-media institutions in favor of the CPRM, thus discrediting the principle of equal access to public radio and television.

Hoping to fix this problem modifications were recently made to the Electoral Code, meant to even out the chances of political candidates. Said modifications have to do with an indirect financial support from the state to political candidates, offering free air time on public mass-media outlets. Thus, throughout any given parliamentary election, national public mass-media institutions must offer 5 minutes of air time on TV and 10 minutes on the Radio in the first 3 days of the electoral campaign free of charge, so that candidates can share their platforms and citizens can be better informed. Additionally, they have to offer one minute of air time per day free of charge for electoral adds and not more than 2 minutes of air time per day for paid political adds (art.64\*)<sup>190</sup>. These amendments offer more equitable participation conditions for candidates with lower financial resources. However, they are insufficient to ensure a fair competition and equal participation chances for all electoral candidates.

#### ***5.4 How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?***

Any electoral system in a democratic society can be judged based on several essential characteristics: the electoral formula, the size of the constituency, the electoral threshold, and the conversion of votes into mandates, the number of members of the legislative branch, the influence of presidential elections on legislative elections and the electoral bonds between parties<sup>191</sup>. The first four characteristics are fundamental for the structure of the electoral system. A few other criteria are essential for the evaluation of its performance: the accuracy of the representation of voters' prefer-

<sup>190</sup> Law N. 119 passed on 18.06.2010 to modify and supplement the Electoral Code.// The Official Gazette, 29.06.2010, N. 108-109.

<sup>191</sup> Arend Lijphart, *Models of Democracy*. Iasi, 2000, pg. 142.

ences, the socio-demographic representation in Parliament, the accountability of parliamentarians to their constituencies, the maximization of voter participation possibilities, party discipline and cohesion, effective and stable governments, identifying governing options, the possibility for voters to remove governments from office<sup>192</sup>. Throughout its development, the electoral system of the Republic of Moldova has undergone multiple modifications, which most frequently meant to safeguard the advantages of the incumbent political forces through various amendments to the electoral legislation in the detriment of other candidates. Throughout the existence of a two-headed executive, two distinct electoral formulas have been applied: the majority formula in 2 rounds<sup>193</sup> and the proportional formula<sup>194</sup>. The majority formula was applied in the presidential elections, while proportional representation (PR) has been applied in parliamentary elections.

Presidential elections using this formula were carried out only once, in 1996, because only one candidate was registered in the presidential elections of 1991– Mircea Snegur. In the 1996 elections, Petru Lucinschi was elected president with a majority of votes in the second round, surpassing the incumbent president Mircea Snegur<sup>195</sup>. President Lucinschi's intention to transform Moldova from a semi-presidential to a presidential republic led to an open confrontation with the legislative branch<sup>196</sup>. However, on July 5<sup>th</sup> 2000 the Parliament voted for the modification of the Constitution and transformed the Republic of Moldova into a parliamentary republic, in which the president is elected by the parliament and not directly by the people. This was the beginning of a new phase in the political evolution of the country.

It's quite a different case regarding parliamentary elections. The Electoral Code stipulates that the Parliament is elected by universal, equal, direct, secret and free-expressed voting for a 4-year term in a single national electoral district. There are 101 members of Parliament (art.73). Because the Electoral Code was adopted in 1997, the 1994 parliamentary elections were carried out using a different legal formula than the current one<sup>197</sup>. However, there were no differences regarding the proportionality aspect and the size of the electoral district. These two elements of the electoral system have stayed the same throughout all the parliamentary elections in Moldova and have not affected voter preferences, nor the judicial equality of the citizens' votes. On the other hand, the other characteristics outlined above have considerably affected political competition, the equality of votes and the representativeness of the legislative branch.

The electoral threshold has been the indicator most susceptible to manipulation by various governing political forces. The modifications extended or to limited the access of different political candidates to the Parliament. Most often, these changes in electoral legislation led to significant disagreements between various political actors. The frequent use of the electoral threshold as an instrument to fight political opponents started at the beginning of 2000. Consequently, the threshold

192 Gallagher, M., Mitchell, P., *The Politics of Electoral Systems*. Oxford, 2005, page, 571.

193 Law regarding the election of the president of the Republic of Moldova. // The Parliament of the Republic of Moldova. Chisinau, 1996.

194 The Electoral Code. Law N. 1381 passed on 21.11.1997.// The Official Gazette N. 81. art N: 667.

195 Presidential Elections 1996. // <http://www.parties.e-democracy.md/electionresults/1996presidential/>

196 Igor Munteanu, *Political parties in the Republic of Moldova: laws, practices and reforms*. Chisinau, 2010, pgs.28-29.

197 Republic of Moldova Law regarding the election of the Parliament, N.1609-XII, October 14th 1993; Decision of the Parliament of the Republic of Moldova about the way to implement the law regarding the election of the Parliament, N.1613-XII, October 19th 1993.// The Parliament of the Republic of Moldova. Chisinau 1993.

was raised from 4% to 6% for parties, socio-political organizations and for electoral blocs<sup>198</sup>. Once the CPRM came to power, changes to the electoral threshold started happening regularly, a fact influenced by two opposite factors. On one hand, there was the willingness to preserve electoral advantages by maintaining a high electoral threshold. This was done by modifying the electoral legislation and establishing different thresholds for parties/socio-political organizations – 6%, for electoral blocs containing 2 components – 9%, and for electoral blocs containing 3 or more components – 12%<sup>199</sup>. On the other hand, there was pressure from the opposition and from international organizations to modify the electoral legislation to ensure a more equitable access of all candidates to the electoral and political processes, thus guaranteeing a better representation of all social groups in the Parliament. The lowering of the threshold to 4% for political parties and 8% for electoral blocs<sup>200</sup> happened after the March 2005 parliamentary elections and was one of the concessions made by the governing party in exchange for the vote of the opposition for the election of the head of state. Electoral rationalizations have prevailed once again in the political competition between the CPRM and its opponents. Right before the elections, the Parliament amends the Electoral Code setting a 6% electoral threshold and forbidding electoral blocs<sup>201</sup>, thus eliminating the option for several political forces to create a pre-electoral coalition and substantially decreasing the chances of some social groups to be represented. The last amendment to the Electoral Code by the CPRM reduced the electoral threshold from 6% to 5%<sup>202</sup> after the April 5<sup>th</sup> 2009 elections. The restrictions imposed by the CPRM on political competitors were eliminated by the current governance after recent modifications to the legal framework, the purpose being the democratization of the electoral process and the creation of equal conditions for all candidates. Consequently, the electoral threshold for parties was reduced to 4%, electoral blocs were again made legitimate, setting a 7% threshold for coalitions made of two components and a 9% threshold for blocs made of three and more components<sup>203</sup>. See table below.

**Table 9 “Modifications of legislation regarding the electoral threshold”**

Date of Modification	Political Parties	Electoral blocs (2 components)	Electoral blocs (3 and more components)	Independent Candidate
23.03.2000	6%	6%	6%	3%
25.01.2002	6%	9%	12%	3%
22.07.2005	4%	8%	8%	3%
10.04.2008	6%	Electoral blocs prohibited	Electoral blocs prohibited	3%
15.06.2009	5%	Electoral blocs prohibited	Electoral blocs prohibited	3%
18.06.2010	4%	7%	9%	2%

Source: the Electoral Code of the Republic of Moldova (with implemented modifications)

198 Law N. 894 passed on 23.03.2000 to modify and supplement the Electoral Code.// The Official Gazette, 25.05.2000, N. 059.

199 Law N. 796 passed on 25.01.2002 to modify and supplement the Electoral Code.// The Official Gazette, 02.02.2002, N. 20.

200 Law N. 176 passed on 22.07.2005 to modify and supplement the Electoral Code.// The Official Gazette, 12.08.2005, N. 107.

201 Law N. 76 passed on 10.04.2008 to modify and supplement the Electoral Code.// The Official Gazette, 07.05.2008, N. 83.

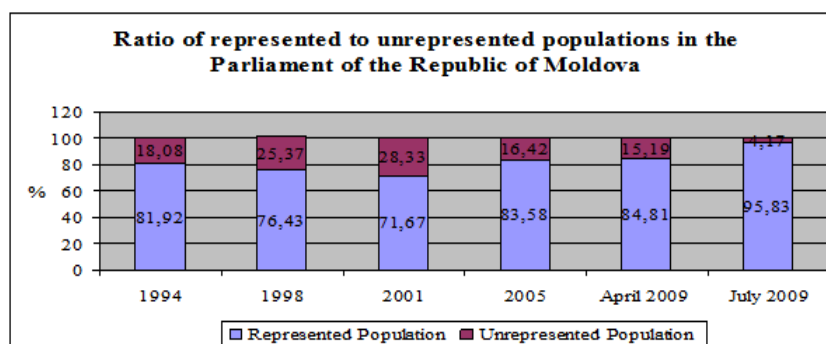
202 Law N. 25 passed on 15.06.2009 to modify and supplement the Electoral Code.// The Official Gazette, 16.06.2009, N. 103.

203 Law N. 119 passed on 18.06.2010 to modify and supplement the Electoral Code.// The Official Gazette, 29.06.2010, N. 108-109.

Political debates and conflicts regarding the electoral threshold are very important and relevant for ensuring a more inclusive representation in the legislative body of all social groups. On the one hand, a higher threshold raises the probability that large social groups remain unrepresented. On the other hand, a lower threshold increases the likelihood of a fragmented Parliament. This can complicate the decision-making process and make for less viable governing coalitions.

The electoral threshold is also very important for the post-electoral process, because the conversion of votes into mandates is sometimes decisively influenced by the votes of those candidates that didn't cross the threshold. The redistribution of these votes to the political actors that did cross the threshold is directly influenced by the formula which is used to convert votes into seats and by who benefits most from this redistribution. The data from all parliamentary elections in Moldova shows that a high electoral threshold can leave important segments of society unrepresented after certain elections. The graph below illustrates the ratio of represented to unrepresented populations in parliament as a result of electoral thresholds.

**Chart 9 “The ratio of represented to unrepresented populations  
in the Parliament of the Republic of Moldova”**



Consequently, the principle of judicial equality of every vote stipulated in the Constitution (art.38) and in the Electoral Code (art.4) is “diluted”. The electoral threshold is not the only instrument of manipulation of representativeness in the legislative body. The formula by which votes are converted into mandates can also contribute to the disproportional overrepresentation of some parties. The formula previously used in Moldova (d’Hondt) gives an advantage to big parties which have significantly benefitted from the redistribution of the votes of parties that didn’t get into Parliament. This made it possible for them to form artificial majorities. The DAPM and the CPRM have benefitted from this formula throughout their governance. Smaller parties (LP, MNA) have been especially upset by the advantage given to larger parties, arguing that because of the application of the d’Hondt formula, the weight of a mandate obtained by the CPRM is lower than that of a mandate obtained by other parties. The courts have refused to make any decisions on



this subject, arguing that it is not in their jurisdiction that the legislative branch should deal with it<sup>204</sup>. Consequently, the legal framework was amended and the d'Hondt formula was replaced with a new method, by which the remaining mandates are successively distributed one by one to the parties that got into Parliament, beginning with the party that got most votes (art.87)<sup>205</sup>. The current method of redistributing mandates works to the advantage of smaller parties, maximizing their electoral advantage when votes are transformed into mandates. The table below shows a comparison between the effects of each method of conversion of votes into mandates<sup>206\*</sup>.

**Table 10 “The effects of the two formulas used to convert votes into mandates”**

	The d'Hondt Method/ Number of mandates	The Current Method/ Number of mandates
<b>February 25<sup>th</sup> 2001 Parliamentary Elections</b>		
CPRM	71	61
Braghis Alliance	19	23
PPCD	11	17
<b>March 6<sup>th</sup> 2005 Parliamentary Elections</b>		
CPRM	56	52
BMD	34	35
PPCD	11	14
<b>April 5<sup>th</sup> 2009 Parliamentary Elections</b>		
CPRM	60	54
MNA	11	13
LP	15	17
LDPM	15	17
<b>July 29<sup>th</sup> 2009 Parliamentary Elections</b>		
CPRM	48	46
MNA	7	7
LP	15	16
LDPM	18	18
PD	13	14
<b>November 2010 Parliamentary Elections</b>		
CPRM	44	42
LDPM	32	32
DPM	14	15
LP	11	12

The results are considerably different when applying the two formulas of converting votes into mandates. This difference is even greater when the number of votes gained by parties that didn't get into Parliament is considerable.

The amendment to the electoral code and thus, to the formula of conversion of votes into Parliament seats<sup>207</sup> has stirred a big conflict between the CPRM and the Alliance for European Integration (AEI). The CPRM has challenged the amendment in the Constitutional Court, but the

204 Bojan Igor, The Robin Hood Formula of redistributing mandates.// <http://www.e-democracy.md/comments/political/robin-hood-formula/index.shtml?print>

205 Law N. 119 passed on 18.06.2010 to modify and supplement the Electoral Code.// The Official Gazette, 29.06.2010, N. 108-109.

206 \* Note: According to the d'Hondt formula, the number of mandates shown is the official number of mandates that the party received at the elections, with the exception of the November 28th 2010 elections when the new formula was already applied. For the November 28th elections, the number of mandates is calculated using the new formula and is the official number. For the new method, the coefficient was calculated by dividing the total number of votes by the number of seats in parliament (101). Then, the number of votes received by each candidate was divided by this coefficient, thus getting at the number of mandates received by each candidate. The rest of the mandates were distributed consecutively, one mandate to each candidate starting with the party that got most votes. To calculate the number of mandates that each party would have got using the d'Hondt formula at the November 28th 2010 elections, the formula was applied using the number of votes obtained by each party.

207 Law N. 119 passed on 18.06.2010 to modify and supplement the Electoral Code.// The Official Gazette, 29.06.2010, N. 108-109.

plea was rejected. The Court noted that the adoption, interpretation, modification and the repeal of laws is the exclusive right of the Parliament. Thus, the enactment of a particular electoral system, as well as the establishment of the method according to which mandates are calculated and distributed are at the discretion of the legislative body<sup>208</sup>.

Each formula of conversion of votes into mandates generates disproportional results, either the overrepresentation or the underrepresentation of certain candidates, thus undermining the principle of the equality of votes. However, the logic of these actions is quite different. The previous method led to the overrepresentation of the CPRM in the detriment of smaller parties. The current method, on the other hand, leads to the overrepresentation of smaller parties in the detriment of larger formations. Both methods distort the electoral process, in regards to the equality of votes. It is also important to mention here that the degree of distortion is greater if the number of votes obtained by parties that didn't cross the electoral threshold is bigger.

The new method of mandate allocation has already been applied to redistribute mandates after the November 28<sup>th</sup> 2010 elections. The LP and the DP are the parties that benefitted most from the new formula, each winning one additional mandate on behalf of the CPRM, compared with how many mandates they would have won had the old method been used. Right now it's difficult to estimate how long the new formula will last and how attractive it will remain for the parliamentary majority, no matter the color of that majority.

International organizations have criticized the revision of a fundamental part of the electoral system – the methodology of mandate distribution – because this modification was done to the advantage of the parties in power (AEI). It was also criticized because it was adopted without consulting the public and less than a year before the elections, which goes against the Venice Commission's Code of good electoral practices<sup>209</sup>.

Although proportional representation offers the voter a greater number of options, citizens have very little influence on drafting the party candidate lists. Party leaders are usually the ones who decide the order of candidates on the list, using informal rules. This is due to the weak institutionalization of political parties: the personalization of internal relations within a party, the absence of internal democracy and the system of party financing, which “obligates” party leaders to push forward candidates with considerable financial resources.

The only option that the proportional system in Moldova offers is to vote the closed party list in its entirety. Thus, the candidates on the party list are not accountable to the voters, but to the party leader. The lack of transparency in drafting party lists raises a few eyebrows regarding the

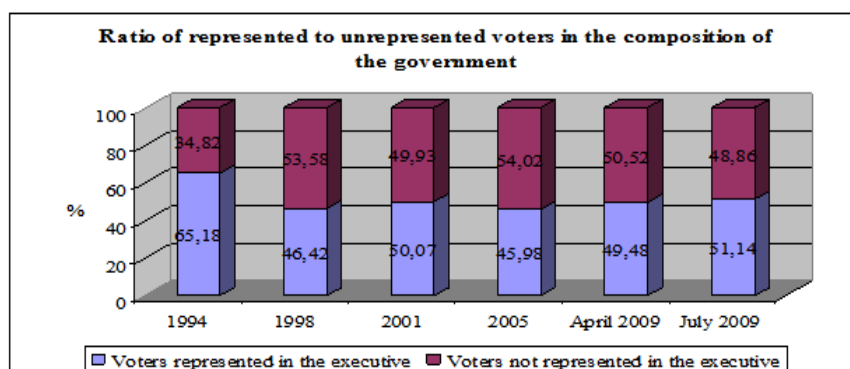
208 The Constitutional Court. Decision N. 26 passed on 15.11.2010 regarding the plea from a party in the Parliament.// Published: 19.11.2010 in the Official Gazette N. 227-230, art. N.: 26, Date of entering into force: 15.11.2010.

209 International Election Monitoring. The Republic of Moldova, Snap parliamentary elections, November 28th 2010. OSCE/ODIHR// <http://www.e-democracy.md/files/elections/parliamentary2010/preliminary-statementent-osce-elections-2010-ro.pdf>

criteria for selecting candidates to run for the party<sup>210</sup>. There have been internal scandals in some parties - certain party members were unhappy with the criteria by which party lists were drafted<sup>211</sup>.

The parliamentary representation of some social groups does not automatically guarantee their representation in the executive. The transformation of parliamentary representation into government representation is determined by how the executive is formed. The type and composition of the government is influenced by the power of the parties in Parliament (the number of seats) and by the relationship between the parties in the Parliament<sup>212</sup>. The majority of the governments in the Republic of Moldova didn't really reflect the voters' options. The graph below shows the representation of voters' options in the different governments, these being formed by the parliamentary majority.

**Chart 10 "Ratio of represented to unrepresented voters in the composition of the government"**



## 5.5 How far does the legislature reflect the social composition of the electorate?

Strictly interpreted, the principle of representativeness entails that the legislative branch reflect perfectly the social structure of the political entity which it claims to represent. In practice, the achievement of this objective is impossible. There is a series of variables which significantly affect the representativeness of the legislative body, distorting the application of the said principle.

The unequal participation of citizens in the political life of the country can be affected by the inequality of economic resources. The equality in political rights is undermined by economic

210 Igor Botan, The Institutionalization of political parties and elections.// <http://www.e-democracy.md/comments/political/200802151/index.shtml?print>; Igor Botan. When I take a look at party lists, horror strikes me. If one asks party leaders how certain candidates got on the party lists, the answers will depress us even more.//<http://unimedia.md/?mod=news&id=24456>

211 LDPM "passionate" activist Fiodor Ghelici has left the party because of its "double standards". <http://actualitate.md/?p=8617>; Oleg Cernei: Serafim Urechean has promoted people like Platon within the party; now, he has to take full responsibility for the collapse of the MNA.// <http://unimedia.md/?mod=news&id=21849>

212 Riker, W., The Theory of Political Coalitions. New Haven, Yale University Press, 1962; Budge I., Laver M., The Policy Basis of Government Coalitions: A Comparative Investigation.// British Journal of Political Science, Vol., 23, No. 4 (Oct., 1993) pp., 499-519; Baron, D., A Spatial Bargaining Theory of Government Formation in Parliamentary Systems.// American Political Science Review, Vol., 85, No.1(Mar., 1991), pp.,137-164.

status inequality. Taking into account the costs of collective action<sup>213</sup>, social groups with higher incomes will be more politically active than groups with lower incomes. Taking this into consideration, the way parties choose candidates is very important because persons with lower incomes will be unable to attract sufficient funds for a campaign, thus they remain underrepresented. Consequently, an appropriate financing system could potentially diminish these inequalities, indirectly ensuring a more competitive and inclusive framework. The public financing of political parties can partially solve this problem, reducing the party leaders' dependence on private resources, which carry an important weight when it comes to drafting the party lists. Thus, the criteria used to select candidates would offer poorer members better chances and would stimulate inter-party democracy.

Another way that the electoral system imposes restrictions on representativeness is through the high threshold, which doesn't allow for smaller parties to represent their electorate. The size of the electoral district has the same effect as the threshold regarding some minority groups. The larger the electoral district, the smaller the chances for minorities to be represented in a proportional system, like the one we have in Moldova. There is no one model which effectively deals with minority representation in the legislative branch. Different governments treat this issue in a different way. The instruments that are used to ensure a better representation of minorities include: the right to form ethnically-based political parties, the abolition of electoral thresholds, preferential treatment when registering minority parties<sup>214</sup> and the setting aside of a few seats for minorities in parliament regardless of their electoral performance<sup>215</sup>.

European Institutions that are concerned with the non-discriminatory participation of minorities in political life recommend creating conditions that would facilitate the representation of minorities, thus stimulating their integration into society through the electoral system<sup>216</sup>. Currently, none of the mentioned instruments are present in the legal framework of Moldova to offer minorities special treatment in the electoral process. The preferential treatment of minorities in Moldova is limited to the translation of electoral documents and of voting ballots into their languages<sup>217</sup>.

Under certain circumstances, political culture can be a major impediment to better representation. The underrepresentation of women in Moldovan politics can be explained by the existence of a dominant pattern in the collective mentality, according to which politics is reserved for men.

Finally, the subjective preferences of members of the elected body can affect this principle through the unequal distribution of values in society. Consequently, the gap between the contribution to society of some groups and the benefits that they receive leads to the "alteration" of representativeness.

213 Olson M., *The Logic of Collective Action: Public Goods and the Theory of Groups*. Harvard University Press, 1965.

214 Nicolas Kaczorowski, *Minority Participation in Electoral Processes: Summary of Findings*, HDIM.ODIHR/252/07, 28 September 2007.// [http://www.osce.org/documents/odihr/2007/09/26778\\_en.pdf](http://www.osce.org/documents/odihr/2007/09/26778_en.pdf)

215 Monica Caluser, *Representation of national minorities through reserved parliament seats*.// *National minority integration policies in Romania. Legal and Institutional aspects in comparison*. Cluj-Napoca, 2008. <http://www.edrc.ro/docs/docs/politici/167-249.pdf>

216 The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note. September, 1999.// [http://www.osce.org/publications/hcnm/1999/09/31545\\_1151\\_en.pdf](http://www.osce.org/publications/hcnm/1999/09/31545_1151_en.pdf); *Convention – for the protection of national minorities*.//[http://www.coe.int/t/dghl/monitoring/minorities/1\\_AtGlance/PDF\\_Text\\_FCNM\\_ro.pdf](http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_Text_FCNM_ro.pdf)

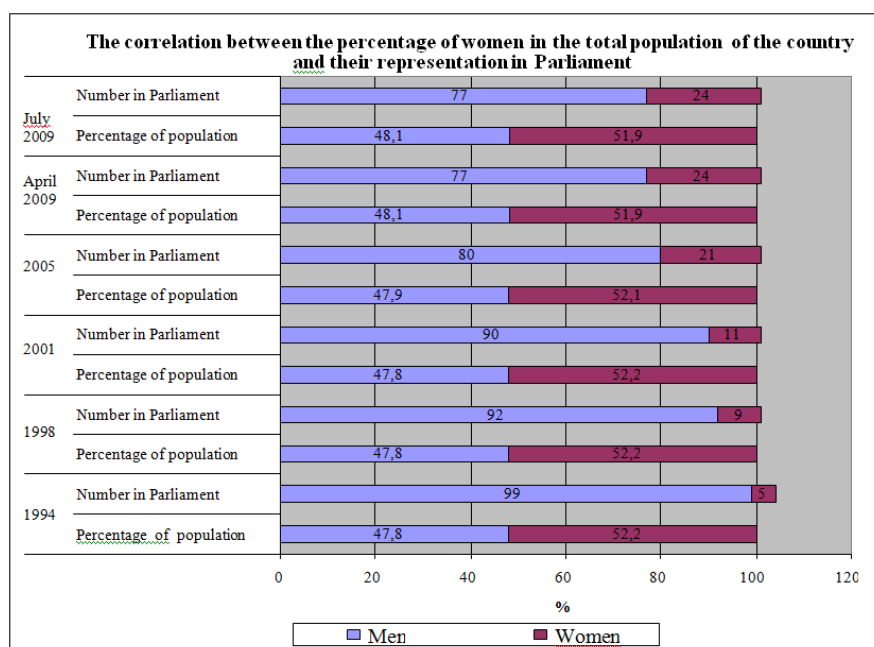
217 Nicolas Kaczorowski, *ibid*.

Depending on the concrete contexts where the principle of equal representation is applied and depending on the criteria being used, all these variables reduce the quality of representation. However, it is very hard to make an exact estimation of this indicator.

The most striking gap in the representation of social groups in Moldova is in regards to gender representation. Although women represent more than half of the population of Moldova, they remain significantly underrepresented in the legislative body. Even if women's parliamentary representation has improved from the first democratically-elected parliament (4.8%) to date (23.8%), they remain a minority (see graph below).

The only way that political parties attempt to promote gender equality based on affirmative action is through politic rhetoric and legal provisions. However, the legal framework doesn't obligate parties to set quotas for women on party lists, as positive discrimination. Therefore, this is not implemented. Furthermore, such a measure is relatively controversial in regards to equal participation chances for all in the political competition. Although there are women's organizations in several parties that have the purpose to ensure a better women's representation and to encourage political participation, it seems that their actual influence on party politics remains pretty small.

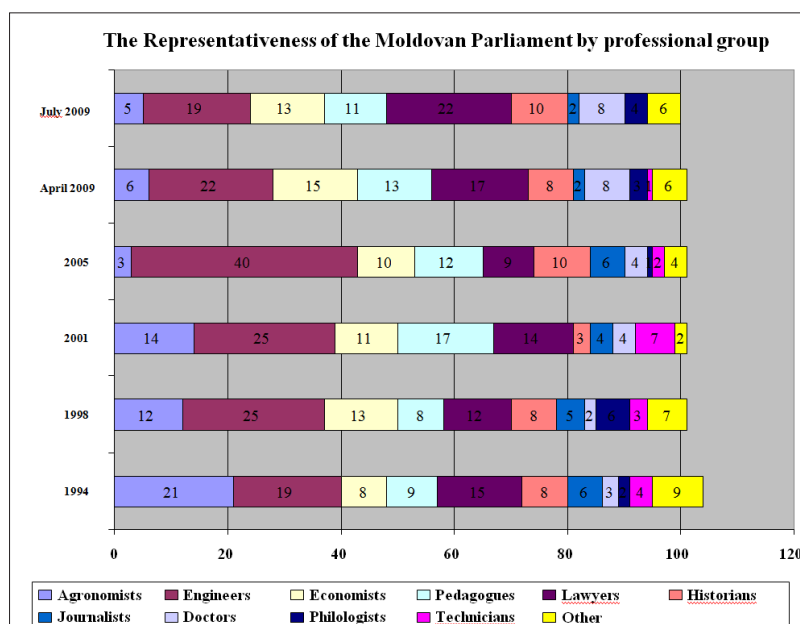
**Chart 11 “The Correlation between the percentage of women in the total population of the country and their representation in Parliament”**



Source: developed from: *Annual statistics directory of the Republic of Moldova, Chişinău, 2009*; *Composition of the parliaments of the Republic of Moldova.* // <http://www.e-democracy.md/elections/parliamentary/>

Estimating the representativeness of the legislative based on other criteria is much more problematic given the complexity of the population. Nevertheless, certain criteria offer a larger perspective on representativeness in comparison with the gender approach. One of the most relevant is occupation, which reflects the share of professional groups represented in Parliament. The graph below shows the structure of all parliaments of Moldova split by professional groups<sup>218\*</sup>. The most represented professional groups in the national Parliament are: engineers, lawyers, economists, agronomists and pedagogues. A few trends can be noticed regarding the professional composition of Parliament. The most prominent decline has been registered by the agronomist group, which went from a dominant position, held in the 1994 legislative, to a minority in the current Parliament. Technical professions are well represented in the legislative by engineers and technicians of various specializations. This group has held a dominant position in 4 consecutive parliaments and is the second best represented in the current legislative. It is also important to note the rise in the number of lawyers, who currently hold the numerically dominant position, registering a more than two-fold increase since the 2005 parliament. Economists and pedagogues are approximately at the same level, while representatives of the medical profession have doubled since 2005.

**Chart 12 “The Representativeness of the Moldovan Parliament by professional group”**



Source: drawn from the composition of the parliaments of the Republic of Moldova.//

<http://www.e-democracy.md/elections/parliamentary/>

An analysis of this data is complicated and doesn't offer an exhaustive answer regarding the representativeness of the Parliament. Nevertheless, the data tends to suggest that Moldovan parlia-

218 \* Note: Many of the members of parliament have more than one professional specialty; for the purposes of establishing their professional category, their first area of expertise was used.

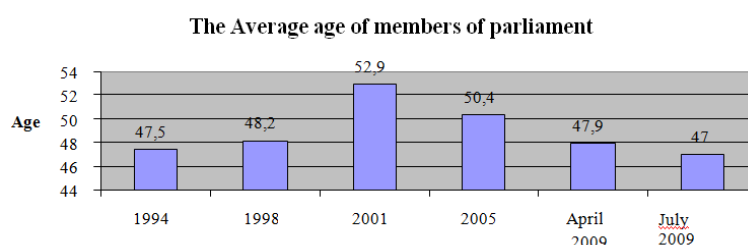


ments have reflected the occupational pattern inherited from the Soviet period. The large presence of agro-industrial professionals partially confirms this thesis. A change in this pattern started to happen only recently with the arrival of representatives of more liberal professions, like lawyers.

To what degree does this metamorphosis reflect the social dynamics – the transformation of the occupational structure of society - is an extremely complex and difficult question.

Representatives' age is another criteria used to evaluate the representativeness of the Moldovan parliament. Judging by the average age of deputies, the parliaments elected in 2001 and 2005 were the “oldest”. The other four parliaments are relatively close regarding the average age of the members of Parliament<sup>219\*</sup> (see graph below).

**Chart 13 The average age of members of parliament**

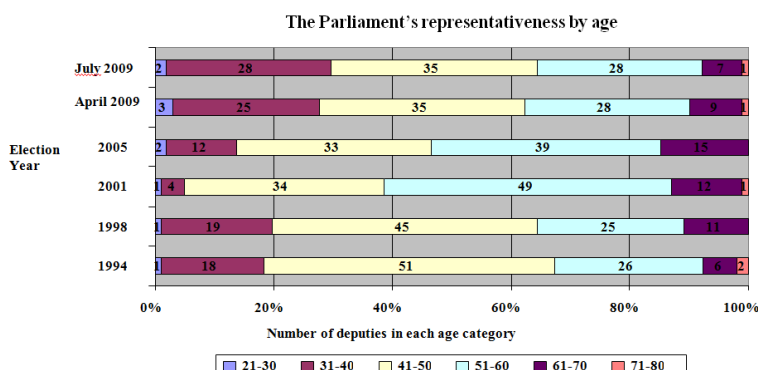


Source: calculated by the author based on the biographical data of the deputies.//

<http://www.e-democracy.md/elections/parliamentary/2010/>

Nevertheless, in each parliament there are considerable differences in regards to the number and distribution of deputies by age (see graph below).

**Chart 14 “The parliaments’ representativeness by age”**



Source: calculated by the author based on the biographical data of the deputies.//

<http://www.e-democracy.md/elections/parliamentary/2010/>

219 \* Note: The average age of the deputies was calculated as of the day of parliamentary elections.

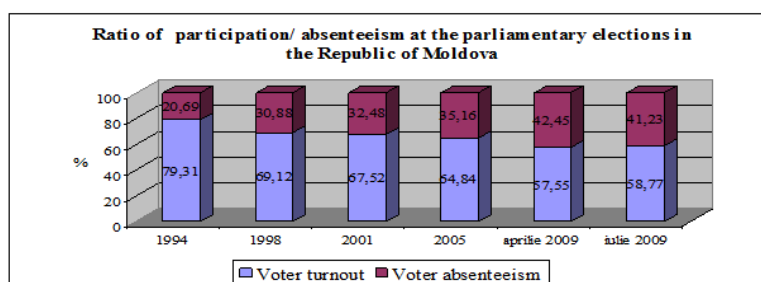
The data shows an obvious dominance of two age categories throughout all parliaments: those between 41-50 and those between 51-60 years of age. However, the last two elections led to a significant rejuvenation of the Parliament, 30% of representatives being below the age of 30. To what extent does this composition reflect the beginning of a delineation of a new political elite remains a subject open for discussion.

## 5.6 What proportion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?

### Political Participation

Citizens' participation in elections, regardless of who they vote for, represents a legitimacy test for the entire political class. This participation also implies that the citizens implicitly support the values and principles that are at the basis of the political regime. This does not imply, however, that the public has unconditional trust in and support for governments. Rather, each government is judged by its performance, i.e. whether it can develop and implement effective public policy. The Republic of Moldova is not an exception to this rule and citizens' trust in democratic institutions and in their performance – guaranteeing certain political, civic and economic rights and freedoms and promoting the public interest – is partially determined by voter turnout. The average voter turnout throughout the six parliamentary elections in the Republic of Moldova, from 1994 to date, is 66.2% - approximately 2/3 of the citizens who have the right to vote. Nevertheless, a continual decline in voter participation has been noted throughout this period. Consequently, popular enthusiasm from the first elections in 1994, carried out in an atmosphere of political pluralism and materialized in a 79.31% voter turnout, has declined to 57.55% at the April 5<sup>th</sup> 2009 elections. The graph below illustrates this decreasing trend for each election.

*Chart 15 “Ratio of participation/absenteeism at the parliamentary elections in the Republic of Moldova”*



Source: drawn by the author based on official data on voter turnout at parliamentary elections.//

<http://www.e-democracy.md/elections/parliamentary/>

The decline of over 20% in voter turnout shows an obvious negative trend regarding citizens' trust in political parties and state institutions. The thesis according to which a low participation rate is an indicator of citizens' satisfaction with their governance and their will to maintain the current situation cannot be applied to the Republic of Moldova. The phenomenon of mass immigration invalidates this thesis when applied to the Republic of Moldova. Even if we take into account migration, which can statistically explain the decline in voter turnout, it only confirms the citizens' disappointment with democratic institutions in Moldova if a good number of them have chosen to leave the country. Official statistical data presented by the Central Electoral Commission before the April 5<sup>th</sup> 2009 elections showed that approximately 628 thousand Moldovan citizens are out of the country<sup>220</sup>. Most of those who emigrated have left in search of a job which means that they also have the right to vote. They represent approximately 25% of the citizens registered on voter lists. The massive exodus of citizens abroad coincides with the governance timeframe of the CPRM, which explains the lowest voter turnout ever.

The opposition boycotted the election of the head of state after the April 5<sup>th</sup> 2009 parliamentary elections, which intensified the conflict between the governing party and the opposition. The apathy of the electorate (manifested in a low voter turnout) combined with the escalation of the clash between the governing and the opposition parties led to early elections. To eliminate the risk of an even lower voter turnout at the July 29<sup>th</sup> 2009 snap parliamentary elections, the Parliament reduced the minimum participation threshold necessary to validate the elections from 1/2 to 1/3<sup>221</sup>. Despite the fact that the CPRM had implemented a series of measures to disadvantage the opposition and to undermine equal participation conditions at the elections – the culmination was the setting of the election day on a workday in the middle of the week (a unique event in the history of elections in the Republic of Moldova) – the opposition and civil society managed to mobilize the electorate. The voter turnout was even higher than at the previous elections. The holding of elections on a workday was an action specifically oriented against citizens working abroad. Although the participation of citizens living abroad is very low compared to the total number of citizens with the right to vote<sup>222\*</sup>, the votes of Moldovans living abroad equaled approximately 1 parliamentary seat, which was given to the opposition parties. This explains the lack of motivation of the previous governing party (CPRM) to maximize electoral turnout of citizens living out of the country.

Low voter turnout occurred throughout other governments as well, not only during the CPRM governance. The Alliance for European Integration (AEI) has come across electorate apathy more recently, which resulted in the invalidation of the Constitutional referendum. Amongst the most important causes of this failure were a weak electoral campaign carried out by the components of the AEI, the ambiguity of the message conveyed to voters, the campaign to boycott the referendum implemented intensively by the CPRM<sup>223</sup>, as well as disagreements within the alliance<sup>224</sup> combined with social polarization

220 There are about 628 thousand Moldovans residing outside the country.// [http://www.irp.md/item.php?text\\_id=756](http://www.irp.md/item.php?text_id=756)

221 Law N. 25 passed on 15.06.2009 to modify the Electoral Code.// The Official Gazette, 16.06.2009, N. 103. Au participat la votare (% din numărul alegătorilor incluși în listele electorale)

222 \* Conform rezultatelor votării în cadrul secțiilor organizate din misiunile diplomatice la scrutinul din 5 aprilie 2009 au participat 16916 alegători, iar la scrutinul din 29 iulie 2009 au participat 17544 alegători.

223 Leonid Litra, Cornel Ciurea, The Referendum in Moldova: a failure or a new path? IDIS „Viitorul”.// [http://www.viitorul.org/public/2985/ro/referendum\\_IDIS\\_RO.pdf](http://www.viitorul.org/public/2985/ro/referendum_IDIS_RO.pdf)

224 Valeriu Prohntchi, Alex Oprunenco, Failed Referendum: what next? Express Analysis, N.21, September 7th 2010, Expert-Grup.// [http://www.expert-grup.org/library\\_upld/d277.pdf](http://www.expert-grup.org/library_upld/d277.pdf)

as shown by the ethnic vote<sup>225</sup>. These factors, analyzed altogether, had decisively influenced voter turnout which was 30.29%<sup>226</sup>, short of the 33.33% necessary to validate the referendum. Although the relevance of a parliamentary election is quite greater than that of a referendum, the decline in voter turnout reflects a dangerous trend regarding the trust bestowed on the political class by the citizens. The trend of declining voter turnout was reversed at the November 28<sup>th</sup> 2010 elections, when the turnout was 61.64%. It was remarkable that the voter turnout of citizens living abroad had doubled at these elections. The table below compares the electoral activism of voters living in different localities.

**Table 11 “Voter turnout by electoral district”**

	Parliamentary Elections March 6 <sup>th</sup> 2005	Parliamentary Elections April 5 <sup>th</sup> 2009	Parliamentary Elections July 29 <sup>th</sup> 2009	Referendum September 5 <sup>th</sup> 2010	Parliamentary Elections November 28 <sup>th</sup> 2010
<b>Country Total</b>	<b>64.84%</b>	<b>57.55%</b>	<b>58.77%</b>	<b>30.07%</b>	<b>61.64%</b>
Chisinau	55.03%	59.27%	62.24%	31.79%	67.58%
Balti	57.45%	49.85%	53.42%	18.84%	58.7%
Anenii Noi	68.37%	54.84%	56.53%	24.88%	60.14%
Basarabeasca	82.01%	74.48%	73.46%	28.93%	73.46%
Briceni	71.8%	60.65%	61.06%	27.08%	58.97%
Cahul	69.04%	55.82%	58.15%	30.34%	57.84%
Cantemir	78.4%	57.61%	59.25%	32.9%	57.97%
Calarasi	71.55%	53.11%	55.8%	32.8%	56.07%
Causeni	65.81%	55.15%	56.85%	30.16%	57.46%
Cimislia	75.49%	54.89%	57.51%	29.91%	57.24%
Criuleni	67.31%	59.07%	59.89%	34.75%	62.75%
Donduseni	68.43%	63.57%	64.35%	28.05%	65.33%
Drochia	67.87%	58.04%	58.07%	26.23%	59%
Dubasari	66.56%	65.7%	64.19%	19.6%	59.1%
Edinet	67.89%	58.95%	59.6%	25.98%	61.04%
Falesti	73.82%	55.83%	55.49%	27.53%	57.62%
Floresti	73.91%	62.77%	61.48%	31.03%	60.63%
Glodeni	65.36%	54%	55.16%	27.14%	57.25%
Hincesti	65.69%	55.72%	56.54%	35.42%	56.18%
Ialoveni	62.73%	57.1%	61.3%	36.22%	62.39%
Leova	74.49%	54.18%	53.04%	29.44%	53.95%
Nisporeni	68.71%	54.08%	57.6%	37.49%	60.63%
Ocnita	76.42%	64.73%	64.38%	29.74%	63.44%
Orhei	64.31%	58.09%	58.29%	37.57%	61.05%
Rezina	74.65%	64.22%	63.05%	35.33%	61.98%
Riscani	71.01%	56.94%	56.7%	27.6%	58.62%
Singerei	69.97%	55.55%	53.81%	29.84%	57.37%
Soroca	68.47%	56.85%	57.09%	31.54%	60.27%
Straseni	65.96%	54.54%	56.14%	33.88%	58.16%
Soldanesti	71.55%	61.07%	58.59%	33.53%	60.94%
Stefan Voda	65.67%	58.14%	57.32%	30.65%	56.24%
Taraclia	71.7%	64.9%	63.97%	12.43%	60.81%
Telenesti	71.96%	61.55%	58.6%	41.46%	61.77%
Ungheni	66.54%	58.24%	56.47%	31.08%	58.44%
UTA Gagauzia	60.64%	53.72%	55.73%	8.63%	51.32%
Diplomatic missions	61.76%	48.23%	48.16%	59.25%	

Source: Official election results.//<http://www.e-democracy.md/elections/parliamentary/>, <http://www.e-democracy.md/elections/referendum/2010/results/>

225 Constantin Tanase, The Referendum and the Moldovans' response. "Timpul", September 7th 2010.// <http://www.timpul.md/articol/referendumul-si-replica-moldovenilor-15099.html>

226 The September 5th 2010 Constitutional Referendum Results.//<http://www.e-democracy.md/elections/referendum/2010/results/>

## National and international recognition of election results

Parliamentary election monitoring began in 1994 and continues to this day, the process being organized and carried out by various national and international organizations specialized in this field. Most of the election monitoring reports have judged positively the organization and the carrying out of elections, which conformed to international standards.

In the 1998 elections monitoring report, the OSCE/ODIHR had noted that the electoral process was generally satisfactory, offering candidates normal competition conditions and offering voters the possibility to freely express their options, without there being significant issues in the pre-electoral period or on election day<sup>227</sup>.

The 2001 election monitoring report noted the same positive aspects regarding the respect of international standards. The democratically-held elections conformed to OSCE standards and Moldova had honored its obligations as member of the Council of Europe<sup>228</sup>. However, the report was concerned with the modifications to the electoral legislation which raised the electoral threshold from 4% to 6% with the purpose of creating a more stable political framework. Due to these modifications, the number of votes not being represented in the Parliament increased<sup>229</sup>.

The coming to power of the CPRM had considerable effects on the electoral process - the March 2005 parliamentary elections. This had strongly mobilized and motivated the local civil society, together with international institutions, to monitor more intensely the electoral process. The monitoring reports of the local NGOs<sup>230</sup>, as well as those done by international institutions<sup>231</sup>, were almost unanimous in judging the way that these elections were held. These reports noted that international standards regarding free and fair elections were only partially observed. The OSCE/ODIHR report had mentioned that "while the March 6<sup>th</sup> 2005 parliamentary elections in the Republic of Moldova generally complied with most OSCE commitments, Council of Europe and other international standards for democratic elections, nevertheless, they fell short of some that are central to a genuinely competitive election process". The Civic Coalition for Free and Fair Elections report was even harsher in evaluating the electoral campaign.

The main problems noted during the electoral campaign were: the inequality of chances of the candidates, the limited or restricted access of the opposition to mass-media, the subjectivity of the public mass-media institutions favoring the governing party, the abusive involvement in the campaign of national force institutions (the Attorney General, the police, the Information and Security Agency (ISA)), the unequal treatment of candidates by the public authorities and the use of administrative resources with electoral purposes. In addition, significant gaps were noted in regards

227 Republic of Moldova Parliamentary Elections 22 March 1998: OSCE/ODIHR Election Observation. // [http://www.osce.org/documents/odihr/1998/04/1285\\_en.pdf](http://www.osce.org/documents/odihr/1998/04/1285_en.pdf)

228 Republic of Moldova Parliamentary Elections 25 February 2001: OSCE/ODIHR Election Observation. Warsaw, 3 April, 2001. [http://www.osce.org/documents/odihr/2001/04/1280\\_en.pdf](http://www.osce.org/documents/odihr/2001/04/1280_en.pdf)

229 Ibidem.

230 Republic of Moldova: March 6th 2005 parliamentary elections. Final Elections Monitoring Report. Chisinau, May 15th 2005. The Civic Coalition for Free and Fair Elections.// <http://www.e-democracy.md/files/2005-final-monitoring-report.pdf>

231 Republic of Moldova Parliamentary Elections 6 March 2005: OSCE/ODIHR Election Observation Mission Final Report. Warsaw, 3 June, 2005.// [http://www.osce.org/documents/odihr/2005/06/14919\\_en.pdf](http://www.osce.org/documents/odihr/2005/06/14919_en.pdf)

to ensuring the right to vote of different social categories – students, Moldovan citizens residing in Transnistria and outside the country. The updating of electoral lists was also problematic<sup>232</sup>. So, the actions meant to constrain the atmosphere during the electoral campaign had advantaged the governing party and thus, did not contribute to ensuring fair conditions for all candidates<sup>233</sup>.

These grievances determined the CPRM's main opponent – the “Democratic Moldova” bloc – “to declare the results of the March 6<sup>th</sup> 2005 elections significantly skewed”<sup>234</sup> and to challenge the results in court asking for the invalidation of the parliamentary elections<sup>235</sup>. The Constitutional Court rejected the contestations and confirmed that “on March 6<sup>th</sup> 2005 the XVI Parliament of the Republic of Moldova was lawfully elected through universal, equal, direct, secret and freely-expressed voting”<sup>236</sup>.

The April 5<sup>th</sup> 2009 electoral campaign highlighted similar trends as the 2005 campaign, but with significant deteriorations. Similar violations throughout the electoral campaign were noted by international organizations<sup>237</sup> and local NGOs<sup>238</sup>. However, this time the opposition challenged more insistently the results and initiated a large campaign to collect information to prove electoral fraud by the governing party, being accused of using obscure electoral manipulation methods. The conflict between the governing and the opposition parties was decided in court in favor of the CPRM, which led to heightened suspicions of judicial subjectivity, the judicial system previously having been accused of favoring the CPRM. Thus, all contestations and documents regarding the falsifying of elections that the opposition parties had put forward were rejected and essentially not even examined by the Appeals Court, nor by the Constitutional Court<sup>239</sup>. In addition, the unwillingness of the authorities to double-check the voter lists – an action initially permitted by the CEC but then withdrawn by the Supreme Court of Justice at the request of the CPRM – had heightened suspicions of electoral fraud. However, the Constitutional Court's decision to validate the elections was not unanimous; a separate opinion was issued<sup>240</sup>. The challenge of election results was indirectly accomplished by the opposition through the boycotting of the election of the head of state, which led to early elections. This decision was a response to the governing party's repression of the mass protests in Chisinau against the election results, as well as to the CPRM's accusations that the opposition had attempted a coup d'état.

232 Republic of Moldova: March 6th 2005 parliamentary elections. Final Elections Monitoring Report. Chisinau, May 15th 2005. The Civic Coalition for Free and Fair Elections.// <http://www.e-democracy.md/files/2005-final-monitoring-report.pdf>

233 Republic of Moldova Parliamentary Elections 6 March 2005: OSCE/ODIHR Election Observation Mission Final Report. Warsaw, 3 June, 2005.// [http://www.osce.org/documents/odihr/2005/06/14919\\_en.pdf](http://www.osce.org/documents/odihr/2005/06/14919_en.pdf)

234 Declaration of the Democratic Moldova Bloc.// <http://www.e-democracy.md/elections/parliamentary/2005/docs/ bemd/200503121/>

235 The Constitutional Court: Notice N. 1 passed on 17.03.2005 regarding the confirmation of the legitimacy of the election of the Parliament of the Republic of Moldova.// The Official Gazette, 21.03.2005, N. 42.

236 Ibidem.

237 Republic of Moldova Parliamentary Elections 5 April 2009: OSCE/ODIHR Election Observation Mission Final.// [http://www.osce.org/documents/odihr/2009/06/38185\\_en.pdf](http://www.osce.org/documents/odihr/2009/06/38185_en.pdf)

238 April 5th 2009 parliamentary elections monitoring report. May 5th 2009. The Civic Coalition for Free and Fair Elections, The League for Human Rights Defense of Moldova – LADOM.// <http://www.e-democracy.md/files/elections/parliamentary2009/final-report-ladom-elections-2009-ro.pdf>, Final Report on the coverage of political actors/ candidates on television programs throughout the electoral period of the 2009 parliamentary elections.// <http://www.e-democracy.md/files/elections/parliamentary2009/report-apel-elections-2009-5-ro.pdf>, Mass-media monitoring during the electoral campaign for the 2009 parliamentary elections: General report February 5th – April 3rd 2009, [http://www.ijc.md/Publicatii/monitorizare/monitorizare\\_raport\\_general.pdf](http://www.ijc.md/Publicatii/monitorizare/monitorizare_raport_general.pdf)

239 April 5th 2009 parliamentary elections monitoring report. May 5th 2009. The Civic Coalition for Free and Fair Elections, The League for Human Rights Defense of Moldova – LADOM.// <http://www.e-democracy.md/files/elections/parliamentary2009/final-report-ladom-elections-2009-ro.pdf>

240 The Constitutional Court: Notice N. 1 passed on 22.04.2009 regarding the confirmation of the legitimacy of the election of the Parliament of the Republic of Moldova.// The Official Gazette, 30.04.2009, N. 83-85.



The legitimacy of the July 29<sup>th</sup> 2009 elections was challenged by the PCDP which petitioned the Constitutional Court for a recount of the votes. However, the contestation was rejected and the legitimacy of the elections confirmed<sup>241</sup>.

The November 28<sup>th</sup> 2010 elections have also raised challenges of legitimacy. The CPRM had petitioned for access to the additional voter lists, where according to them, there was misconduct. Furthermore, the CPRM had petitioned the Constitutional Court (CC) for a recount of votes – the petition was accepted by the CC<sup>242</sup>. The CPRM had also asked to make copies of voter lists. This procedure was used by the opposition after the April 5<sup>th</sup> 2009 elections, but was then blocked by the CPRM.

Despite generally positive reports by international organizations, the continuous contestations of the parliamentary elections results throughout the CPRM's time in power showed that the holding of free and fair elections is a difficult test for the Republic of Moldova.

### ***5.7 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

The regulations stipulated in the legal framework regarding the holding of elections are sufficiently comprehensive to ensure more or less fair conditions for all candidates involved in the political contest. The main concern here is the selective application of some regulations which gives an unfair advantage to the ruling parties.

The data indicates that the voter registration mechanism has many problems which fuel suspicions of opposition parties that elections are sufficiently skewed as to lean the balance in favor of the governing party. The delay in the creation of a national registry of voters which would significantly lower opportunities for electoral fraud, has generated suspicions regarding the complicity of several institutions which use state resources to favor a particular candidate.

To eliminate these gaps, the Electoral Code was modified and supplemented and the CEC is doing more to train electoral officials in the testing and implementation of the electronic voter registry. The latest test of the registry was carried out at the September 5<sup>th</sup> 2010 referendum and had highlighted several difficulties that the CEC is having implementing this instrument. The purpose of the voter registry is to eliminate issues with the quality of the voter lists and with the voting process itself. According to CEC officials, the main problems with the registry are technical and arise due to the lack of experience of the operators who use it on election day<sup>243</sup>. On a national scale, the

241 The Constitutional Court: Notice N. 3 passed on 14.08.2009 regarding the confirmation of the legitimacy of the election of the Parliament of the Republic of Moldova.// The Official Gazette, 21.08.2009, N. 127-130.

242 The CPRM petitions the court for access to supplemental voter lists.// [http://www.publika.md/pcrm-solicita-in-instanta-acces-la-listele-electorale-suplimentare\\_160331.html](http://www.publika.md/pcrm-solicita-in-instanta-acces-la-listele-electorale-suplimentare_160331.html)

243 The poor qualifications of the staff had caused technical problems.// <http://itmoldova.wordpress.com/tag/cec/>

electronic voter registry will be used in the 2011 local elections. From 2013, on-line voting will be available. The main objectives of the CEC are the improvement of the transparency of the electoral process through the quicker processing of voter turnout and the exclusion of the possibility of electoral fraud through multiple voting<sup>244</sup>.

The party registration procedure is relatively complicated because there are mandatory quotas on territorial representation which affect the citizens' right to freedom of association. Although the quotas have been reduced, they remain relatively prohibitive for minorities. The last elections have shown an unequal access of political parties to public mass-media outlets, caused by the abusive use of administrative resources and by the inequality of candidates' financial resources.

The purpose of the recently introduced amendments to the Electoral Code is to even out candidates' chances and to promote every candidate's access to the electoral competition by offering them free air time in the public mass-media, as an indirect financial support. The fair and objective coverage of all political actors in the public mass-media is another major purpose that up till now was absent from the editorial politics of these institutions. With the coming to power of the AEI and the change in the leadership of IPNA "Teleradio Moldova" the politicization of these institutions seems to have decreased. The absence of censure and of political pressure is noted by representatives of these institutions<sup>245</sup>, as well as by other institutions specialized in mass-media<sup>246</sup>. The most recent data regarding the services of these public institutions in objectively covering electoral campaigns confirms previous trends of de-politicization of these institutions.

Although the party system offers voters a very broad range of choices, the equality of votes has been affected by high electoral thresholds and by the formula used to convert votes into mandates which previously gave an advantage to big parties (See 5.4).

This situation has been mediated with the change in governance. The Electoral Code was modified to reduce the electoral thresholds for parties and independent candidates and to allow pre-electoral blocs. The formula used to convert votes into mandates has also been substituted by one that is more evenhanded.

All the parliaments till now have reflected relatively poorly the social structure of the electorate. The weak representativeness was caused by a series of factors like: a weak political culture, the socio-economic status of different social groups, the informal relations and appointment procedures of candidates to party lists.

A better reflection of the social structure in Parliament requires the institutionalization of political parties. This involves the de-monopolization of power within parties and the institutionalization of a functional internal democracy, where various social categories can participate in party

244 Moldovan citizens will soon be able to vote on-line.// <http://www.moldpres.md/News.aspx?News Cod=4382&NewsDate=16.05.2010>

245 Teleradio - Moldova – with no censure or political pressure, but in a "lamentable" state.// <http://unimedia.md/?mod=news&id=19641>

246 Memorandum regarding the Freedom of Press in the Republic of Moldova, May 3rd 2009 – May 3rd 2010.// [http://www.ijc.md/index.php?option=com\\_content&task=view&id=524&Itemid=1](http://www.ijc.md/index.php?option=com_content&task=view&id=524&Itemid=1)

decision making. It also involves modifying the rules regarding party financing with the purpose of ensuring the participation of all members.

Citizen participation in the electoral process has declined significantly in the last 15 years. This decline was caused by a decreased trust in political parties as democratic institutions. The open challenge of election results by the opposition is a more specific effect of this phenomenon.

To reestablish a good image of political parties will require the state to monitor their activity more thoroughly and enforce disciplinary sanctions when violations are identified. Likewise, it is important to ensure a true transparency in party activity regarding decision making and regarding establishing a functional internal democracy, not only in rhetoric.

### Summary: Progress throughout the last 3 – 5 years

	Very good	Good	Satisfactory	Poor	Very Poor
5.1			X		
5.2				X	
5.3			X		
5.4			X		
5.5				X	
5.6				X	
5.7			X		

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## 6. DEMOCRATIC ROLE OF POLITICAL PARTIES

*Sergiu Lipcean*

*Does the party system support the democracy functioning?*

### ***6.1 How freely are parties able to form and recruit members, engage with the public and campaign for office?***

#### **Normative framework**

The general principle underlying the political parties' freedom is the right to free association. Thus, the restrictions imposed to the right to free association may be treated as restrictions imposed on freedom and functioning of political parties. The right to association is treated in the RM in the context of political parties' freedom and is reflected in the Supreme Law.

The Constitution provides for the freedom of parties and other social-political organizations, assuring citizens' right to association and contributing to expression of political will through participation in elections in equal legal conditions, and the State ensures the observance of the parties' legal rights and interests (art. 41).

At the same time, the Constitution implies interdictions for the parties that militate against the political pluralism and the constitutional order, the secret associations and the parties established by foreigners.

The establishment and the participation of the political parties in the electoral process are regulated at a larger extent by the Law on Political Parties<sup>247</sup>.

A political party is registered by the Ministry of Justice, the authority responsible for the record keeping of the political parties. In order to get registered, the political party should submit a number of documents: the registration application, the party's charter and program, the establishment act with the list of the political party's members, which should cover at least four thousand persons, etc. When the party is being established, its members must reside in at least half of the second-level administrative-territorial units of the Republic of Moldova, but at least 120 members should reside in every mentioned administrative-territorial unit (art. 8). In a month since the submission of documents, the Ministry of Justice shall register the party or refuse its registration in

<sup>247</sup> The Law on Political Parties, No. 294, dated 21.12.2007. // Official Gazette No. 42-44, dated 29.02.2008.

case it does not comply with the legal requirements – this decision may be challenged in the court by the applicant.

All the citizens entitled to vote, based on the principle of free association, may become members of political parties. When joining a political party, the person shall declare on his/her own responsibility the membership to another political party (art.6). A person may become member of a political party by submitting a written application, revised by the relevant body of the party dealing with receiving new members. The respective body decides upon the acceptance or rejection of the application. The same person cannot be simultaneously member of two or more political parties, and the joining to a political party implies the immediate withdrawal of the membership from the previous party. The acquirement and the loss of the membership are regulated by the internal rules of the party, being provided in the charter of the party (art.7).

### **Situation evaluation**

Before the approval of the Law on Political Parties in 2007, the activity of the political parties was regulated by the old law on political parties and other social-political organizations<sup>248</sup>. In spite of a number of attempts to adopt an adequate normative framework, in line with the international standards regarding the functioning of the political parties, this law has survived until recently, although was subject to numerous amendments during several governments. The political consensus obtained around the law was due to some ambiguities which were permissive enough for the relatively weakly regulated political parties' activity. The modifications that were made followed the scheme of some small steps without tackling the subject through some ample and radical amendments.

On one hand, the procedure for political parties' registration may be used as a tool allowing the right to association and limiting the political competition. On the other hand, the setting of some more rigorous criteria for political parties' registration aims to avoid the excessive fragmentation of the party system. Nevertheless, an over-restrictive registration procedure combined with some components of the electoral system (representation threshold) may affect seriously the fundamental rights and freedoms of the citizens and the political pluralism. The Republic of Moldova knows the experience of such manipulations of the game rules so as to discriminate some electoral candidates.

The problem regarding the political parties' freedom and establishment became an important debate subject, as a result of some amendments dealing with the radical modification of the conditions for the political parties' registration. If before the adoption of the law, it was enough to have 300 members so as to register a party, the new law introduces a number of 5000 members residing in at least half of the territorial-administrative units of the second level, but not less than 150

<sup>248</sup> Law No. 718-XII, dated 17.09.91 on parties and other social/political organizations.//Official Gazette No. 11-12/106, 1991.// <http://www.parties.e-democracy.md/legislation/politicalparties/>

members in each of the respective units<sup>249</sup>. This clause was challenged in the Constitutional Court, which has issued a positive endorsement for the respective changes, stating that there is no contradiction between the right to freedom of association and the principles of representativeness, if the latter does not lead through its effects to suppressing the right to association<sup>250</sup>. This position was expressed by the CC and later, it was reasoned that the numeric criterion for parties' representativeness is under the discretionary competence of the Parliament and cannot be an object for the Court examination as long as its effects do not lead to suppressing the principle of political pluralism<sup>251</sup>.

The political collision regarding this subject came up for a number of times when debating the draft laws on political parties, which benefited from the expertise of the Venice Commission. According to the Venice Commission's recommendations, the regulations regarding these subjects are ambiguous and restrictive, thus they may affect the right to freedom of association and the enforcement of arbitrary and disproportional measures in relation to the parties<sup>252</sup>.

The experts of the commission qualified the established thresholds as being very high and imposing an excessive burden on citizens' shoulders, with a restrictive and disproportional potential, which is not necessary in a democratic society when citizens try to exercise their rights according to art. 11 of the European Convention on Human Rights<sup>253</sup>. Although these thresholds were reduced (4000 members with 120 members residing in at least half of the administrative-territorial units), they still remain to be prohibitive and affect citizens' right to freedom of association. The implementation of the legal provisions induced a number of conflicts between the parties and the Ministry of Justice – conflicts that derived from the ambiguities of the normative framework and the different interpretation of the legal provisions. These conflicts were settled in the court so as to oblige the Ministry of Justice to register the parties<sup>254</sup>.

The regulation of the political party membership in the existing normative framework is left almost entirely upon the parties' discretion. The Law on Parties and other Social-Political Organizations from 1991 covers a long list of civil servants who are prohibited to be members of a party. Thus, the servicemen, the employees of law enforcement agencies, state security bodies, customs officers, judges, prosecutors, criminal investigation officers, parliamentary ombudsmen, state controllers, as well as the people working in official press and radio-television could not be members of parties and social-political organizations (art. 10(8)). This law is less restrictive and mentions that the persons who are prohibited to take part in activities of political nature according to the legal provisions cannot be members of political parties<sup>255</sup>. But the lack of an explicit list in the law could

249 Law No. 146 dated 30.09.1998 for amending and completing the Law on parties and other social-political organizations.// Official Gazette, 12.11.1998, No. 100.

250 Decision No. 37 dated 10.12.1998 on interpreting the article 41 par. (1) from the Constitution of the Republic of Moldova. // Official Gazette, 07.01.1999, No. 001.

251 Decision No. 3 dated 29.01.1999 on constitutionality control of some provisions from the Law No. 146-XIV dated September 30, 1998 "For amending and completing the Law on parties and other social-political organizations".// Official Gazette, 18.02.1999, Nr. 016.

252 James Hamilton, Comments on the draft law on Political Parties and Socio-Political Organizations of The Republic Moldova// This opinion was endorsed by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002).[http://www.venice.coe.int/docs/2002/CDL\(2002\)119-e.asp](http://www.venice.coe.int/docs/2002/CDL(2002)119-e.asp)

253 Vogel Hans-Heinrich, Comments on the Draft Law on Political Parties of Moldova.//Opinion, No.,431/2007, Strasbourg, 19 April 2007.// [http://www.venice.coe.int/docs/2007/CDL\(2007\)013-e.asp](http://www.venice.coe.int/docs/2007/CDL(2007)013-e.asp)

254 Igor Botan, Ion Creanga, Corneliu Gurin, Electoral Context 2009: Study on the electoral framework and context in the Republic of Moldova in the parliamentary elections. Chisinau, 2009, pages 17-18.

255 Law on Political Parties, No. 294 dated 21.12.2007. // Official Gazette No. 42-44, 29.02.2008, art. 6.

create, in theory, a situation when different public servants could avoid responsibility, thus making more difficult the qualification of the offence.

Hence, the interdiction to be member of a political party is still in force for some categories of civil servants - judges, prosecutors, and customs officers.

The parties set independently the criteria and the procedure for admitting new members based on the charter provisions. These criteria differ from party to party and affect, formally, the level of difficulty to join a party. The standard procedure used by all the parties when registering new members includes a written personal application addressed to the party primary organization, which actually decides on accepting the new member or not. Some parties ask for references from the members with a certain experience. The below table reflects the situation for some parties (selected based on the electoral performance) from the Republic of Moldova. Thus, only the Communist Party and the Conservative Party ask for two references from the members with work experience within the party, so as to be sure of the future members' quality.

**Table 12 Request for references so as to become a party member**

Party	References
Democratic Party of Moldova (DPM)	No
Communist Party of the Republic of Moldova (CPRM)	2
Our Moldova Alliance (OMA)	No
Christian Democratic People's Party (CDPP)	No
Liberal Party (LP)	No
Liberal Democratic Party of Moldova (LDPM)	No
Social-Democratic Party (SDP)	No
European Action Movement (EAM)	No
Conservative Party (CP)	2
United Moldova Party (UMP)	No

*Source: Charters of the political parties.*

Nevertheless, some parties specify conditions that restrict the access to the party for those who wish to join the party. The DPM restricts the access for the persons who support and undertake extremist, racist, anti-Semite, anarchist, and chauvinistic actions or actions that are in contradiction with the democratic and rule-of-law principles<sup>256</sup>. The LP, CP and the SDP apply interdictions against the persons who have perpetrated serious abuses when being in public or political positions, and those who promote violence, terror, and different extremist ideology or actions, or deeds coming into contradiction with human fundamental rights and freedoms<sup>257</sup>.

The majority of parties limit the number of restrictions to those stipulated in the legislation in force.

The drastic registration conditions of the political parties made them less selective in co-opt-

256 The charter of the Democratic Party of Moldova, Chisinau, 2008.// [http://www.pdm.md/files/Statut\\_PDM.pdf](http://www.pdm.md/files/Statut_PDM.pdf)

257 The charter of the Liberal Party.// <http://www.pl.md/pageview.php?l=ro&idc=12>; the charter of the Conservative Party.// <http://www.conservator.md/yctav.html>; the charter of the Social-Democratic Party.// <http://www.e-democracy.md/files/parties/psd-statute-2007-ro.pdf>

ing new members and treating some charter provisions regarding the obligations of the members easier. The payment of party membership fees is one of the most relevant examples. On one hand, the parties changed themselves into “mass” parties, based on the number of members. On the other hand, members’ participation in party’s life as payment of membership fees is a practice that is not so used by the parties. See the table below.

**Table 13 Party membership fees**

Party	Number of members	Membership fees
Democratic Party of Moldova (DPM)	21000	48 lei per year
Communist Party of the Republic of Moldova (CPRM)	30000	0.5%-2% from the monthly income
Our Moldova Alliance (OMA)	50000	12 lei per year
Christian Democratic People’s Party (CDPP)	20000	Unavailable
Liberal Party (LP)	12000	Unavailable
Democratic Liberal Party of Moldova (LDPM)	30000	Unavailable
Social-Democratic Party (SDP)	20000	Unavailable
European Action Movement (EAM)	10000	Unavailable
Conservative Party (CP)	10000	Unavailable
United Moldova Party (UMP)	12600	Does not provide for membership fees

*Source: Political parties’ charters*

The modification of the normative framework regarding the political parties’ funding was enforced relatively recently, regulating also the procedure of parties’ financial reporting during the electoral campaigns<sup>258</sup> and during the ordinary activities<sup>259</sup>. The data reveal that the membership fees are missing from the structure of the political parties’ revenues, with a few exceptions (CPRM), thus confirming the formal nature of the membership. At the same time, the elections from November 28, 2010 have demonstrated that even the relatively simple formal procedures may be crimped or minimized by the political parties, which do not apply the legislation. Thus, the case of the unemployed persons who have paid big amounts of money to the CPRM account (250.000 lei) proves that the legal shields existing in the system of political parties’ integrity protection are not regulated adequately, and the legal sanctions are not yet in place. The case disclosed by the press acknowledges also a certain detrimental solidarity among the parties, which practice the same forms of financial manipulation during the electoral campaigns. Usually, the electoral bets and the extremely short periods of time for the campaign itself makes these cases to be insufficiently investigated, diminishing the rationale for developing the elections with no incidents, and the suspension of a political party from the campaign as a result of the falsification of some financial contributions would mean a very serious incident. The lack of conformity between the indicated financial sources and the campaign portfolios held by the political parties denote an inadequate mechanism of the current legislation for

258 Financial reports of the electoral rivals for the parliamentary elections on April 5. // [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB\\_17martie2009498](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_17martie2009498); Financial reports of the electoral rivals for the anticipated parliamentary elections from July 29. // [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB\\_RapoarteFinanciare134](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_RapoarteFinanciare134)

259 Financial report of political parties for 2009. // <http://www.justice.gov.md/ro/organizatii-necomerciale/>

preventing political corruption. At the same time, it should be mentioned that the members' number is not an indicator of the adequate funding. The majority of political parties from the RM are not mass parties, but some circulating parties, which are curdled around some charismatic leaders or some declared ideological identities. Apparently, the parties which a better organized from territorial point of view enjoy higher chances in elections, but this factor does not guarantee the electoral success, under conditions when the lack of internal democracy reduces the functions of the respective political parties to imitating the participation of their members and systematic mobilizing mistakes in the competition for certain elective functions.

## ***6.2 How effective is the party system in forming and sustaining governments in office?***

The performance of the party system is best estimated through its capacity to establish and maintain stable and efficient governments, capable to transpose into practice the policies derived from the electoral preferences of the majority of voters. Depending on the number and the force of parties that have access to the parliament, they have set and maintained governments with different levels of stability and life duration. The average governing duration of a cabinet was a little bit over 19 months, about one year and a half. However, there are significant differences in regards to the cabinets' sustainability and the conditions in which they have exercised their duties. When comparing by longevity, the majority of the local governments are situated at extremes, meaning very short or very longevous government. The relation between the sustainability of the Cabinet and its composition is an extremely important subject for assessing the performance of the government, as well as that of the party system able to ensure such sustainability<sup>260</sup>. The below table reflects the situation regarding the chronology, composition, and sustainability of the Cabinets of Ministers in Moldova since the independence proclamation until nowadays, and reflects the performance of the party system to set up and maintain coalitions during certain periods of time.

260 Budge, I., Keman, H., *Parties and Democracy: Coalition Formation and Government Functioning in Twenty States*. Oxford University Press, 1993; Laver M., Shepsle, K., *Making and Breaking Governments: Cabinets and Legislatures in Parliamentary Democracies*. Cambridge University Press, 1996; Laver M., *Models of Government Formation*.// *Annual Review of Political Science*, June 1998, Vol. 1, Pages 1-25.



**Table 14 “Chronology, composition, and sustainability of Cabinets of Ministers. The party system performance to set up and maintain coalitions”**

Governments' sequence	Prime Minister	Mandate start date	Mandate end date	Duration of mandate /days	Number of parties entering the government
<b>The governments approved during the Parliament of the XII legislature</b>					
1.	Valeriu Muravschi	28.05.1991	01.07.1992	398	
2.	Andrei Sangheli I	01.07.1992	05.04.1994	644	
<b>The governments approved during the Parliament of the XIII legislature</b>					
3.	Andrei Sangheli II	05.04.1994	24.01.1997	1000	2 (DAPM + SPUEM)
4.	Ion Ciubuc I	24.01.1997	22.05.1998	483	2 (DAPM + SPUEM)
<b>The governments approved during the Parliament of the XIV legislature</b>					
5.	Ion Ciubuc II	22.05.1998	01.02.1999	256	3(FDPM+ DCM + DFP)
6.	Serfim Urechean-acting	05.02.1999	17.02.1999	12	3(FDPM + DCM+ DFP)
7.	Ion Sturza	19.02.1999	09.11.1999	264	3(FDPM + DCM +DFP)
8.	Braghis Dumitru	21.12.1999	19.04.2001	474	3(FDPM + DCM +DFP)
<b>The governments approved during the Parliament of the XV legislature</b>					
8.	Vasile Tarlev I	19.04.2001	19.04.2005	1460	1(CPRM)
<b>The governments approved during the Parliament of the XVI legislature</b>					
10.	Vasile Tarlev II	19.04.2005	31.03.2008	1077	1(CPRM)
11.	Zinaida Grecianii I	31.03.2008	04.05.2009	399	1(CPRM)
<b>The governments approved during the Parliament of the XVII legislature</b>					
12.	Zinaida Grecianii II	10.06.2009	17.09.2009	109	1(CPRM)
<b>The governments approved during the Parliament of the XVIII legislature</b>					
13.	Vlad Filat	25.09.2009	Presently	365 – 25 September	4(LDPM+DPM +LP+OMA)

*DAPM – Democratic Agrarian Party of Moldova*

*SPUEM – Socialist Party and Unity – Edinstvo Movement*

*FDPM - For a Democratic and Prosperous Moldova*

*DCM - Democratic Convention from Moldova*

*DFP - Democratic Forces Party*

The Republic of Moldova has passed through three distinct stages of governing form, which have left their prints on the party system and its capacity to set up and sustain the governing Cabinets.

The first stage was covered in between 1991 – 1994 and proved to be a presidential ruling regime with a party system which was under creation, poorly institutionalized, and with no power to undertake an efficient control over the government. The RM Parliament from this period of time was ruling based on the results of the parliamentary elections from 1990, the period when the CPRM was holding a hegemonic position. Additionally, the normative framework offered the RM President wide competences in the executive area. Two governments have ruled during this period of time, and the reason for relieving Muravschi Government was the triggering of the Transnistrian conflict and the pressure exercised over the president within and outside the country to establish the government of “national reconciliation”.

The second stage was covered in between 1994 – 2001 and represented a mixed governing regime. The Constitution from 1994 limited the competences of the president, establishing a bicephalous executive. This division of executive competences generated the first major conflict between the Prime Minister and the Chief of the State. This period is characterized by coagulation of forces from the political space in two big blocks divided by the identity principle (language, history, statehood), and the battle between them was won by the nomenclature forces, which obtained a comfortable victory as a result of the parliamentary elections in 1994<sup>261</sup>. Two governments ruled during the parliamentary coalition between the DAPM and SPUEM. The resignation of the Sangheli II Government was conditioned by the failure suffered during the campaign for the position of the president and the subsequent reconfiguration of the forces within the DAPM. This reconfiguration has weakened the party and got it out of the Parliament during the next parliamentary elections in 1998. The establishment and functional maintenance of some coalition governments composed of 3 components proved to be a difficult task for the parliamentary majority in the XIV legislature. Three cabinets alternated during this parliamentary cycle, with an average ruling duration of about 11 months. The negative effects of the conflicts from inside the alliance, cumulated with the conflict between the Parliament and the Chief of the State were amplified by the external financial crisis. As a consequence, the implementation of some structural reforms was substantially affected by the governmental instability which had a negative impact on the citizens' wellbeing – the ones who have granted the CPRM the majority vote during the anticipated elections in 2001.

The third stage starts together with the change of the modality to elect the President by the Parliament<sup>262</sup>, but gets enforced after the parliamentary elections from 2001 and continues until now. De jure, this stage represents a parliamentary regime, but de facto, it may be qualified as a presidential regime, based on the discretionary power of the president of the country (who has cumulated this function with the function of party president) over the party members, representing the majority of the parliament during two complete parliamentary cycles. Thus, the multi-party system turned to be a system of a dominating party, according to J. Blondel's considerations<sup>263</sup>. All the cabinets established during the CPRM mandate were mono-colored, with minimal wins, of which two were the lengthiest. Thus governmental sustainability is only apparent, because frequent modifications occur within the government, without its full removal. Only during the period between 2001 and 2003, there were changed 8 ministers and 20 deputy ministers<sup>264</sup>. The staff turnover at the highest level of the government was a practice, which was frequently used all over the ruling of this party. The political stability was ensured rather by the party discipline than by the capacity to develop coherent and efficient social-economic policies. The changes inside the government reflected the more or less subtle competition between the internal groups of the CPRM to be favored by the Chief of the State. The last two communist governments denote very clearly the conflicts inside the CPRM and its incapacity to manage the political and economic situation in the country, thus leading to its defeat during the last parliamentary elections.

261 Igor Munteanu, *Political Parties in the Republic of Moldova: laws, practices, and reforms*. Chisinau, 2010, pages 19-22.

262 Law No. 1115, dated 05.07.2000 on amendments and completion of the RM Constitution // Official Gazette, 29.07.2000, No. 088.

263 Blondel J., *Party Systems and Patterns of Government in Western Democracies*.// Canadian Journal of Political Science, Vol.,1, No.2, (Jun., 1968), pp., 180-203.

264 Igor Munteanu, the above mentioned work, page 32.

The government coalition, which was established after the elections from July 29, 2009 pointed out the difficulties and problems of a coalition government set up of 4 components. At the same time, the pressure coming from the CPRM has maintained the alliance together and weighted more than all the internal dissensions. Although the post-electoral period after the elections from November 28, 2010 modified significantly the ratio of forces, measured in number of mandates, among the former components of the EIA, on one hand, and the CPRM, on the other hand, the negotiations for establishing a right-centered alliance of 3 components (OMA did not pass the threshold) are rather troublesome. The difficult nature of the negotiations was caused by DPM accepting the CPRM as a potential coalition partner.

### ***6.3 How free are opposition or non-governing parties to organise within the legislature, and how effectively do they contribute to government accountability?***

From institutional point of view, the opposition has limited legal and financial means to efficiently take part in government's accountability. The accountability implies the existence of a control of the opposition over the government's activity. This approach provides for the agent (government) to be responsible to the principal (the parliamentary opposition), when the principal may exercise control over the agent<sup>265</sup>. The agent is responsible to the principal, if it is obliged to act in its interest and may be sanctioned or rewarded for its performance. In this context, the accountability invokes two rights held by the principal in relation to the agent: the right to ask for information and the capacity to impose sanctions<sup>266</sup>. The parliamentary opposition from the RM has no efficient tool able to influence the government, making it accountable for its decisions and actions. There are three types of major sanctions which are applied, as a rule, for making the government accountable:

- blocking or amending the decisions adopted by the agent (government);
- removing from position or limiting the authority;
- imposing some specific penalties (monetary or of any other nature)<sup>267</sup>.

None of these sanctions can be used by the parties from the opposition to make the government accountable. The request of information by asking questions or submitting interpellations in the parliament constitutes the tool most frequently used by the parliamentary opposition for monitoring and evaluating the governmental activities. When functional alternative control tools are missing, the accountability of the government remains to be a subject outside parliamentary control. As long as no efficient tools exist for the parliamentary opposition to monitor and control

265 Lupia Artur, Delegation and its Perils.// Strom Kaare, Muller Wolfgang, Bergman Torbjorn. Delegation and Accountability in Parliamentary Democracies. Oxford University Press, 2003, page, 35.

266 Kaare Strom Parliamentary Democracy and Delegation.// Strom Kaare, Muller Wolfgang, Bergman Torbjorn. Delegation and Accountability in Parliamentary Democracies. Oxford University Press, 2003, page, 62.

267 Ibidem.

the government activity, it is actually impossible to assess its efficiency from government accountability perspective.

The institutional and normative frameworks limit the efficient participation of the opposition in making the government accountable. Only the parties and the electoral blocks which exceed the electoral threshold have the right to get organized within the parliament. The extra-parliamentary opposition has no legal tools to participate in the parliament's activity. Only the parties and the blocks which exceed the electoral threshold, may get organized in parliamentary faction and participate plenipotentiary in the legislative activity and control exercise over the government. The Parliament Rules of Procedure offer more participation tools, but they are conditioned by the parliamentary faction power. The main ways for the opposition to take part in the legislative act is its organization in parliamentary factions and activity within the parliamentary committees. Any group of elected MPs may establish a parliamentary faction if it has at least 5 persons. The parliamentary factions are established within 10 days from the legal establishment of the legislative body, having the right to function based on their own regulations. The MPs may be members of only one fraction, they may leave the faction, and may be excluded from the faction<sup>268</sup>. Nevertheless, when being excluded from or leaving the faction, the MP cannot join another faction for a period of 6 months – a provision that was repeatedly challenged by the MPs who left the factions they were a member of, but who continue to support the unity of these factions, in spite of the existing differences. As a rule, the MPs who are leaving a faction are asked to submit the MP mandates, although art. 68 of the Constitution stipulated that any imperative mandate is void, meaning that these mandates do not belong to the political parties on whose lists the respective MPs were elected, but to the people who vested them with the competence to represent their sovereignty. The discussions regarding the way in which the organized groups of MPs are managed continue due to the fact that the factions, unlike the non-affiliated and independent MPs, benefit from certain institutional advantages.

When the proportional representation of factions in the parliaments is modified, they can ask for the modification of the composition of the standing bureau, permanent committees and delegations, but not earlier than one year since the finding of this change. The factions have material assistance and personnel to perform the duties based on the proportional representation. These provisions point out the fact that the more numerous factions benefit from more consistent advantages as against the smaller factions, and especially as against the independent or nonaffiliated MPs who do not benefit from infrastructure and personnel. The restrictions imposed to those who leave the faction are meant to reduce the probability of MPs' migration towards the factions of the political opponents and to ensure stability for the more efficient functioning of the institution.

Another essential aspect for evaluating the activity of the opposition within the legislative body relates to the procedure for standing committees' establishment. The standing committees are elected for the entire duration of the legislative, and the number, name, numeric and nominal

268 Law for adopting the Parliament Rules of Procedure //Official Gazette, 19.12.1996, No. 81-82/765.

composition of every committee is decided by the Parliament, upon the proposal of the Standing Bureau. The composition of the standing committees is established based on the proportional representation in the parliament, with the vote of the majority of elected MPs.

The composition of the parliamentary committees determined based on the principle of representativeness is established by taking into account the power ratio between the parliamentary majority and minority. However, the quantitative criterion related to the mathematical/proportional distribution of functions in committees is not the only criterion. The second criterion is the qualitative one, implying that some committees are more attractive for the parliamentary majority, which will try to get them, maximizing its influence over the subjects of major importance in the decision-making process. This thing is easier to be achieved within the mono-colored parliamentary majorities, while the coalition parliamentary majorities will encounter more difficulties in distributing the functions within the parliamentary committees. The below table reflects the structure of the standing committees established as a result of 4 parliamentary elections.

**Table 15 “Structure of standing parliamentary committees established as a result of 4 parliamentary elections”**

Name of the committee	Composition of committees 1994 – 1998	Composition of committees 1998 – 2001	Composition of committees 2001 – 2005	Composition of committees 2009 – 29 September 2010
1	2	3	4	5
Committee on Legal Affairs, Appointments and Immunities	P <sup>1*</sup> – DAPM DP <sup>2*</sup> – DAPM, SPUEM S <sup>3*</sup> – DAPM M <sup>4*</sup> – 3 DAPM, 1 SPUEM, 1 BPI, 1 ACDPF	P – DCM DP – DPM S – ? M – 2 CDPP, 2 CPRM, 2 IMP <sup>5*</sup>	P – CPRM DP – 2 DI S – ? M – 6 CPRM, 1 CDPP	P – OMA DP – 1 DPM, 1 CPRM S – LDPM M – 3 CPRM 1 LP, 1 DP, 1 IMP
Committee for Budget and Finance/ 2009 – Committee for Economy, Budget and Finance	P – DAPM DP – 2 DAPM S – SPUEM M – 2 DAPM, 2 SPUEM, 1 BPI, 1 ACDPF	P – DPM DP – 1 DCM, 1 PFD S – CPRM M – 3 CPRM, 2 DPM		P – LDPM DP – 1 CPRM, 1 LP S – DP M – 4 CPRM, 1 LDPM, 1 LP, 1 IMP
Committee for Foreign Policy	P – DAPM DP – DAPM S – DAPM M – 4 DAPM, 1 SPUEM, 1 BPI, 1 ACDPF	P – PFD DP – DI S – DCM M – 1 CPRM, 1 DPM	P – CPRM DP – 1 CPRM, 1 CDPP S – CPRM M – 4 CPRM, 1 SDA, 1 IMP	P – DPM DP – CPRM S – LP M – 5 CPRM, 2 LDPM, 1 LP, 1 DPM, 1 OMA
Committee for Agriculture and Food/Processing Industry	P – DAPM DP – 1 DAPM, 1 SPUEM S – DAPM M – 4 DAPM, 1 SPUEM, 1 BPI	P – CPRM DP – 1 DPM, 1 IMP S – DPM M – 3 CPRM, 2 IMP, 1 DCM, 1 DPM	P – CPRM DP – 1 CPRM, 1 SDA S – CDPP M – 4 CPRM	P – CPRM DP – LDPM S – CPRM M – 3 CPRM, 2 LP, 2 DPM, 1 LDPM
Committee for Social Protection, Healthcare and Ecology	P – DAPM DP – DAPM S – DAPM M – 2 SPUEM, 2 BPI, 1 DAPM	P – CPRM DP – 1 CDPP, 1 CPRM S – PFD M – 2 DPM, 2 CPRM, 1 DCM		

Committee for Economy, Industry and Privatization	P – DAPM DP – 2 DAPM S – DAPM M – 3 SPUEM, 2 DAPM, 1 BPI, 1 ACDPF	P – DCM DP – 1 DPM, 1 CPRM, 1 PFD S – CPRM M – 2 CPRM, 1 DPM, 1 PFD		
Committee for State Security and Assurance of Public Order /2001-2009 Committee for National Security	P – DAPM DP – DAPM S – DAPM M – 2 DAPM, 2 SPUEM, 2 ACDPF, 1 BPI	P – CPRM DP – IMP S – IMP M – 3 CPRM, 1 DPM, 1 DCM, 1 CDPP	P – CPRM DP – 1 CPRM, 1 SDA S – CPRM M – 5 CPRM, 1 CDPP, 1 SDA	P – CPRM DP – 1 LDPM, 1 CPRM S – IMP M – 3 CPRM, 2 LP, 1 DPM, 1 LDPM
Committee for Human Rights and National Minorities/Inter-ethnic Relations	P – SPUEM DP – 1 DAPM, 1 SPUEM S – DAPM M – 2 DAPM, 1 SPUEM, 1 ACDPF, 1 BPI	P – DPM DP – 1 CPRM, 1 IMP S – CDPP M – 2 CPRM, 1 PFD	P – DI DP – CPRM S – CPRM M – 2 CPRM, 1 CDPP	P – CPRM DP – 1 DPM, 1 OMA S – CPRM M – 4 CPRM, 1 LDPM
Committee for Culture, Science, Education and Means for Mass Information	P – SPUEM DP – 3 DAPM S – SPUEM M – 2 DAPM, 1 SPUEM, 1 ACDPF, 1 BPI	P – DPM DP – CPRM S – DCM M – 3 CPRM, 2 DCM, 1 CDPP, 1 DPM		
Committee for Control and Petitions	P – DAPM DP – DAPM S – SPUEM M – 2 DAPM, 2 SPUEM	P – CPRM DP – DCM S – CPRM M – 3 CPRM, 1 CDPP, 1 PFD		
Committee for Youth, Sport and Tourism		P – CPRM DP – DPM S – CPRM M – 1 DCM, 1 CPRM, 1 CDPP, 1 IMP		
Committee for Economy, Industry, Budget and Finance			P – CPRM DP – 1 CPRM, 1 SDA, 1 CDPP S – CPRM M – 7 CPRM, 2 SDA, 1 CDPP, 1 IMP	
Committee for Culture, Science, Education, Youth and Means of Mass Information			P – CPRM DP – 2 CPRM, S – CPRM M – 3 CPRM, 2 CDPP, 1 SDA	P – PL DP – 1 CPRM, 1 OMA S – LDPM M – 2 CPRM, 1 LP, 1 LDPM, 1 DPM, 2 IMP
Committee for Social Protection, Healthcare and Family			P – SDA DP – 1 CPRM, 1 CDPP S – IMP M – 4 CPRM	P – LDPM DP – CPRM S – CPRM M – 3 CPRM, 2 LP, 2 LDPM, 1 DPM
Committee for Public Administration / 2009 – Committee for PA, Environment and Territory Development			P – CPRM DP – CPRM, S – CPRM M – 4 CPRM	P – DI DP – CPRM S – CPRM M – 2 CPRM, 2 LDPM, 2 DPM, 1 OMA, 1 LP
Committee for Ecology and Territory Development			P – CDPP DP – CPRM, S – CPRM M – 4 CPRM, 1 SDA, 1 IMP	

Developed based on the data from: the Parliament of the Republic of Moldova, Chisinau, 1996; the Parliament of the Republic of Moldova. Chisinau, 2001; the Parliament of the Republic of Moldova. Chisinau, 2003; Parliamentary Committees.// <http://www.parlament.md/Lastructurede Parlament/Comisiipermanente/tabid/84/Default.aspx>



The analysis of the data from the table reflects the same logics for the establishment of the committees, which is characterized by the wish of the parliamentary majority to ensure a comfortable majority for itself within every committee, so as not to compromise the activity of the committee as long as the decisions are passed via the majority of votes.

The columns 2 and 4 indicate similar situations which are characterized by a more than comfortable majority of the coalition/ruling party, measured by the number of mandates. The reduced number of mandates held by the opposition allowed for their dispersion by the parliamentary majority without any chance for a real participation in the decision-making process undertaken within the parliament at the level of the standing committees. Thus, the coalition between the DAPM (54 mandates) and SPUME (27 mandates) distributed those 20 mandates of the opposition among the 10 standing committees, meaning an average of 2 MPs from the opposition within every committee (column 2). This situation is also characteristic for the majority held by the CPRM (71 mandates), which has very easily distributed the functions, placing its representatives in the most requested positions within the parliamentary committees. The absolute domination at the committee level is ensured, in average, in a ratio from 7 to 3 (column 4). In such conditions, it is difficult for the parliamentary opposition to get organized in an efficient manner so as to participate in the governing act.

A different situation has emerged as a result of the elections that created minimal winning coalitions composed of a number of parties (columns 3 and 5). Both: the coalition resulting from the elections in 1998, but especially the one which was established after July 29, 2009 encountered two problems: on one hand, negotiations of some comfortable positions within the alliance, based on the number of held mandates, and on the other hand, abandonment the CPRM in minority at the level of the parliamentary committees, for them not to compromise their activity. This objective was more difficult to be fulfilled by the current government, due to the fewer mandates held by the ruling majority (53 mandates) and opposition (48 mandates). Although being at the limit, the alliance has ensured itself a majority in all the parliamentary committees, thus maintaining the CPRM in minority at the subsystem level in the legislative body.

This model of interaction between the power and the opposition in the RM parliament proves the functionality of this rational model maximizing its usefulness – a fact demonstrated by the paradigm of the public elections<sup>269</sup>. On the other hand, the institutional arrangements within the parliament do not create real and efficient conditions for the opposition to participate in the law-making process. The excessive politicizing of the administrative apparatus does not allow for the professionalization of the legislative body and making its activities more efficient. An evaluation report of the parliament activity points out the need to develop some sustainable human resources administration policies based on some clear recruitment principles, a system to promote and develop the employees, ensuring equal chances for all the candidates, and eliminating the discrimination based on age, sex, political affiliation, ethnic origin and religious opinions within all the structural

269 Riker, W., *The Theory of Political Coalitions*. New Haven, Yale University Press, 1962, pp. 16-28.

units of the parliament's secretariat, as well as within the parliamentary committees<sup>270</sup>. For the time being, the approach is not functional.

## 6.4 How fair and effective are the rules governing party discipline in the legislature?

The provisions of the Parliament Rules of Procedure impose a rather strict discipline for the parliamentary groups and their members. The analysis of the regulations set in paragraph 6.3 show that they favor the political parties in the detriment of the independent and non-affiliated MPs. The main rationale for the enforcement of such provisions reflects the perspectives of the political parties and their leaders. The last electoral campaigns showed that the financial resources invested by the parties for promoting their candidates were rather considerable. It is natural for the parties to request loyalty and a certain level of discipline from the MPs elected on the party list to be members of the parliamentary factions, so as to recuperate the investments made during the electoral campaigns.

The table below reflects the campaign costs for obtaining a parliamentary mandate during the last three elections of the parties who have access in the Parliament.

**Table 16 “Campaign costs for obtaining a parliamentary mandate during the last three elections for the parties that have access in the parliaments”**

	The cost for a MP mandate during the campaign for the parliamentary elections on April 5, 2009 / lei	The costs for a MP mandate during the campaign for the parliamentary elections on July 29 2009/ lei	The costs for a MP mandate during the campaign for the parliamentary elections on November 28, 2010/ lei
CPRM	112 735	80 942	102 948
OMA	377 573	441 276	did not pass the threshold
LDPM	276 059	122 336	314 909
LP	111 606	87 967	318 115
DPM	did not pass the threshold	288 722	780 468

*Source: Calculated by the author based on the ratio between the campaign costs to the number of mandates obtained by every party.*

From this point of view, the party discipline seems to be a rather powerful coagulation element to combat the separatist ambitions of some faction members in case of some potential confrontations within the party. The unfavorable provisions of the Parliament Rules of Procedure for the independent MPs did not ensure an absolute immunity against the turnover of some parliamentary factions' members.

The party discipline is very important within the parliament, as it affects the interdepen-

270 Anita Dudina, Maris Sprindzuks, Functional and Administrative Review of the RM Parliament. UNDP, Chisinau, 2006. // <http://www.undp.md/publications/doc/mission%20reports/Analiza%20functional%20a%20Parlamentului%20RM.pdf>

dency relation between the parliamentary factions and the activity of the parliamentary committees. The constraints imposed for the establishment and operation of the parliamentary factions mean to implicitly discourage the MPs from leaving the factions, and the interdiction to establish factions after the deadline of 10 days aims to reduce the costs in the negotiation process within the parliament.

The multiplication of the parliamentary factions as a result of the potential fragmentation of some parties would generate operational problems for the functioning of the standing committees, modifying the power ratio at the committee level, thus affecting the decision-making process. Although the abandonment of some parliamentary factions represents a phenomenon which emerged in the parliaments after 1998, the magnitude of this phenomenon was rather small, without a major impact on the operation of factions until recently. However, the current situation differs from the previous situation, as it was produced by a more emphasized fragmentation process within some factions. A group of MPs' leaving from the Communist faction after the elections from July 29, 2009 may induce much more significant effects for the CPRM, not only because it affected the numerical composition and the combating level of the faction in the parliament, but also induced psychological effects generated by the undermining the party cohesion and discipline, two of the distinct features and fundamental tools used by the CPRM within the political competition. The same phenomenon affected also the OMA, in case of which 3 MPs left the faction as a result of some open or more latent internal conflicts. As a consequence, the conditions which allowed the OMA to establish a faction with full rights within the parliament were cancelled, as the faction had only 4 out of the 5 necessary number of MPs for establishing a faction.

The fragmentation of the parliamentary factions led again the debates related to the amendment of the Parliament Rules of Procedure, so as to allow for the establishment of some new parliamentary groups. The eventual amendment of the Rules of Procedure towards the liberalization of the rules could affect the power balance between the leaders of the parties and the MPs of the respective parliamentary factions as a result of a more emphatic MPs' migration process.

However, after a number of debates and controversies, an amendment was made to the Parliament Rules of Procedure, which allowed the establishment of a faction composed of non-affiliated MPs<sup>271</sup>.

Some parties tried to regulate the situations for leaving a party in their charters. The charter of the OMA stipulates that the Parliament MPs, mayors and local counselors who are excluded or dismissed from the party shall give up the mandate they have obtained on the party list<sup>272</sup>. But the practical enforcement of such regulations is problematic, and this fact is confirmed by the current situation.

271 United Moldova as a parliamentary faction.// <http://unimedia.md/?mod=news&id=19421>

272 The Charter of the "Our Moldova Alliance" political party. Chisinau, 2008.

## ***6.5 How far are parties' effective membership organisations, and how far are members able to influence party policy and candidate selection?***

The efficiency of the political parties, as democratic institutions able to offer solutions for social-economic problems, is appreciated with skepticism by the majority of the RM citizens. The appearance and the development of the political parties' system went through different stages. When falling apart from the state one-party system, the political parties were treated with a lot of interest and enthusiasm, but with enough prudence in relation to the registration of the active members of these formations. Over the time, the political parties became more and more associated with negative stereotypes, collected based on some individual experiences and the inflation of the number of candidate to the supreme positions in the state. Thus, the negative images regarding the parties affected directly the institutional performance of their leaders, reflecting also their incapacity to transform themselves into credible institutions which would be able to offer the citizens alternative and competitive packages of public policies. This thing did not occur, and the social-economic development of the RM has confirmed this fact. Moreover, the parties find themselves in the top of the institutions enjoying the lowest level of trust from the population.

The results of the last opinion poll show that 75.3% of respondents have no or not so much trust for political parties, about 15% have some trust, and only 1.8% expressed a very high level of trust for the political parties<sup>273</sup>. The comparison of the current level of trust against the level of trust that existed about 10 years ago points out a regress of the parties, even though insignificant one. According to the data, 68% of respondents had no or not so much trust for the parties, 19% had some trust, and 2% proved to have a lot of confidence for the political parties<sup>274</sup>.

The low level of political parties' legitimacy in the RM is not an exception. The decrease of the political participation through the parties represents a trend which is currently present in the majority of advanced democracies<sup>275</sup>. The specific nature of the party policy goes for the mobilization and integration of the large groups in the democratic process. The main effect of this process is represented by the identification of the respective political party. Only in such conditions we can assess the performance of the parties as institutions able to obtain a consistent support from the public. In RM the parties' expansion to the "mass" took place in an artificial manner, being caused, first of all, by the need for them to get adjusted to the rules imposed by the legislation for registration and participation in the electoral process (see § 6.1). In this context we cannot talk about a natural institutionalization process used by the political parties to co-opt, socialize, and promote members based on some doctrinal values and principles, which would have allowed them to efficiently participate in the political life of the party. The institutionalization of the parties took place according to the "from top to bottom" model and not vice-versa, because the normative framework obliged

273 Public Opinion Barometer. Chisinau, May – 2010, page, 39. // <http://www.ipp.md/libview.php?l=ro&idc=156&id=552>

274 Public Opinion Barometer from Moldova. Chisinau, March – April, 2002, page, 38. <http://www.ipp.md/libview.php?l=ro&idc=156&id=469>

275 Wattenberg, M., Dalton, R., Parties Without Partisans, Political Change in Advanced Industrial Democracies. Oxford, 2002.

the parties to extend themselves territorially to cover at least half of the territorial-administrative units of second level. The respective situation is valid for about half of the parties.

The big number of members does not necessarily mean their plenary participation in the activities organized by the party, except for the electoral campaigns. The main problem is not the number of members, but the assurance of some conditions for equitable participation of all members in the competition for the party or public positions. Thus, the internal party democracy is a fundamental issue for promoting democracy in the society. The question is to what extent the parties need to promote democracy internally so as to be able to promote it also in the more general social context? In this context, two competitive approaches are emerging, offering a partially different answer: focus on the process or results<sup>276</sup>. The procedural approach points out the participatory dimension as an intrinsic value in the party activity, offering the simple members the opportunity to influence, in the decision-making process, the political offer of the parties for the voters<sup>277</sup>. The approach focused on results points out the capacity of the parties to formulate clear and distinct electoral options for the voters. From this point of view, the organizational structures of the parties must be assessed under all the aspects, based on their ability to select the personnel and the policies which reflect the electoral preferences of the larger groups deriving from<sup>278</sup>.

In this context, the parties from the RM are far away from ensuring equal conditions to all their members based on the meritocratic criterion. In spite of the fact that all the parties in the RM provide for members' quality in their charters, committing themselves to observe their rights, nevertheless there are several factors with considerable impact on the parties' capacity to implement the charter provisions in practice. One of the decisive factors that does not allow the assurance of some equitable conditions for members' participation is the excessive personalization of the party policy in the RM and the existence of some informal structures and relations within the parties which prevail in the detriment of the institutional relations. Another factor, probably the most important, is the inequality of financial resources among the party members. This fact reduces drastically the chances of the members who have fewer financial resources to participate in the process of appointing the candidates on the party lists within the competition for eligible positions.

While in the electoral process at the local level this handicap may be compensated by other types of resources, in case of the national campaigns, this handicap is practically insurmountable. Until recently, the party funding system (see details in § 6.6) was not very regulated, and the established practices offered access to the eligible positions almost exclusively to those who funded directly or indirectly the electoral campaigns. The interdependency between the personalized system based on informal rules with the party funding system, in compliance with these rules, undermines seriously the capacity of the members to influence the party policy or the process of candidates' appointment. To what extent the financial factor is important in the equation of appointing the

276 Susan Scarrow, *Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy*. NDI, Washington, 2005.// [http://www.ndi.org/files/1951\\_polpart\\_scarrow\\_110105.pdf](http://www.ndi.org/files/1951_polpart_scarrow_110105.pdf)

277 Ibidem., page 3

278 Ibidem., page 4.

candidate for the elective functions at the central level? We can deduce this from the information regarding the basis of those who contribute to funding the last two electoral campaigns, which were carried out in a more strictly regulated system.

The table below reflects the number of donors for the parties, both: parliamentary and extra-parliamentary ones with the biggest campaign budgets.

**Table 17 “Number of donors of the parties with the biggest campaign budgets”**

	Number of donors in the campaign for the parliamentary elections from April 5, 2009	Number of donors in the campaign for the parliamentary elections from July 29, 2009	Number of donors in the campaign for the parliamentary elections from November 28, 2010
CPRM	Not available <sup>6*</sup>	Not available	76
SDP	117	26	5
OMA	81	49	40
LDPM	28	21	141
EAM	37	35	18
DPM	21	21	292
LP	7	46	31
CDPP	94	90	80

Source: *Financial statements of the electoral candidates.*// [www.cec.md](http://www.cec.md)

This data are very relevant for assessing the relations between the leadership of the parties and their members, if we treat the financial contribution as a form of political participation. From this point of view, the financial revenues accumulated from the membership fees are not found in the structure of the campaign costs. The data also suggest that the parties have an extremely limited base of donors, based on the volume of financial resources accumulated in campaigns related to the length of lists and distribution of the financial burden by categories of donors (see § 6.6). In this context, the equality of chances to participate in the political competition for the members who do not have consistent financial resources becomes an illusion.

## ***6.6 How far does the system of party financing prevent the subordination of parties to special interests?***

Parties’ funding in the Republic of Moldova was a subject left outside the public debates, and a stricter regulation of this area was implemented only by the end of 2007, when a new law on political parties was adopted and benefited from expertise offered by the Venice Commission. This law has also completed the regulations of the Electoral Code regarding the funding of the electoral campaigns. Nevertheless, the way in which the parties have funded



their activities until presently remains to be relatively non-transparent, in spite of the fact that there is a normative framework which obliges them to be more transparent. Nevertheless this framework contains imperfections and extremely controversy provisions. The need for a stricter regulation of the parties' funding aimed to ensure a more equitable participation of the parties in the political and electoral processes, to reduce the parties' dependency on private interests and to minimize thus the political corruption. So as to fulfill these objectives, the revenues from the private sources were regulated more rigidly and the public funding of the political parties was introduced.

Although it benefited from international expertise, the most important provisions regarding the funding from private and public sources, which would allow reducing the dependency of the party system from special interests were formulated contrary to the good funding principles and practices present in the international documents<sup>279</sup>. The normative framework is extremely permissive in relation to the threshold imposed on the amount of the donation to be made by a natural person or legal entity to a political party. These provisions stipulate that a natural person may donate to one or more parties amounts that do not exceed 500 monthly average salaries, and if the natural person is a party member, this amount includes also the membership fees. In the same context, a legal entity may come up with donations that do not exceed 1000 monthly average salaries in the national economy<sup>280</sup>.

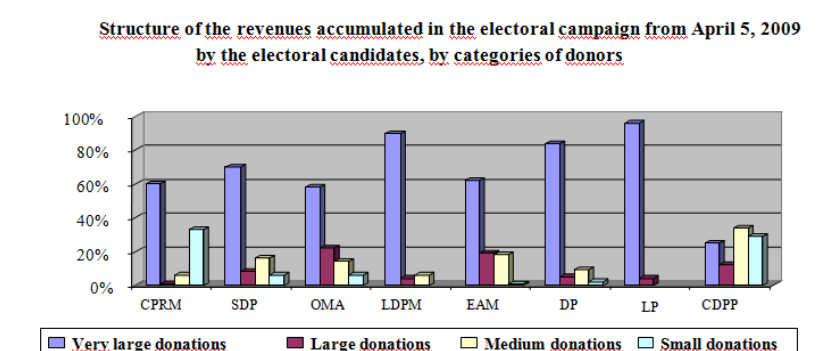
The enforcement of these regulations during the parliamentary electoral campaigns in 2009 pointed out the perverse effects of the provisions on parties' and campaigns' funding. Thus in 2009 a natural person could make donations for an amount up to 1 570 000 lei, and a natural entity could donate an amount up to 3 140 000 lei to fund a political party<sup>281</sup>, the equivalent of about 107 thousand € and respectively 214 thousand €. By correlating the value of these donations to the thresholds imposed by the CEC for the campaign costs, it may be noted that the law allowed for the campaign from April 5, 2009 to be funded by 8 natural persons or 4 legal entities, while the campaign from July 29, 2009 could be funded by 5 natural persons and 3 legal entities. The respective arrangements do not limit the parties' dependency on special interests; they rather legalized the previous practices for funding parties and campaigns. The structure of the revenues accumulated by the political parties in the electoral fund during these electoral processes confirms the situation reflected in the below diagrams.

279 Transparency International's Standards on Political Finance and Favors.// [www.transparency.org/content/download/.../standards\\_eng.pdf](http://www.transparency.org/content/download/.../standards_eng.pdf); Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.// [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/AS\(2003\)Rec1516&Language=lanEnglish&Ver=finalsupp&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/AS(2003)Rec1516&Language=lanEnglish&Ver=finalsupp&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75)

280 Law on Political Parties, No. 294 dated 21.12.2007. // Official Gazette No. 42-44, 29.02.2008, art. 26

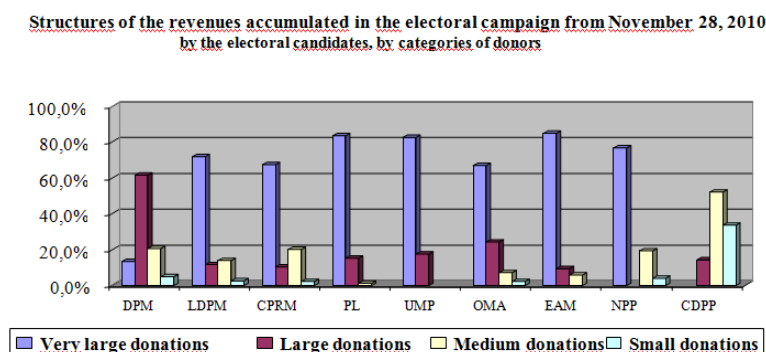
281 Guidelines for political parties in the area of electoral campaigns funding for the parliamentary elections from April 5, 2009, page 9, // [http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB\\_AlegerileParlamentare182](http://www.cec.md/i-ComisiaCentrala/main.aspx?dbID=DB_AlegerileParlamentare182)

**Chart 16 “Structure of the revenues accumulated in the electoral campaign from April 5, 2009 by the electoral rivals by categories of donors”.**



Source: Developed by the author according to the data on donations from the financial statements of the electoral candidates submitted to the CEC for the parliamentary election campaign from April 5, 2009.

**Chart 17 “Structure of revenues accumulated in the electoral campaign from November 28, 2010 by the electoral candidates by categories of donors”**



Source: Developed by the author according to the data on donations from the financial statements of the electoral candidates submitted to the CEC for the parliamentary election campaign from November 28, 2010.

The data indicate that the very big donations cumulated with the big donations<sup>282\*</sup> usually represent over 80% of the total revenues of the electoral candidates who had the biggest campaign budgets (although the weight of the first category is higher as compared to the weight of the second category). The funding of the electoral campaigns from the financial resources concentrated within some limited groups of persons or businesses points out the closed connections between the local political parties and the special interests, a fact that does not eliminate the risks of political corruption in relation to the parties. Moreover, the excessively high thresholds for the donation value contradict the small incomes of the citizens and the European standards and practices that specify the need to impose restrictions for big donations and to encourage the small donations.

282 \* Conventional classification of the donations: very big donations - 100 thousand lei and over (» 6,8 thousand €); big donations – in between 50 thousand and 100 thousand lei ( 3,4 - 6,8 thousand €); medium donations – over 10 thousand lei – under 50 thousand lei (680 - 3,4 thousand €); small donations – up to 10 thousand lei inclusively (up to 680 €).

The public funding formula adopted in the new law on parties is also inefficient for reducing the parties' dependency on private interests and equaling the chances for participation in the political life, even though its provisions are not applied yet in practice (it will enter into force starting with July 1, 2011 for local elections and July 1, 2013 for the parliamentary elections)<sup>283</sup>. The annual allocation from the state budget for funding the parties accounts for 0.2% from the revenues expected in the state budget for the respective year and is distributed according to the following formula: 50% to political parties proportionally to the number of mandates; 50% to political parties proportionally to the number of votes accumulated in the general local elections, conditioned that these parties obtained not less than 50 mandates in the representative bodies of the administrative-territorial units of the second level. The number of mandates, as a main criterion for the budget allocations, produces discrimination in relation to the small parties. The level of 50 mandates obtained within the representative bodies of the administrative-territorial units of the second level have the same effects. These provisions will maintain the situation unchanged and will allow the access of smaller parties to public funding. Although the current government undertook some actions so as to balance the participation of the parties in the electoral process by modifying the normative framework<sup>284</sup>, so as to increase the indirect funding from the state, these funds are not sufficient under the current regulations set in the law on political parties. The current regulations are formulated so as not to limit the influence of the special interests on the party system. The campaign for the elections from November 28, 2010 showed that the parties benefited fully from the ambiguities of the normative framework for campaign funding, using different elusions which fell under the category of some illegal practices rather than legal ones<sup>285</sup>. The lack of an efficient mechanism for financial violations' sanctioning has encouraged such a behavior from the political parties, who ended up, in the worst case, with a warning, without being really threatened with exclusion from the electoral course.

## ***6.7 To what extent does support for parties cross ethnic, religious and linguistic divisions?***

The RM Constitution provides for the equality of all the citizens in front of the law and public authorities, without any differentiation based on race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation or social origin (art.16). In the same context, the State acknowledges and protects the right to maintain, develop and operation of the Russian language and other languages spoken on the territory of the country (art.13).

The political parties are obliged to follow these constitutional principles when implementing specific activities, embedding them in their internal regulations and charters, and the political

283 Law No. 64 dated 12.11.2009 for amending article 32 from the Law No. 294-XVI, dated December 21, 2007 on political parties.// Official Gazette, 27.11.2009, No. 171-172, art. 533.

284 Law No. 119 dated 18.06.2010 for modifying and completing the Electoral Code// Official Gazette, 29.06.2010, No. 108-109.

285 Cornel Ciurea, Cornelia Cozonac, Leonid Litra, Sergiu Lipcean, Funding political parties: between transparency and obscurity. // Public Policies, No.8, 2010. // [http://www.viitorul.org/public/3118/ro/POLITICI\\_PUBLICE\\_8\\_finante%20partide.pdf](http://www.viitorul.org/public/3118/ro/POLITICI_PUBLICE_8_finante%20partide.pdf)

speech of the majority of parties tends to point out parties' openness to all voters, regardless of the ethnical, linguistic or religious affiliation. In this respect, the local parties tend to self-identify themselves as "catch-all" parties in the interpretation of Klaus von Beyme<sup>286</sup>, although the European legislation (Convention for Human Rights Protection) allows the operation of parties established based on ethical or religious affiliation.

It is known that the number of parties within the system tends to go up alongside the social fragmentation based on some ethnical, linguistic or social-economic cleavages. In this respect, the institutionalization of the ethno-linguistic cleavage occurred in the RM either through some parties with reduced electoral weight (Ravnopravie) or through the regional parties (United Gagauzia). Thus, when formulating the electoral options, the ethno-linguistic dimension is less relevant as compared to the social-economic problematic. Although the ethnic dimension remains to the present in the public debate, the intensity of the opinions related to the identity aspects has decreased considerably as a topic used in the electoral competition.

The ethnical, linguistic, and religious dimensions are currently blurred by the social-economic and foreign policy issues. Nevertheless, there is a rather visible polarization of the vote between the main nationality and ethnic minorities regarding the voting preferences for certain electoral subjects. The results of the public opinion polls point out the existence of some breakdowns based on the ethno-linguistic criterion. The distribution of the answers based on the ethnic criterion for the question – If elections are to be organized next Sunday for the Parliament of the Republic of Moldova, what party would you vote for? – offers a relevant indication regarding the polarization of the vote based on the ethnic and linguistic criterion. The tables below reflect the structure of the vote granted to the first four parties classified in the opinion polls based on the ethno-linguistic affiliation, which were organized on the eve of the last three electoral elections, for which such data are available.

**Table 18 "Structure of the vote granted to the first four parties classified in the opinion polls based on the ethno-linguistic affiliation during the parliamentary election from March 6, 2005"**

Nationality		CPRM	CDPP	Democratic dova	Mol- SDP
	<b>Total</b>	<b>46.7%</b>	<b>9.2%</b>	<b>15.9%</b>	<b>3.3%</b>
	Moldovan/Roma- nian	41.7%	11.4%	19.0%	3.8%
	Russian	65.4%		6.2%	3%
	Ukrainian	65.9%	1.7%	3.6%	
	Other	62.0%	2.6%	3.8%	1.0%

Source: *Public Opinion Barometer in Moldova. January – February 2005, page 61*

286 Klaus Von Beyme, The concept of political class: A new dimension of research on elites?// West European Politics, Volume 19, Issue 1 January 1996, pages 68 – 87.

**Table 19 “Structure of the vote granted to the first four parties classified in the opinion polls based on the ethno-linguistic affiliation during the parliamentary election from April 5, 2009”**

		CPRM	LP	LDPM	OMA
Nationality	<b>Total</b>	<b>36.2%</b>	<b>8.2%</b>	<b>8.3%</b>	<b>5.4%</b>
	Moldovan/Romanian	31.5%	10.5%	9.6%	6.3%
	Russian	43.6%	3.4%	3.8%	2.6%
	Ukrainian	62%		4.8%	1.6%
	Other	44.6%		3.2%	3.6%

Source: Public Opinion Barometer. March, 2009, page 46

**Table 20 „ Structure of the vote granted to the first four parties classified in the opinion polls based on the ethno-linguistic affiliation during the parliamentary election from November 28, 2010”\***

		CPRM	LP	LDPM	DPM
Nationality	<b>Total</b>	<b>37.2%</b>	<b>12.5%</b>	<b>31.1%</b>	<b>14.4%</b>
	Moldovan/Romanian	29.9%	13.9%	36.6%	15.1%
	Russian	77.3%	6.9%	9.1%	2.3%
	Ukrainian	67.6%	6.6%	6.9%	11.2%
	Other	71.1%	0.0%	4.7%	17.6%

\*Note: the data reflect the preferences of the respondents who indicated a party for which they would vote.

Source: Public Opinion Barometer. November 2010, page 70.

The data point out the fact that the ethnic minorities have expressed traditionally their more emphasized support for the CPRM and less for the other parties, as compared to the majority nation. The other parties are perceived, for the time being, with skepticism in relation with their capacities to represent the ethnical minorities' interests. The data of the ethno-barometer confirms the same trend regarding the minorities' voting options. (See the table below)

**Table 21 “Voting opportunities of minorities”**

	Bulgarians	Gagauzians	Russians	Ukrainians
Communist Party of the Republic of Moldova	41%	37%	46%	54%
Electoral Block “Democratic Moldova” (Alliance “Our Moldova”, Democrat Party and Social-Liberal Party)	7%	5%	5%	2%
Christian Democratic People's Party	3%	2%	1%	1%
Agrarian Party from Moldova	4%	1%	1%	

Source: Ethno-barometer – Republic of Moldova. 2005// <http://www.ipp.md/libview.php?l=ro&idc=156&id=462>

The gap between the CPRM and the other parties in the electoral preferences of the minority ethnical groups remains to be rather prominent, in spite of the inclusive speeches of the parties that have access to ruling after the last parliamentary elections. The representation of the ethnical minorities within the legislative body represents a topic which is relatively weakly debated by the public opinion. Although minorities represent almost a quarter of the population, there are no specific tools to ensure their proportional representation in the state power bodies. (See the table below)

**Table 22 “Ethnical composition of the RM population”**

	Population Census 1989	Population Census 2004*
<b>Moldovans</b>	64.5%	75.8%
<b>Ukrainians</b>	13.8%	8.4%
<b>Russians</b>	13%	5.9%
<b>Gagauzians</b>	3.5%	4.4%
<b>Romanians</b>	0.1%	2.2%
<b>Bulgarians</b>	2%	1.9%
<b>Other</b>	3.1%	1%

\*Note: the population census from 2004 does not cover the data from the left side of the Nistru River.

Source: The Population Census 2004. Chisinau, 2006.

The constitutional provisions and the normative framework regarding the protection of minorities' rights and freedoms do not apply a preferential treatment, based on the affirmative action regarding the political participation and the proportional representation. The political participation of the minority ethnical groups is based on the rules applied to all the citizens without any ethnical or linguistic differentiation. The current electoral system also does not favor the minorities' representation in the legislative body. The proportional formula used within one single national constituency is actually discouraging their representation. In these circumstances, the solution chosen by certain minorities is that to offer a vote directed mainly to the political left, represented by the CPRM, which has promoted insistently the idea of a multinational state in its speeches. This attachment was once again reconfirmed by the non-participation at the referendum; the minorities have manifested an electoral behavior in line with the CPRM message to boycott the referendum. But, the behavior of the minority-ethnical groups needs deeper studies, because any generalization may be combated through the exceptions rule, especially among the elites of these groups, which decide to get integrated plenary in the society, including at the linguistic and political levels. The minorities, at their turn, emerge as multicultural communities with different and even divergent agendas, in which the problem of accepting the costs related to the objective of mobilization (radicalization) or integration (looking for the consensus) seem to increase as long as the State progresses with its political and economic reforms.

## ***6.8 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

The recommendations of the Council of Europe and OSCE/ODIHR served, as a rule, as basis for important legislative and governmental efforts aimed to remediate the legislative and operational framework for the political representation in the RM. The first law on political parties from 1991 has served as a starting point, which generated intense debates in the society regarding almost all the procedures related to the registration, monitoring, interaction or sanctioning of the

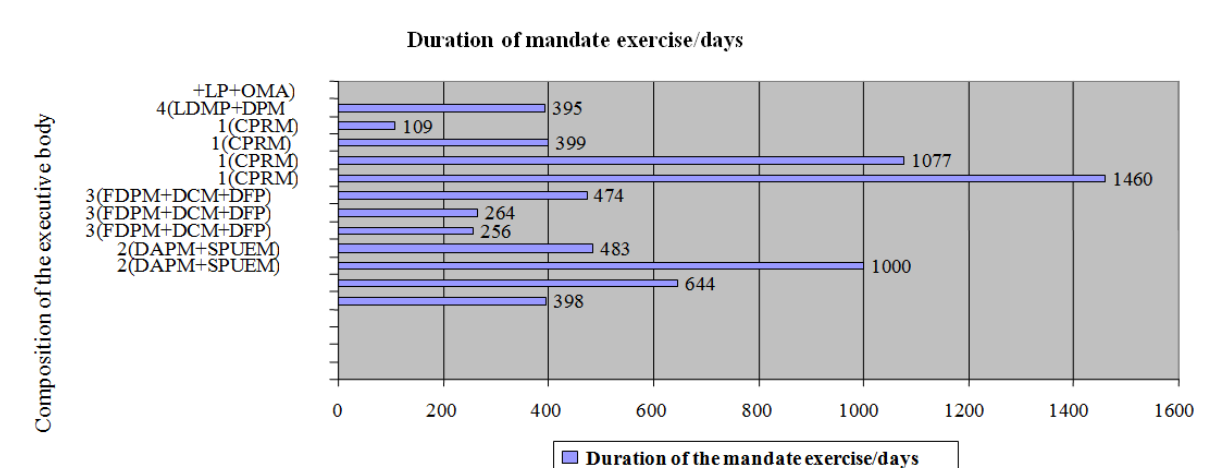


political groups. There are strict rules related to the way in which the parties are encouraged to enforce the existing legislation whenever acting as legal actors as they will be able to participate in the electoral campaign only being registered. And there are less rigid rules, like those included in the internal regulations, aiming to preserve the cohesion and the democratic nature of the decisions taken within a certain party, establishing the procedures used by the leadership of the parties so as to remain accountable and transparent to the members, and which may encourage or sanction the conduct of the top persons in the party.

The quota imposed for the number of members and their territorial distribution represent an impediment for setting new parties. The procedure for members' recruitment is left upon the discretion of the political parties, which set forth selection criteria observing the legislation in force. The participation in the electoral campaigns is limited by the parties' resources and capacity to mobilize the supporters. The organization of the electoral campaigns pointed out also some impediments related to the use of the administrative resources by the ruling party, thus affecting the equal participation chances for all the electoral rivals.

The party system created several governing types: over-dimensional coalitions, majority mono-colored cabinets and minimum winning cabinet coalitions. As a rule, the mono-colored governments were more longeval, but they were not immune to the turnover of personnel either, thus not benefiting from continuity in implementing public policies. The diagram below shows the longevity of the governments depending on their composition.

**Chart 18 “Longevity of the governments depending on their composition”**



Although the parliamentary opposition has the possibility to get organized within the legislative body's framework based on the same rules as those enjoyed by the parliamentary majority, it is nevertheless limited in its actions. This arrangement is a formal one. In reality, the opposition does not have any tools which would offer them the possibility to participate efficiently in influencing the legislative process. The only tool used by the opposition was the threat to boycott the

parliamentary sessions. The rules for the parliament's internal operation favor the big parliamentary factions. The efficiency of this activity is limited due to the algorithm for positions' distribution within the parliamentary committees. The experience shows that the parliamentary majorities were rather successful in demobilizing the minority at the level of the parliamentary committees, even when having an insignificant majority, so as not to allow the blocking of the law-making process.

The Parliament Rules of Procedure promote the party discipline and discourage the migration from one faction to another, specifying some restrictions for those who leave the factions they were part of when the respective faction was established. However, these measures did not ensure an absolute loyalty of some MPs who have left the factions as a result of some internal party conflicts. These regulations ensured a good stability level in the legislative activity of the parliament, preventing the mass migration phenomenon and the destabilization of the legislative body's activity.

The performance of the parties as efficient institutions of party members is rather weak. The electoral system, the informal rules for appointing the candidates, and the funding system have created a framework favoring the candidates with consistent financial resources, who may cope with the campaign costs or may attract substantial resources to fund the party. The presence of one and the same persons on the parties' lists eloquently proves this statement. In such conditions, the members' capacity to influence the major decisions of the parties is not achievable.

Equal participation rights may be ensured only by diminishing the influence of private funds on the party policy and introducing the public funding, which would balance the competition between the well-to-do members and those less well-to-do, from financial point of view. Even though the normative framework on funding regulation was adjusted so as to comply with some European standards, the provisions regarding the funding from the private sources are in contradiction with the practices shared in this area and do not limit the influence of the pressure groups on the political parties. The excessively high thresholds for the amount of the private donations legalize the existing funding practices and practically cancel the positive effects of some legislative amendments meant to remediate the unsatisfactory situation in the area, preserving the influence of the interest groups over the parties.

To improve the situation, it is necessary to implement as operatively as possible the provisions on parties' public funding and to amend the law on parties and the Electoral Code so as to encourage and foster the citizens to take part in parties' funding with small contributions, and the parties to mobilize this participation. Although a number of amendments were made to the electoral legislation and law on parties, the respective provisions remained unchanged, thus denoting the existence of a strong opposition in regards to a stricter regulation of this area. Even though the parties in the RM do not make any differentiation based on the ethno-linguistic criterion, the vote and the trust of the ethnical minorities are strongly oriented towards the political left in the detriment of the political right wing. The absence of some alternative tools for minorities' political representation and participation based on the proportionality criterion and the implicitly restrictive institutional

design offer only this means of participation. A number of initiatives existed to promote a more important representation of women in the political life, but they failed to be imposed in the national legislation, being disseminated more as some positive practices, left at the latitude of the political parties. The idea of affirmative action in relation to the representation of the ethnic minorities was analyzed only briefly, remaining to be blocked due to the prevailing concept of citizens' equality in front of the law, within the unitary constitutional framework applied on the territory of the RM.

### Summary: Progress obtained over the last 3 – 5 years

	Very good	Good	Satisfactorily	Poor	Very poor
6.1			X		
6.2			X		
6.3		X			
6.4		X			
6.5				X	
6.6					X
6.7		X			
6.8			X		

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## 7. GOVERNMENT EFFECTIVENESS AND ACCOUNTABILITY

*Sergiu Lipcean*

*Is the government responsible to citizens and their representatives?*

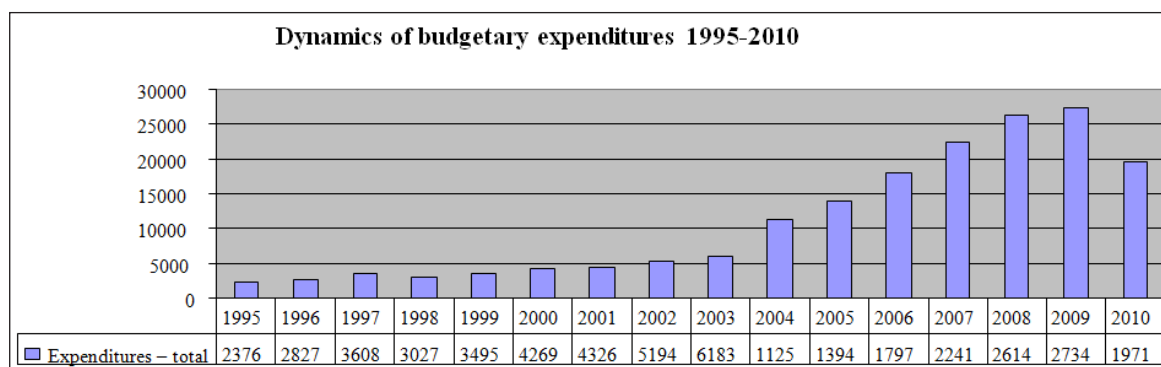
***7.1 How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it informed, organised and resourced to do so?***

Government efficiency is assessed through its ability to develop and implement public policies aimed to remedy the most severe social-economic problems faced by the citizens. From this point of view, the social-economic situation of the Republic of Moldova shows a relatively weak performance of the governments, regardless of their political color. In a democratic society, the performance of the governments is assessed depending on their ability to respond to social requests.

In this regard, there is a need of a more or less symmetric communication mechanism between public authorities and citizens. In absence of an efficient communication mechanism, the identification of social problems and provision of efficient solutions is counter-productive. It is obvious that the efficiency of governmental actions is measured in terms of public satisfaction/dissatisfaction with governmental actions. Assessing the activity of the governments in the Republic of Moldova applying this principle, we find a paradoxical relation. Despite the fact that the amount of financial resources for governmental expenses for the purpose of managing social problems has increased steadily, in particular after 2000 (see the diagram below), this fact was not felt by most citizens.



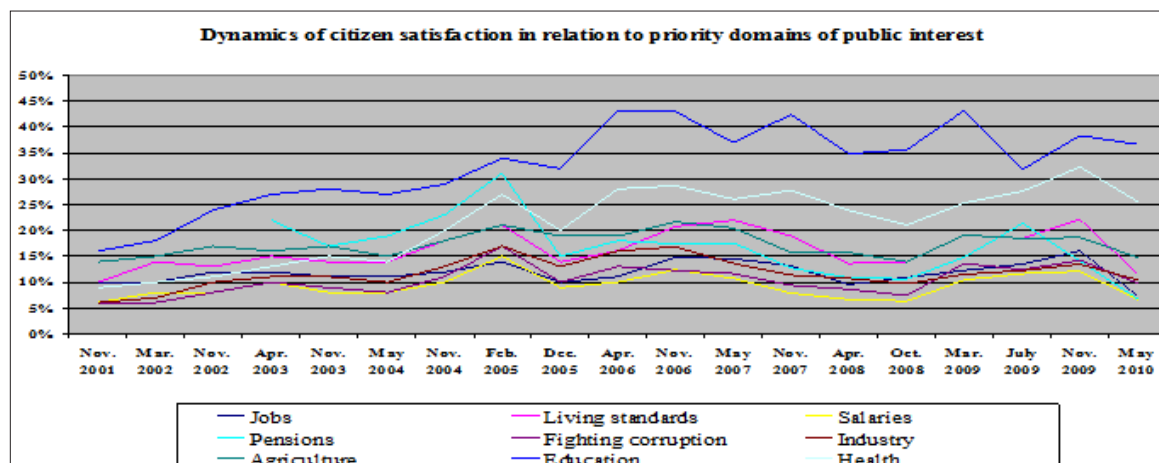
**Chart 19 “Dynamics of budgetary expenditures 1995-2010”**



Source: Developed by the author based on NBS data.// <http://www.statistica.md/pageview.php?l=ro&idc=263&id=2193>

Public perception concerning the ability of the governments to provide efficient solutions in relation to the main field of public interests is not in direct ratio with the increase in the amount of financial resources intended for it. The data rather shows a general dissatisfaction with government actions in relation to the main activity fields. Only a small part of citizens are satisfied with the manner of action of the authorities<sup>287\*</sup> (please see the Chart below).

**Chart 20 “Dynamics of citizen satisfaction in relation to priority domains of public interest”**



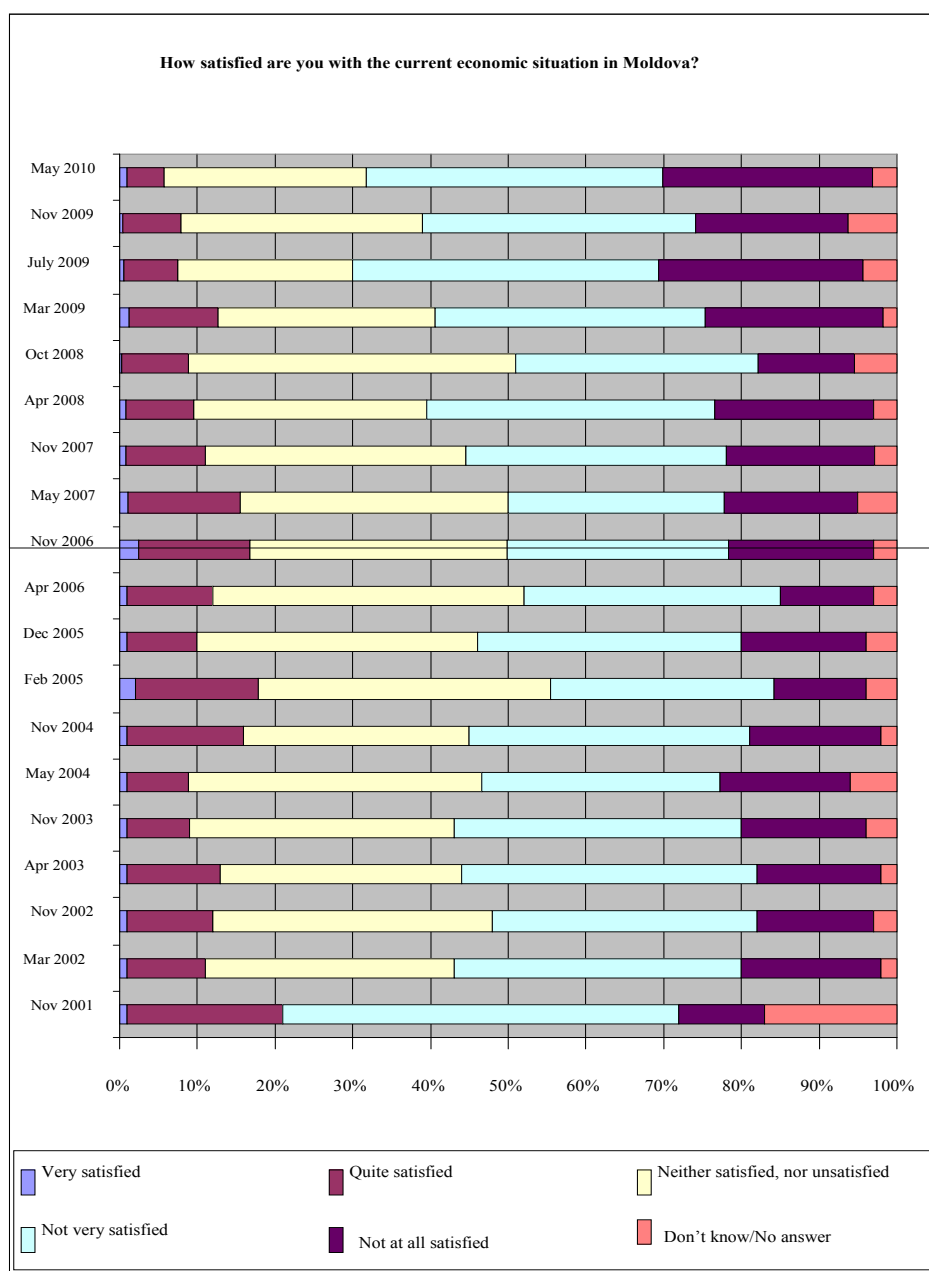
Source: Developed by the author based on data from the Barometer of Public Opinion, May 2010.// [http://www.ipp.md/public/files/Barometru/2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru/2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

Only about 20% of citizens have been more or less satisfied with the performance of the

287 \* Note: the diagram reflects the level of citizen satisfaction summarizing the replies 'Quite satisfied'/'Very satisfied' to the question 'To what extent are you satisfied with the activity of the country leadership in the following fields?'

authorities in 7 of 9 general activity domains. By comparing the dynamics of budgetary allocations with the satisfaction of citizens in the recent 5 years, we find that the amount of budgetary allocations, which was increasing, was not positively perceived by the citizens. Moreover, the level of satisfaction with the economic situation in the recent 10 years also reflects a dissatisfaction of most citizens. The number of very satisfied individuals is under 3%, and of satisfied under 20%. Most citizens are partly or very unsatisfied with the economic situation (please see diagram below).

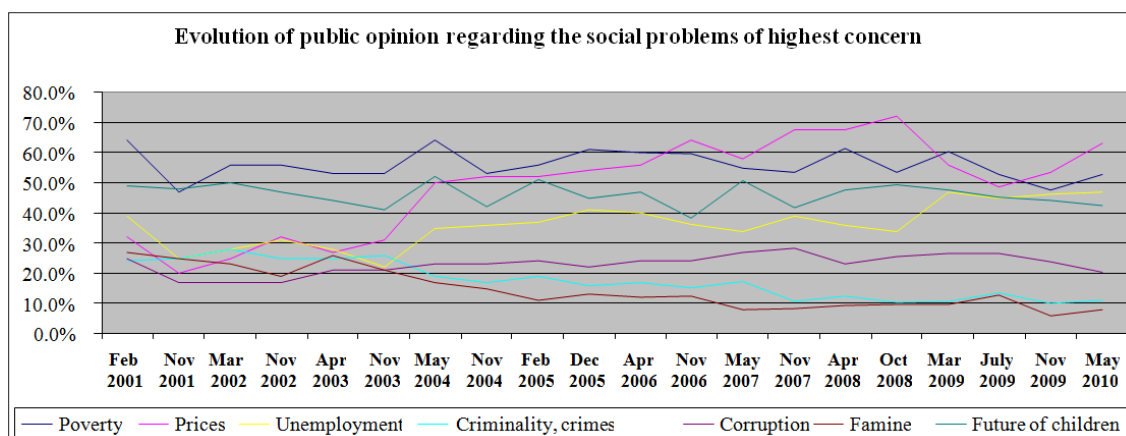
**Chart 21 “Population perception of the economic situation in Republic of Moldova”**



Source: Developed by the author based on the data from the Barometer of Public Opinion, May 2010.// [http://www.ipp.md/public/files/Barometru/2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru/2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

Even if the major part of budgetary allocation had a social orientation, the Communist Government managed to produce by means of social transfers the decrease in the gap between the most provided and the least provided categories, and it seems that the fears of citizens regarding the social-economic problems have not disappeared entirely. Poverty and prices stayed constantly in the top of citizens' concerns (please see diagram below).

**Chart 22 “Evolution of public opinion regarding the social problems of highest concern”**



Source: Developed by the author based on the data from the Barometer of Public Opinion, May 2010.//

[http://www.ipp.md/public/files/Barometru2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

The financial crisis brought up back to discussion these subjects, after the power was taken over by the parties in the composition of AEI. Budgetary austerity measures and reduced expenditures in certain socially sensitive fields generated some social dissatisfaction, but have been positively assessed by the international financial institutions and external partners, providing the current government with financial assistance for promotion of structural economic reforms.

## 7.2 How much public confidence is there in the effectiveness of government and its political leadership?

The public trust in relation with government performance and political leadership should be analyzed in connection with other political institutions directly or indirectly associated with its activity in the perception of the citizen. Certainly, under the aspect of governance democratization, the Republic of Moldova recorded an obvious regress since the 1990s until now<sup>288</sup>. This situation is characteristic not only for the Republic of Moldova, but also for most former Soviet republics, excepting the Baltic states. Thus, the democratic score for the governance in most of these states was in a decrease (please see table below).

288 Nations in Transit 2010, Nations in Transit 2005.// [http://www.freedomhouse.hu/index.php?option=com\\_content&view=category&layout=blog&id=46&Itemid=121](http://www.freedomhouse.hu/index.php?option=com_content&view=category&layout=blog&id=46&Itemid=121).

**Table 23 “Level of democratic governance”<sup>289\*</sup>”**

	1997	1998	1999/ 2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Armenia	4.50	4.50	4.50	4.50	4.50	4.75	4.75	5.00	5.00	5.25	5.25	5.75	5.75
Azerbaijan	6.25	6.25	6.25	6.25	6.00	5.75	5.75	6.00	6.00	6.00	6.00	6.25	6.50
Belarus	6.00	6.25	6.25	6.25	6.50	6.50	6.50	6.75	7.00	7.00	7.00	6.75	6.75
Georgia	4.50	5.00	4.50	4.75	5.00	5.50	5.75	5.50	5.50	5.50	5.75	6.00	6.00
Kazakhstan	5.50	5.50	5.00	5.00	5.75	6.25	6.25	6.50	6.75	6.75	6.75	6.75	6.75
Kyrgyzstan	4.25	4.50	5.00	5.25	5.50	6.00	6.00	6.00	6.00	6.00	6.25	6.50	6.75
<b>Moldova</b>	<b>4.25</b>	<b>4.50</b>	<b>4.50</b>	<b>4.50</b>	<b>4.75</b>	<b>5.25</b>	<b>5.50</b>	<b>5.75</b>	<b>5.75</b>	<b>5.75</b>	<b>5.75</b>	<b>5.75</b>	<b>6.00</b>
Russia	4.00	4.50	4.50	5.00	5.25	5.00	5.25	5.75	6.00	6.00	6.25	6.50	6.50
Tajikistan	7.00	6.75	6.25	6.00	6.00	6.00	5.75	6.00	6.25	6.25	6.25	6.25	6.25
Turkmenistan	6.75	6.75	6.75	6.75	6.75	6.75	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Ukraine	4.50	4.75	4.75	4.75	5.00	5.00	5.25	5.00	4.50	4.75	4.75	5.00	5.00
Uzbekistan	6.00	6.25	6.25	6.00	6.00	6.25	6.25	6.50	7.00	7.00	7.00	7.00	7.00
Estonia	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25	2.25
Latvia	2.50	2.50	2.50	2.25	2.25	2.25	2.25	2.25	2.00	2.00	2.00	2.50	2.50
Lithuania	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.50	2.75	2.75

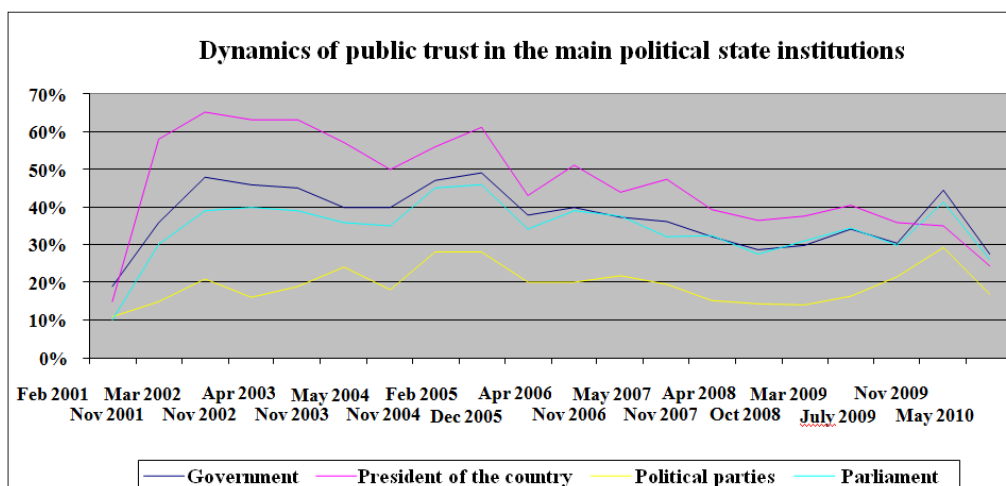
Source: *Nations in Transit 2010*; *Nations in Transit 2005*.// [http://www.freedomhouse.hu/index.php?option=com\\_content&view=category&layout=blog&id=46&Itemid=121](http://www.freedomhouse.hu/index.php?option=com_content&view=category&layout=blog&id=46&Itemid=121)

Therefore, with regards to democratic governance, the Republic of Moldova followed a downward trajectory from the category of transition governments to the category of consolidated authoritarian regimes, in accordance with this democratization index. The democratic regress was felt at the time of accession to power of PCRM and progressively continued until its defeat in the election campaign of July 2009. Nevertheless, the shift to an authoritarian regime does not imply automatically a proportional decrease of its legitimacy. A government may be credited with trust even if it is less concerned with the promotion of some rights and democratic freedoms, if it produces economic wealth. The main problem lies in the fact that a sustainable economic growth may be maintained only in conditions of a democratic regime and a free market economy<sup>290</sup>. But this has not happened in the case of the Republic of Moldova. Even if PCRM accession to power in 2001 brought to an end a period of political instability, the party being vested with massive trust of the citizens, the contrary effect was the stopping of democratic processes. PCRM imposed its control over all state institutions, generating a gradual monopolization process of political power. The shift to a regime with authoritarian inclination meant also the beginning of a slow, but constant decline of citizen trust in the main state institutions. The diagram below reflects this phenomenon eloquently\*.

289 \* Note: In accordance with the methodology used by Freedom House the assessment of the democratic progress is done on a scale from 1 to 7, where 1 represents the highest level of democracy and 7 the lowest. Democracy score/regime type: 1-2 – Consolidated Democracy; 3 – Semi-consolidated Democracy; 4 – Transitional Government/Hybrid Regime; 5 – Semi-consolidated Authoritarian Regime; 6 – 7 Consolidated Authoritarian Regime.

290 Adam Przeworsky, *Democracy and Market: Political and Economic Reforms in Eastern Europe and Latin America*. Cambridge University Press, 1991.

**Chart 23 “Dynamics of public trust in the main political state institutions”**

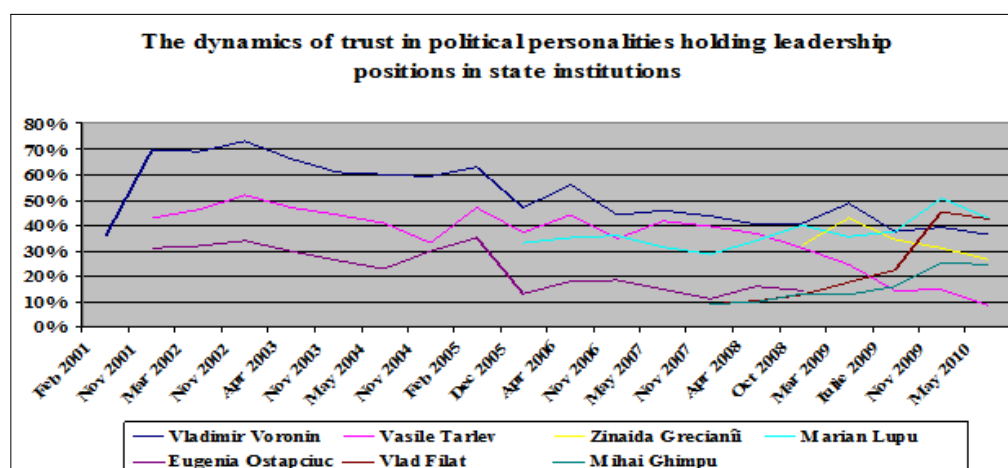


Source: Developed by the author based on the data from the Barometer of Public Opinion, May 2010.// [http://www.ipp.md/public/files/Barometru/2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru/2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

The comeback to a higher trust score happened only during the parliamentary election campaign, which is explained by a strong coverage of representatives of the governing party in mass media. This phenomenon was more prominent during 2005 and less visible during election year 2009. The resuscitation of citizen trust in the government during 2005 may be explained by the compromise achieved by the governing party and the opposition in the result of the vote offered by a part of opposition in the election of the president of the country. The later refusal of PCRM to collaborate with the opposition on some subjects of major interest for the democratic development of the country and the option of an open confrontation contributed to the erosion of its legitimacy towards 2009. A decisive factor in explaining the evolution trends of citizen trust in government is the approach of this subject through the perspective of personalization of the political phenomenon in the Republic of Moldova. The data suggests a close interdependence relation between the trust given to institutions and the trust given to public persons leading these institutions. The relation is visible in particular during PCRM governance period. The diagram below reflects the trust scores for public officials, which were leaders of the Presidency (Vladimir Voronin, Mihai Ghimpu), of the Parliament (Eugenia Ostapciuc, Marian Lupu, Mihai Ghimpu) and of the Government (Vasile Tarlev, Zinaida Grecianii, Vlad Filat)<sup>291\*</sup>.

291 \* Note: The diagram shows the level of trust cumulated for options 'A lot of trust' / 'Some trust'

**Chart 24 “Dynamics of confidence in public persons in leadership functions in state institutions”**



Source: Developed by the author based on the data from the Barometer of Public Opinion, May 2010.// [http://www.ipp.md/public/files/Barometru/2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru/2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

If we overlap the two diagrams, we find that the dynamics of institutional trust records the same fluctuations as the dynamics of personal trust in the former President Voronin during the entire period of PCRM governance. This tendency is shown also in relation with some political personalities within PCRM, holding the positions of Prime Minister and Speaker of the Parliament. The most relevant example regarding the political personalities is the case of succession of governments lead by Vasile Tarlev and Zinaida Grecianii. The diagram reflects the sudden drop of trust in the former Prime Minister once he resigned and the trust score was taken over by Grecianii, following the same trajectory as the President.

The preeminence of the personal factor in the disadvantage of the institutional one in citizens' assessment of the political phenomenon is currently confirmed by higher trust score, registered by AEI political leaders, compared to institutional scores, even if one year of governance is a quite short period of time to evaluate the trust vested by the citizens in the current government.

Correlating the evolution of the governance democratization index with the dynamics of public trust in the main political institutions and their leadership, we find a strong interdependence relation. The shift of the regime to an authoritarian model of governance happened on the canvass of a slow, but constant process of erosion of public trust in these institutions, which *de facto* means a decline of the regime legitimacy.



### ***7.3 How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?***

The debate on interdependence of governmental bureaucracies and elected politicians within contemporary democracies is an important subject in the context of the evolution of democratic control over the activity of bureaucracies. The current approaches on bureaucracy differ with regards to the role, status and competences of civil servants in the public policy development and implementation process. Regardless of approach, the quintessence is the capacity of officials to monitor and supervise the behavior of bureaucrats, obliging them to act in accordance with their preferences<sup>292</sup>.

In the Republic of Moldova the relation between politicians and civil servants is ambiguous and paradoxical. On one side, the political criterion in occupying high administrative functions weighs heavily in the candidate selection equation, the elected politicians wishing to ensure the support of bureaucrats in the implementation process of political decisions. On another side, the deficient implementation of laws confirms the fact that this stage in the policy development process is one of the most severe issues permanently confronted by Moldova<sup>293</sup>, and this suggests that the bureaucrats enjoyed sufficient autonomy in exercising the mandate delegated by the elected leaders. This situation is the result of rigidity and incapacity of the administrative system to transform and adapt itself to new economic-social conditions. The old administrative territorial structure, inheritance of the Soviet regime, showed that the raions are small administrative units, with a very weak economic potential, what made them fully dependent on the state budget<sup>294</sup>. The administrative territorial reforms materialized in the introduction of counties as administrative units was supposed to put in application the principles of a genuine local autonomy, consecrated by the European standards and practices<sup>295</sup>. The effects of the reform were not in line with the objectives and intentions of PCRM, which, once in power, came back to the previous formula of administrative territorial organization in raions, liquidating all elements of local autonomy that shaped on local level<sup>296</sup>.

The main objective followed by PCRM was the subordination of local public administration in relation with central authorities, annihilating their capacity to transform in economically and financially self-sufficient territorial entities<sup>297</sup>. The ideological reasoning prevailed over the arguments based on a cost-efficiency assessment of the reform. The estimations carried out by the experts showed that the costs of going back to raions proved to be in the amount of over MDL 1

292 \* Note: The diagram shows the level of trust cumulated for options 'A lot of trust' / 'Some trust'

293 William Niskanen, *Bureaucracy and Representative Government*. Chicago, 1971; Patrick Dunleavy, *Democracy, Bureaucracy and Public Choice*. London, 1991;

294 Ion Beschieru, Viorel Furdul, *Implementarea legilor în Republica Moldova-probleme actuale* (Translated title: Law Enforcement in the Republic of Moldova: Current Problems). // *Politici Publice*, Chisinau, 2008. // <http://www.viitorul.org/public/1278/ro/studiu%20furdul%20implementare%20legi.pdf>

295 Victor Popa, *Efectele descentralizării: rolul reprezentantului guvernului în unitățile administrativ teritoriale* (Translated title: Effects of Decentralization: Role of Government Representative in Administrative Territorial Units). // *Politici Publice*, July 2008, Chisinau. <http://www.viitorul.org/public/1277/ro/studiu%20reprezentant%20guvern%20popa.pdf>

296 Igor Munteanu, *Republica Moldova: între democrație regională și demagogie* (Translated title: Republic of Moldova between Regional Democracy and Demagoggy). // [www.viitorul.org/.../ro/regionalism%20moldovenesc.doc](http://www.viitorul.org/.../ro/regionalism%20moldovenesc.doc)

297 Victor Popa, *op cit*, pages 29-30.

billion. Only during one year, the maintenance expenses increased with 51% due to the multiplication of public institutions in the field from 955 to 1.842 entities and respectively the number of civil servants<sup>298</sup>.

This reform established *de facto* a client relationship between PCRM and LPA, where the allocation of financial resources was determined by party affiliation. Even after PCRM lost the power, the relations between CPA and LPA reflect mechanically the same interaction model.

Recent analyses find that the problem of relations between CPA and LPA is by far not solved. One of the main problems is the discrepancy between the legislative and financial components in the activity of LPA. Even if some reforms expanded the competence and responsibilities of LPA, there is no financial coverage of legal competences, which reflects a low degree of autonomy of LPA bodies<sup>299</sup>. Excessive centralization in relation with human resources policies, the inconsistency between delegated competences and their coverage with functions and specialists, the ambiguity of the local public financial system are deficiencies that affect the functionality of LPA. Today the LPA is rather qualified as representative of the government in the field, than as representative of the local collectivity<sup>300</sup>.

CPA reform is another complex issue concerning the optimization of its activity. This was initiated in 2005 and had the purpose to redefine the functions and structures of CPA, as well as to redefine the status of the civil servant<sup>301</sup>. In this context, the Law on Public Function and the Status of Civil Servants was adopted, determining the scope of competence and responsibility of civil servants<sup>302</sup>. So far the results of these reforms are inconsistent and partial.

A comprehensive monitoring and evaluation study on the implementation of the reform found a number of procedural and substantial problems:

- the institutional and functional optimization was carried out in a selective manner, because of political reasons, which led to the overlapping of institutional competences and attribution of improper functions to some institutions;
- lack of a unique planning and reporting system in CPA, based on results, and not activities;
- lack of a coordination mechanism in the process of personnel training within CPA;
- weak correlation between budgetary process and policy development;
- underdevelopment of institutional capacities with strategic planning and budgetary planning functions, which will not allowed the assessment of financial impact of various policy options;
- absence of a universal system for the evaluation of administrative performances correlated with the amount of allocated resources<sup>303</sup>.

298 Botan Igor, Revizuirea organizării administrative a teritoriului Republicii Moldova (Translated title: Review of Administrative Organization of the Territory of the Republic of Moldova).// <http://www.e-democracy.md/comments/political/200304081/index.shtml?print>

299 Costurile și efectele reformei administrativ-teritoriale din 2003 (Translated title: Costs and Effects of Administrative Territorial Reform), (Review), IDIS "Viitorul", 2004.

300 Andrian Chivriga, Viorel Furdul, Organizarea și funcționarea APL în Republica Moldova: competențe, structură și resurse (Translated title: Organization and Operation of LPA in the Republic of Moldova: Competence, Structure and Resources). Politici Publice No.6, 2009.// [www.viitorul.org/public/2421/ro/POLITICI\\_PUBLICE\\_APL.pdf](http://www.viitorul.org/public/2421/ro/POLITICI_PUBLICE_APL.pdf)

301 Ibidem, page 29.

302 Decision on Adopting the Reform Strategy for the Central Public Administration in the Republic of Moldova, No.1402 of 30.12.2005.// <http://rapc.gov.md/file/Hotarirea%20Guvernului%20cu%20privire%20la%20aprobarea%20Strategia%20RAPC.pdf>

303 Law No.158 of 04.07.2008 on Civil Service and the Status of the Civil Servant, Published on 23.12.2008 in the Official Gazette No.230-232, Article No.840. Date of entry into force: 01.01.2009.

The contradictory results of the reform have been recognized and assumed by the current authorities (AEI). The reduction of the dimensions of civil service was compromised by the transfer of a big number of public functions to agencies subordinated to the ministries, while the separation of policy development functions from administrative functions was only partial<sup>304</sup>.

The partial and contradictory result of CPA reform shows basically the reluctance of the administrative system to radical and rapid transformations, in accordance with principles of a new public management based on competitiveness and performance. The administrative legacy and tradition are significant barriers in this process, since they reflect a model of action based on following some rigid and opaque organizational procedures.

The implementation of a remuneration and motivation mechanism for civil servants depending on their performance could accelerate this process, but the budget austerity generated for now opposite results.

## ***7.4 How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?***

Being the highest representative body of the people in the state, the Parliament embodies the legislative power. According to the Constitution, the Republic of Moldova is a parliamentary regime, the functions of the legislative body being broad enough to allow it to exercise a control over the entire law-making process<sup>305</sup>. The transformation of the semi-presidential regime in a parliamentary regime at the same time with the amendment of the Constitution did not affect essentially the competence of the legislative body in law-making<sup>306</sup>. The only one essential amendment of the Constitution that directly regarded the legislative function happened in 2003 and referred to the specification of entities with legislative initiative<sup>307</sup>.

As a result, the constitutional amendments did not affect negatively the capacity of the legislative body to initiate, amend or control the implementation of legislation. On the contrary, the legislative body strengthened its positions regarding the executive power, yet the formal expansion and strengthening of the position of the legislative body regarding the executive had unexpected secondary effects. The conflict between the legislative power (the Parliament of 14<sup>th</sup> legislature) and the executive one (President Lucinschi) concerning the delimitation of institutional competences resulted in the victory of the legislative body, amending the formal relation of power to the advantage of the legislative authority. *De facto* the accession to power of PCRM cancelled almost entirely the formal domination of the legislative regarding the executive. During two parliamentary cycles dominated by PCRM, the legislative institution limited itself to passive adoption of legislative draft laws

304 Assessment of Implementation Performance of Central Public Administration Reform Strategy. Chisinau, 2010.

305 Relansăm Moldova: prioritățile de dezvoltare pe termen mediu (Translated title: Rethink Moldova: Mid-Term Development Priorities). Report for the Consultative Group Meeting held in Brussels on 24 March 2010. // <http://www.britania.mfa.gov.md/img/docs/rethink-moldova-ro.pdf>

306 Constitution of the Republic of Moldova.// Published on 18.08.1994 in the Official Gazette No.1, Article No.1, Date of entry into force: 27.08.1994

307 Law No.1115 of 05.07.2000 on Amending the Constitution of the Republic of Moldova.// Published on 29.07.2000 in the Official Gazette No.088, Promulgated on 27.07.2000

submitted by the executive, formed of PCRM representatives. Even if a similar trend could be observed also during other governments, it was not so broad. In case of coalition governments, they depended on the support of parliamentary majority. In this context, the decline of legislative power is paradoxical, despite some quite comprehensive attributions concerning its capacity to exercise its functions.

The constitutional competences of the Parliament include the adoption and interpretation of laws, approval and exercise of control over the state budget, as well as the establishment of priority direction in internal, external and security policy of the state (Article 66).

In accordance with constitutional provision, the Regulation of the Parliament describes in detail the legislative procedure that enables the members of the parliament to initiate legislative projects of all kinds, personally or jointly with other members of the Parliament<sup>308</sup>. The regulation determines the conditions for exercising the right of legislative initiative, the procedure of registration of draft legislative acts and legislative proposals, as well as the appointment of standing committees responsible to examine the legislative projects. In order to ensure the transparency of parliamentary activity, certain amendments have been made with regards to the activity of standing committees. In this context, the intimated committees are obliged „to ensure public consultation of draft legislative acts and of legislative proposals with stakeholders, by organizing debates and public hearings or by means of other consultation procedures set in the Law on Transparency in the Decision-Making Process”<sup>309</sup>. For the same purpose the committees are obliged to publish on the website of the legislative body the synthesis of recommendations received during public consultation. The entire law-making procedure is quite long and toilsome.

The procedural and political aspects may complicate a lot the conception of a law. In this regard, the conflict of competence on the committee level, the deadlines to debate the projects on committee level and its clearance by other competent committees and by the government represent procedural barriers that considerably postpone the adoption of laws<sup>310</sup>. Moreover, the decision-making process on the parliamentary level is affected by a number of contextual factors. In this regard, the timeliness and priority of some legislative projects are defined subjectively, based on the relation of power in the legislative body and the political agenda of the parliamentary agenda. Thus, the value of a legislative project is determined not by the urgency of the problem to be solved, but by the political preferences of the majority. Even if there are no consistent statistics that reveal the degree of collaboration between the parliamentary majority and opposition in Moldova, the common practice shared by the parliamentary majorities was the rejection of legislative projects submitted by the opposition.

Some experts highlighted that despite the fact that the Regulation of the Parliament imposes a mandatory examination of all legislative initiative, those submitted by the opposition are not examined for several years or are not examined at all. Even the best legislative initiatives of the opposition are not examined until the Government comes with a similar project examined in priority order, while the legislative initiative of the opposition is rejected<sup>311</sup>.

308 Law No.344 of 25.07.2003 on Amending the Constitution of the Republic of Moldova.// Published on 08.08.2003 in the Official Gazette No.170, Article No.721, Promulgated on 29.07.2003

309 Law on Adopting the Regulation of the Parliament //Official Gazette, 19.12.1996, No.81-82/765, (Article 47).

310 Ibidem, Article 491.

311 Ibidem, Article 53, 54, 56-58.

The deficiencies generated by the political dimension of the legislative process are magnified by the technical-managerial aspects.

The weakness of the legislative power in relation with the executive is also explained by the lack of sufficient resources available to the Parliament, for an efficient exercise of their functions. A functional review of the Parliament activity highlighted a number of issues confronted by it in the law-making process. The human resources are more often at the disposition of the leadership of the Parliament, and not at the disposition of members of the Parliament. Most operations regarding the analysis of materials, processing of information and preparation of speeches is done by each member of the parliament independently, which significantly diminishes their efficiency and influence<sup>312</sup>. In the same context, an external functionality assessment of the legislative body identified another kind of problems resulted from the distorted status of the civil servant in the parliament, the lack of well-defined human resources policy and information sources, as well as a weak organizational culture because of an unclear organizational mission among the employees<sup>313</sup>.

The political dimension of the legislative procedure is openly showed during the debates of legislative projects<sup>314</sup> by means of the voting procedure and manner, depending on the type of legislative acts<sup>315</sup>. After the adoption of a legislative project by the Parliament, this needs to be signed and promulgated by the President of Moldova. Even if the President has a temporary veto, having the possibility to request the Parliament to reexamine the law, this right loses its power if the legislative body maintains its decision unchanged<sup>316</sup>. Despite the fact that the legislative body has sufficient competences and legal instruments to effectively conduct its activity, during 2001-2009 these instruments have been used in a lower manner. This situation is explained by the governmental policies to limit the access of parliament and members of the parliament to informational, financial and human resources<sup>317</sup>, what created significant barriers in the efficient exercise of their attributions in the legislative process.

## ***7.5 How extensive and effective are the powers of the legislature to scrutinise the executive and hold it to account?***

The control of the executive power by the legislative authority is one of the defining elements of a parliamentary regime and indirectly a tool to make the government accountable before the citizens. At the same time, the attributions of the law-maker in this field are a manner to apply in practice the principle of separation of power and to ensure a balance between them. The justification of control and accountability of the executive power in relation to the legislative power is

312 Creanga Ion, Viorel Furdui, Controlul parlamentar și problemele de echilibrare a raporturilor de putere (Translated title: Parliamentary Control and Issues of Balancing the Power Relations).// Policy Brief, IDIS "Viitorul", Chisinau, 2009, page 21. [www.viitorul.org/public/2461/ro/Policy\\_Brief\\_Reforma.pdf](http://www.viitorul.org/public/2461/ro/Policy_Brief_Reforma.pdf)

313 Ibidem.

314 Anita Dudina, Maris Sprindzuks, Analiza funcțională a administrației parlamentului Republicii Moldova (Translated title: Functional Analysis of the Administration of the Moldovan Parliament. UNDP), Chisinau, 2006. // <http://www.undp.md/publications/doc/mission%20reports/Analiza%20functional%20a%20Parlamentului%20RM.pdf>

315 Law on Adopting the Regulation of the Parliament // Official Gazette, 19.12.1996, No.81-82/765, Articles 60-71.

316 Ibidem, Articles 87-93.

317 Ibidem, Article 74.



legitimated through delegation of authority to the Parliament by the electorate. The delegation of popular sovereignty to the parliament for the purpose of representing the public interest, regardless of the way in which it is defined is the first and the most important link in the chain of delegation of power and responsibility to state institutions, because it is done directly, by means of voting.

Other links of the delegation process lose some legitimacy due to its mediated nature. Thus, the delegation of legislative authority to the executive branch, in particular to the Prime Minister, the delegation of power within the government to various executive departments and delegation to civil servants is an indirect process that is not controlled by the citizens<sup>318</sup>. From this perspective, the status of the legislative power gains relevance from the angle of the control exercised over the executive and other authorities. The Parliament of the Republic of Moldova has sufficient instruments, consecrated on constitutional level, which enable it to control and make the government accountable. The Constitution stipulates directly the competences of the Parliament in this field (Article 66):

- exercises the parliamentary control over the executive power, under the forms and within limits provided by the Constitution;
- approves the state budget and exercises control over it;
- elects and appoints state officials, in cases provided by the law;
- suspends the activity of local public administration authorities, in the cases provided by the law.

The constitutional provisions are reflected in a number of normative acts that develop and specify the attributions of the legislative in exercising the parliamentary control<sup>319</sup>. The opinions expressed by the experts regarding these subjects point out a situation, where both the legislative body and the members of the parliament do not exercise plenipotentiary this constitutional right. Despite the existing wide range of instruments available to the Parliament for its relation with the executive, they are not used<sup>320</sup>. As a result, a number of problems occurred in the relations between the parliament and the government, generated by the lack of efficient communication and coordination of activities related to the law-making and implementation process. Beyond the problematic aspects of technical nature, the specialists claim a substantial problem in the activity of almost all parliaments in the Republic of Moldova – a weak performance in the normative acts development process that should guide the executive in its actions<sup>321</sup>.

This supposes that the government substitutes partially the Parliament in exercising one of

318 Creanga Ion, Viorel Furdul, Controlul parlamentar și problemele de echilibrare a raporturilor de putere (Translated title: Parliamentary Control and Issues of Balancing the Power Relations).// Policy Brief, IDIS "Viitorul", Chisinau, 2009, page 21. [www.viitorul.org/public/2461/ro/Policy\\_Brief\\_Reforma.pdf](http://www.viitorul.org/public/2461/ro/Policy_Brief_Reforma.pdf)

319 Lupia Artur, Delegation and its Perils.// Strom Kaare, Muller Wolfgang, Bergman Torbjorn. Delegation and Accountability in Parliamentary Democracies. Oxford University Press, 2003, pages 33-52.

320 Creanga Ion, Viorel Furdul, Controlul parlamentar și problemele de echilibrare a raporturilor de putere (Translated title: Parliamentary Control and Issues of Balancing the Power Relations).// Policy Brief, IDIS "Viitorul", Chisinau, 2009. [www.viitorul.org/public/2461/ro/Policy\\_Brief\\_Reforma.pdf](http://www.viitorul.org/public/2461/ro/Policy_Brief_Reforma.pdf)

321 Ion Beschieru, Viorel Furdul, Implementarea legilor în Republica Moldova – probleme actuale (Translated title: Law Enforcement in the Republic of Moldova: Current Issues).// Politici Publice, Chisinau, 2008. <http://www.viitorul.org/public/1278/ro/studiu%20furdul%20implementare%20legi.pdf>, Creanga Ion, Viorel Furdul, Controlul parlamentar și problemele de echilibrare a raporturilor de putere (Translated title: Parliamentary Control and Issues of Balancing the Power Relations).// Policy Brief, IDIS "Viitorul", Chisinau, 2009. [www.viitorul.org/public/2461/ro/Policy\\_Brief\\_Reforma.pdf](http://www.viitorul.org/public/2461/ro/Policy_Brief_Reforma.pdf)



its basic functions. The shaping of such balance in the relations between the two powers obviously undermined the position of the Parliament. At the same time, the exercising of parliamentary control over the executive depended greatly not only on the complex of legal attributions, but rather on the power relations between the main political actors in conditions of transition through three distinct governance forms. In this context, the positioning of the Parliament in the structure of power bodies depended strongly on the position of the head of the state and the composition of the executive. During the coexistence of the bi-cephalous executive<sup>322\*</sup> the phases of parliamentary activism/lack of activism succeeded and depended directly on the distribution of political power in the Parliament. Thus, the Parliament of the 14<sup>th</sup> legislature (1998-2001) was much more active than its predecessor. Two factors fed this parliamentary dynamism: the need of permanent negotiations between the components of the majority parliamentary coalition, emphasized by the pressure by PCRM which was in a strong ascent and the conflict between the President and the Parliament that generated a crisis solved by amending the Constitution and early parliamentary elections. The following two full parliamentary cycles were characterized fully by a general parliamentary apathy. The parliamentary institution and the executive were fully subordinated on the party line to the head of state, who at the same time was holding the function of head of the party<sup>323</sup>. In these conditions, the opposition had no real possibility to have control over the executive power.

Despite the fact that the Constitution regulates the main relations between the legislative and executive powers (Articles 104-106) and stipulates directly the accountability of the government towards the Parliament, the exercise of this right by the parliament proved to be deficient. A few pertinent analyses on the parliamentary control over the executive find that the traditional control instruments of the Parliament, such as information session, hearings, questions, intimations, motions and parliamentary inquiries are not treated in an appropriate manner by the government<sup>324</sup>. The formal attitude of the executive regarding these instruments was not specific only for the Communist governance, but continued also during the AEI governance. Two cases illustrate with eloquence the weakness of the Parliament to exercise its control attributions. The first case refers to the results of the inquiry committee for investigation of events following 5 April 2009<sup>325</sup>. Up till now, the persons involved in the organization and management of that situation have not been identified and charges have not been brought against anyone. The second case refers to the dissensions between the legislative and executive powers in the fall 2010 regarding the indexation of pensions, a legislative project through which the government engaged its responsibility before the Parliament, adopting it by Government Decision, avoiding its debate in the Parliament.

Even if this fact dissatisfied strongly the leaders of the parties in the composition of AEI<sup>326</sup>, they did not undertake anything to sanction the Government. In these conditions, the legislative

322 Creanga Ion, Viorel Furdui, op cit, page 11.

323 \* The period between 1994 (adoption of the Constitution and establishment of a semi-presidential regime) and 2000 (amendment of the Constitution and transformation of the Republic of Moldova into a parliamentary regime).

324 Creanga Ion, Viorel Furdui, op cit, page 20.

325 Ion Beschieru, Viorel Furdui, op cit, Creanga Ion, Viorel Furdui, op cit, [www.viitorul.org/public/2461/ro/Policy\\_Brief\\_Reforma.pdf](http://www.viitorul.org/public/2461/ro/Policy_Brief_Reforma.pdf)

326 Report of the Inquiry Committee for Elucidation of Causes and Consequences of the Events following 5 April 2009. Chisinau, 2010. [http://www.irp.md/files/1279872631\\_ro.pdf](http://www.irp.md/files/1279872631_ro.pdf)

authority had the possibility to express the vote of non-confidence to the Government within 3 days from submission of the project, by initiating a motion of censure at the initiative of 1/4 members of the Parliament, but they did not use this right<sup>327</sup>. This proves the inefficiency and limits of parliamentary control over the executive power during the last decade.

## ***7.6 How rigorous are the procedures for approval and supervision of taxation and public expenditure?***

The Constitution establishes the general principles of authorizing the taxation and public expenditures. It provides expressly the obligation of financial contribution of citizens through taxes and levies to public expenditures based on a duly distribution of fiscal burden (Article 58.) The Government is the competent institution for the development of the draft budget that should be approved by the Parliament (Article 131), while the latter is responsible for approving and exercising the control over it (Article 66). The control function over the manner of establishment, management and use of public financial resources is given to the Court of Accounts (CA) (Article 133). Generally the process of public funds authorization/control involves two dimensions: the technical and the political one. The technical dimension includes procedures and mechanisms that regulate the interaction between the institutions involved in this process. The political dimension makes reference to political principles and values, based on which the resources are allocated depending on who is in power. From this point of view, the process on establishing the tax rates and the budgetary allocations reflects the political preferences of the incumbents.

From a technical point of view, the normative framework of the budgetary process and system, as well as the budgetary classification regulates in general the process of authorization/supervision of public expenditures<sup>328</sup>. In this regard, the authorities put substantial effort to optimize the management of public resources. These efforts include the implementation of Mid-Term Expenditure Framework (MTEF) and Public Financial Management (PFM) project.

The MTEF was introduced in 2002 as a more efficient tool for mid-term public financial management. Its main objectives envisaged the improvement of financial discipline, the improvement of macroeconomic and fiscal forecasts, a more efficient correlation between allocation of sources and policy priorities, identification of budgetary priorities, enhanced capacities of authorities in public financial management and ensuring of transparency in this process<sup>329</sup>. An MTEF coordination group was established within this program. This is a consultative body in the decision-making process, extending the participatory framework in budgetary-fiscal policy development

327 Cornel Ciurea, Alexandru Fala, Disputa dintre componentele Alianței pentru Integrare Europeană în chestiunea indexării pensiilor (Translated title: Dispute between the Components of the Alliance for European Integration concerning the Issue of Pension Indexation). IDIS "Viitorul".// <http://www.viitorul.org/public/3024/ro/pensii%20fin.pdf>

328 Constitution of the Republic of Moldova.// Published on 18.08.1994 in the Official Gazette No.1, Article 1, Date of entry into force: 27.08.1994, Articles 106-106/1.

329 Law No.847 of 24.05.1996 on Budgetary System and Budgetary Process. Published on 27.03.1997 in the Official Gazette No.19, Date of entry into force 31.08.2000; Order of the Ministry of Finance No.91 of 20.10.2008 on Budgetary Classification. Published on 31.10.2008 in the Official Gazette No.195-196, Article 581. Date of entry into force 31.10.2008.

with a more active development of the Parliament, Presidency, Government, central public authorities and social partners – trade unions and employer association.

PFM was launched by the Government in early 2006 based on:

- making the budgetary planning and execution system more efficient by institutionalizing the planning of mid-term expenditures, modernization of budgetary classification and implementation of an integrated management information system;
- development of an internal control and audit system in central government authorities;
- capacity building in development and training of civil servants in financial management;
- ensuring an effective implementation, monitoring and reporting of the project<sup>330</sup>.

A comprehensive monitoring and evaluation of the implementation of these objectives finds that actions undertaken in 2006-2009 did not have a significant impact on development of an efficient and sustainable system of interaction with policy development process with the budgetary process<sup>331</sup>. The assessment of CA are more optimistic regarding some progress noted in PFM implementation, referring to the improvement of the methodology used in forming the national public budget, as strategic planning tool, the improvement of the legal-normative framework in the field of control and audit and establishment of internal audit units. Yet, these assessments show multiple deficiencies in public financial management. CA qualifies as unsatisfactory the evolution related to observance of budgetary-fiscal discipline and legal-normative framework in the field of use of public financial management and public assets<sup>332</sup>. Actually, the CA assessments recorded systematically significant deviations from financial discipline in the activity of CPA, but a repeated registration of the same deficiencies means absence of efficient political control over the manner of use of public financial resources.

Despite the efforts to improve the normative framework aimed to limit the discretionary behavior of authorities in the process of financial resources allocation, there are “dark zones” that undermined the financial discipline and favored an allocation structure based on strictly political criteria. This happened in the recent years with regards to the transfers made to LPA. This situation became very obvious after 2005, while this trend got head after local elections in 2007, when the incumbent PCRM lost the power in several raions and in Chisinau municipality in favor of opposition. As a result, the Government applied a discretionary distribution system of some budgetary resources favoring the localities with Communist mayors<sup>333</sup>. For this purpose the authorities used the subventions directed by means of special allocations, correction of the budget during the budgetary year and decisions of the government concerning the allocation of financial resources to various local authorities, without any explanation or justification of criteria that served as basis for the allocation and without assessing the efficiency and effectiveness of these expenditures<sup>334</sup>.

330 Mid-Term Expenditure Framework. Ministry of Finance of the Republic of Moldova.// <http://www.mf.gov.md/ro/middlecost/>

331 Evaluation of Public Expenditures and Financial Responsibility: Report on Performance of Public Financial Management. July, 2008.// [www.mf.gov.md/.../raportinfo/evaluare/MD\\_PEFA\\_2008\\_final\\_rom.doc](http://www.mf.gov.md/.../raportinfo/evaluare/MD_PEFA_2008_final_rom.doc)

332 Assessment of Implementation Performance of Central Public Administration Reform Strategy. Chisinau, 2010, pages 69-70.

333 Report on Administration and Use of Public Financial Resources and Public Goods. Court of Accounts: Annual Report 2009, Chisinau 2010.// [www.ccrm.md/file/raport/H58\\_rap.pdf](http://www.ccrm.md/file/raport/H58_rap.pdf)

334 Descentralizarea finanțelor locale (Translated title: Decentralization of Local Finances). Policy Brief, No.2, May 2007, IDIS “Viitorul”.// [www.viitorul.org/public/.../CPE\\_newsletter\\_descentralizare\\_rom.pdf](http://www.viitorul.org/public/.../CPE_newsletter_descentralizare_rom.pdf)

The analyses show that the structure and the size of local budgets are not correlated with the needs and the economic potential of the localities. Since the Ministry of Finance is the institution that determines the agenda of LPA, the latter is transformed into a passive executor of governmental agencies, and the expenditures reflect the budgetary planning process within the Ministry of Finance and not the needs of local communities<sup>335</sup>. The quantitative estimations reveal that following the application of this allocation formula, the Communist mayors have been advantaged and the non-Communist mayors have been punished, thus stimulating the migration to PCRM. The electoral reasoning that served as basis for the allocation of budgetary resources, in particular during pre-electoral periods, confirmed the open discrimination of communities led by opposition forces<sup>336</sup>. In this context, we find that beyond all intentions and projects to ensure the financial discipline of authorities, the normative framework allows several possibilities of distribution of public resources in an inequitable, discriminatory manner, at the edge of legality.

## ***7.7 How comprehensive and effective is legislation giving citizens the right of access to government information?***

Citizens' access to governmental information is a relatively new phenomenon for the Republic of Moldova. Despite the fact that the Constitution offers the right to have access to information of public nature, obliging the public authorities to ensure the correct information of citizens (Article 34), a more detailed regulation of this subject took place only in 2000, with the adoption of the Law on Access to Information<sup>337</sup>. The normative framework in this field was complemented by the Law on Transparency in the Decision-Making Process that entered into force in 2009<sup>338</sup>. Moreover, the access to information and transparency in the decision-making process is regulated by various aspects of operation of public authorities<sup>339</sup>. Despite the existence of a quite comprehensive normative framework on citizens' access and participation in the decision-making process, the implementation in practice of these rights remains unsatisfactory.

The monitoring reports find a reduced responsiveness of public institutions with regards to the respect of normative framework. Complex studies conducted by organizations in the field find a "careless and irresponsible attitude of most authorities and public institutions regarding a strict compliance with the legislation in force and international standards in the field of access to information"<sup>340</sup>. Thus, the empirical results concerning the requests of information submitted to

335 Ibidem.

336 Factorul politic al finanțării infrastructurii la nivel local (Translated title: Political Factor of Infrastructure Financing on Local Level). Policy Brief, No.3, March 2008, IDIS "Viitorul".// [www.viitorul.org/public/1146/ro/policy\\_brief\\_factory.pdf](http://www.viitorul.org/public/1146/ro/policy_brief_factory.pdf)

337 Ibidem.

338 Law No.982 of 11.05. 2000 on Access to Information. Published on 28.07.2000 in the Official Gazette No.88-90, Article 664.

339 Law No.239 of 13.11.2008 on Transparency in Decision-Making. Published on 05.12.2008 in the Official Gazette No.215-217, Article 798.

340 Law on Government No.64-XII of 31.05.90.// Official Gazette No.131-133/1018 of 26.09.2002; Law on Adopting the Regulation of the Parliament No.797-XIII of 02.04.1996.// Official Gazette No.50/237 of 07.04.2007; Law on Budgetary System and Budgetary Process No.847-XIII of 24.05.96 .//Official Gazette, Special Edition, 2005; Law on Normative Acts Adopted by the Government and Other Central and Local Public Administration Authorities No.317-XV of 18.07.2003.// Official Gazette, No.208-210/783 of 03.10.2003; Law on Local Public Administration No.436-XVI of 28.12.2006.// Official Gazette, No.32-35/116 of 09.03.2007; Parliament Decision on Adopting the Concept of Cooperation between the Parliament and the Civil Society No.373 – XVI of 29.12.2005, Official Gazette, No.5-8/55 of 13.01.2006; Decision of the Government of the Republic of Moldova on Implementation Actions regarding the Law on Transparency in Decision-Making No.96 of 16.02.2010, Official Gazette No.30-31/161 of 26.02.2010

public institutions show that out of 4839 requests submitted to public institutions, replies were offered only in 19.3% cases. Out of 934 requests that received an answer, the number of complete ones represents 78.1%, incomplete 13.8% and formal 8.1%<sup>341</sup>. The same study shows disproportionality in distributing the answers by types of institutions.

The central authorities offered most answers to the requests, compared to municipality, rayon and local authorities. Also, there are no significant differences in the treatment applied by state institutions with regards to the main categories of applicants, even if the citizens represent the category that received the least answers to requests. The ratio between answers and refusals is the following: NGOs – 18.5% answers, 81.5% refusals; mass media – 21.2% answers, 78.8% refusals; citizens – 17.2% answers, 82.8% refusals<sup>342</sup>.

The expert analyses highlight a discrepancy between the intentions on discourse level of authorities in relation to guaranteeing the freedom of expression and the access to information and the absence of certain implementation mechanisms that would provide these rights with real power<sup>343</sup>. The lack of a systematic and strict control over the uniform application of laws by the Government and the Parliaments offers a wide space of interpretation of legal provisions by the subordination authorities, which restricts the right of citizens in this field. The lack of a monitoring mechanism rather stimulates the public authorities to ignore their obligations of informing the public and to develop a passive and unconcerned attitude of most civil servants with regards to the interest of the public<sup>344</sup>.

In the same context fall the efforts of the civil society in assessing the transparency in the decision-making process, which develops and deepens the right of access to information and represents a participatory tool in the governance process. Even if the normative framework in this dimension was adopted recently, the first reports on monitoring the decision-making transparency reflect a situation similar to the right of access to information<sup>345</sup>. The decision-making transparency standards are currently not respected by the public authorities that have the mission to apply them in their activity. The impossibility to apply them is partially explained by the lack of institutional capacities and penury of financial resources confronted by the public institutions. Though, the main cause is the imperfection of the legal framework, since currently there are no clear, simple and accessible standards, which do not allow multiple interpretations<sup>346</sup>.

Even if the Law on Transparency in the Decision-Making Process obliges the public authorities to present and publish annual reports on their websites, only 50% of 24 public authorities monitored by the experts developed and published the respective reports, out of which very few detailed, with information about the deliberative process of certain decisions<sup>347</sup>. The analyses suggest the lack of political will in the process of creating the necessary conditions that would facilitate the manifesta-

341 Dreptul la informație: pe hârtie și în realitate. Raport de monitorizare (Translated title: Right to Information: On Paper and in Reality). Center "Acces-info", Chisinau 2008.// [http://www.acces-info.org.md/upload/acces\\_info\\_final.pdf](http://www.acces-info.org.md/upload/acces_info_final.pdf)

342 Ibidem, page 22.

343 Ibidem, page 28.

344 Ibidem, page 110.

345 Ibidem, page 110.

346 Monitoring Report concerning the Respect of Decision-Making Transparency. April-June, 2010, ADEPT.// <http://www.e-democracy.md/files/raport-monitorizare-respectarii-transparentei-decizionale-aprilie-iunie-2010.pdf>

347 Ibidem, page 29.



tion of these rights and demonstrate the opacity and reluctance of public institutions with regards to respecting a democratic right of the citizen. This functions so far according to a quite rigid model that characterizes old model bureaucracy, which is used to dominate the relation with the citizens.

## ***7.8 What measures are adopted to improve the democratic control over the executive power and the transparency of its operation and how important are they for the Government?***

Despite the existence of a sufficiently broad legal framework, aimed to improve the accountability of the Government in its relation both with the Parliament, and the civil society, its functioning is so far limited.

The activity of the executive during the independence of the Republic of Moldova suggest rather the lack of a political will in reforming the executive, in order to make it more transparent, responsive and efficient in relation to the citizens. The reorganization of ministries and other executive agencies resulted in the review of zones of influence by redefining institutional competences and responsibilities, without effective optimization of their activity. On discourse level the entire political class expressed its commitment for a structural reform of the institutional framework, but in reality these efforts materialized quite late.

Nevertheless, the initiation of CPA reform in 2005 and its implementation was focused on four fundamental components: reorganization of public administration, optimization of decision-making process, improvement of human resources management and improvement of public financial management<sup>348</sup>.

The assessment of reform implementation highlights a number of achievements, but also failures. The most significant achievements include<sup>349</sup>:

- compliance of government structure with the principles of CPA reform, that took place only in 2009, after the establishment of the new government;
- delimitation of policy development functions from implementation/regulation/service provision functions on ministry level;
- establishment of policy analysis, monitoring and evaluation departments within specialized bodies of CPA, which was an important action in policy development and strategic coordination process;
- implementation of strategic planning systems, based on institutional development plans, which allowed the correlation of resources of CPA authorities with their mission;
- introduction of Regulatory Impact Assessment, based on the analysis of the need to adopt a

348 Monitoring Report concerning the Respect of Decision-Making Transparency. July-September, 2010, ADEPT, page 35.// <http://www.e-democracy.md/files/raport-2-transparenta-decizionala.pdf>

349 Decision on Adopting the Reform Strategy of Central Public Administration in the Republic of Moldova no.1402 of 30.12.2005.// <http://rapc.gov.md/file/Hotarireea%20Guvernului%20cu%20privire%20la%20aprobarea%20Strategia%20RAPC.pdf>



draft normative act and the quantitative and qualitative impact assessment by applying the cost-benefit method, contributing to enhanced quality of adopted decisions;

- modernization and development of information technologies within CPA authorities and training of civil servants in this field, which contributed to optimization and transparency of decision-making process;
- development of a legislative framework on optimization of public function management and civil servants;
- development of training programs for civil servants, based on the needs of various categories of civil servants, even if this practice is not universally shared;
- development of an institutional framework and application of program-based budgets<sup>350</sup>.

The current Government (AEI) committed itself before the partners and international donors to continue and deepen these reforms, and the measures adopted in this direction seem to confirm the respect of commitments.

Besides these achievements there are still several problems, due to the partial and selective nature of transformation carried out under the reform. Most problems result from the lack of a legal framework on the organization and functioning of CPA. The absence of a normative framework generates an overlapping/duplication of competences and conflicts of interests<sup>351</sup>. Additional problems occur because of lacking uniform methodological standards regarding policy documents, applied in all CPA authorities. Also, the implementation of a unique planning and reporting system within CPA based on results, and not actions, did not succeed<sup>352</sup>, what proves the reticence of public authorities with regards to performance evaluation.

From the point of view of transparency of government activity, the evaluations point out the need to simplify the existent procedures related to decision-making transparency. The sophistication of procedures creates difficulties in the implementation of the normative framework, and in this case the decision-making transparency remains more on paper, than it is implemented in reality<sup>353</sup>. These findings made on the basis of quantitative and qualitative assessments point out the need to continue the efforts of authorities in the direction of ensuring the transparency of the governmental act. Despite some visible progress, the optimization of activity remains a desideratum that implies cumulative efforts of all actors involved in this complex exercise of modernizing the CPA.

### Summary: Progress during the recent 3 to 5 years

	Very good	Good	Satisfactory	Poor	Very poor
7.1				X	
7.2				X	
7.3			X		
7.4				X	
7.5				X	
7.6			X		
7.7			X		
7.8			X		

350 Assessment of Implementation Performance of Central Public Administration Reform Strategy. Chisinau, 2010, page 10.

351 Ibidem, page 10.

352 Ibidem, page 20.

353 Ibidem, page 31.

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## 8. CIVILIAN CONTROL OF THE MILITARY AND POLICE

*Veaceslav Berbeca*

### ***8.1. How effective is civilian control over the armed forces, and how free is political life from military involvement?***

Democratic control over the army represents an important element and a result of the democratic exercise in a democratic country. The experience of Republic of Moldova on civil control over the army is relatively short, and starts together with the independence in 1991. This mechanism is indispensable for western democracies. International military cooperation had an important role in spreading western values on cooperation between the army and civil society. International organizations have developed a series of norms and standards which refer to parliamentary control over the army as a basic element of social welfare, economic development and international stability. Republic of Moldova adhering to the UNO, Council of Europe and OSCE meant taking the commitment to set up democratic control over security. The progress of the relationship between Republic of Moldova and NATO through signing the Framework Paper of the Peace Partnership Program assumes as priority objective to develop some efficient defense institutions under civil and democratic control. Since 1991 and until the present, NATO is the most important organization that provides the necessary assistance to Republic of Moldova on military reform through several mechanisms.

The main measures which government of Republic of Moldova was to take were aiming at establishing institutions entitled to control, monitor the army and develop a legislative framework that targets the achievement of this objective. These measures were to be undertaken following the negative experience of the totalitarian communist system, which excluded such an exercise. To this end, several laws were passed and several reforms whose main goal was to establish democratic control over law enforcing bodies were initiated. Even though there is a normative framework to implement military reforms, this initiative was not finalized due to political will and economic problems, which should support this reform.

Democratic control over the military follows the so-called division of labor, which means that political leaders decide on the goals and political strategies, while the military power has something to say on implementing these decisions using the knowledge specific for their status of professional military; the supremacy of politics over the army presumes tacitly that political leaders will not get involved in the functioning of the army, and military decision makers will not appear on the political scenery to influence the decision making process.<sup>354</sup>

The Constitution of Republic of Moldova, the Law on National Defense, the Law on the State Border of Republic of Moldova, the Military Doctrine, the Law on the Status of the Military and the Decree on Approving Military Regulations of the Army of Republic of Moldova, the Concept of Military Reform, the Concept of National Security are the most important documents setting up the establishment of the military force in Republic of Moldova, the institutions and control and monitoring mechanisms for military activities. In other words, democratic control over the army presumes the subordination of the latter to the will of the people, i.e. the Parliament, which is freely elected, free access to information and an important role for the civil society in decision design. Unfortunately, Moldovan legislation maintained intact some reminiscences from the Soviet tradition in the military area. Thus, art. 37 of the Criminal Code of Practice 122-XV of 14.03.2003 maintains the institution of military court empowered to issue rulings on military offences. Another problem is the fact that the institution of prosecutors is militarized. Unfortunately, reforming the prosecutor's office by providing to prosecutors the status of magistrates is delayed.

One of the pillars of exercising democratic control over the army is the existence of democratic institutions, where the functions of the powers in a state are clearly defined, including in the area of defense. In the absence of functional democratic institutions, the tensions tend to get out of control and turn into violent conflicts.<sup>355</sup>

The Constitution of Republic of Moldova stipulates that the army is subordinated exclusively to the will of the people to guarantee sovereignty, independence and unity, territorial integrity of the country and constitutional democracy. The President of Republic of Moldova is the supreme commander of the army and is entitled to call for partial or general mobilization with the preliminary approval of the Parliament.

The 1995 military doctrine of Republic of Moldova stipulates that the military is built in compliance with the principle of democratic control by supreme public authorities over the area of defense, the management bodies of the military and people in responsible positions in the army. The Law on State Security no. 618-XIII of 31.10.1995 stipulates the principle of setting up a system of state security bodies, separating their powers, ensuring their interaction as well as establishing a control and supervision mechanism for their activity. Article 25 stipulates the mechanism for the Parliament to exercise control:

354 Cristina Cojocaru, *Concordanța legislației și actelor departamentale în domeniul transparenței decizionale: studiu de caz* (Translated title: Compliance of Legislation and Departmental Acts in the Field of Decision-Making Transparency: Case Study). July 2010. ADEPT.// [www.e-democracy.md/.../concordanta-legislatiei-actelor-departamentale-domeniul-transparenței-decizionale.pdf](http://www.e-democracy.md/.../concordanta-legislatiei-actelor-departamentale-domeniul-transparenței-decizionale.pdf)

355 Kuhlmann, Jürgen (2004): „Comparative Studies on Relationships between Civilians and the Military in Europe.” in: Callaghan Jean/Kernic Franz (ed.). *International Security and the Army*. Bucharest: Tritonic, p. 59

- The Parliament exercises control over the activity of state security bodies through hearings and Parliamentary research, hearings for reporting by the leaders of state security bodies during public or closed sessions, as well as through participation of the Chairman of the Parliamentary Committee for National Security or the Deputy Chairman of this Committee to the meetings of the collegiate body of the Information and Security Service of Republic of Moldova.
- Permanent control over the activity of state security bodies is exercised by the Parliament through the National Security Commission.
- State security bodies submit annual activity reports to the President of Republic of Moldova, the Parliament and the Government.
- State security bodies shall answer as stipulated by legislation to the inquiries of standing, special and investigation commissions of the Parliament as well as to the inquiries of members of Parliament.
- The management of state security bodies are personally liable for the timeliness, objectivity and exhaustive nature of submitted information.
- Members of Parliament who as a result of inquiries receive information from state security bodies are liable as stipulated by the law for the disclosure of information that contains state secrets.

In 2002 the Concept of Military Reform no. 1315-XV of 26.07.2002 was approved with the purpose of setting up a qualitative, new, efficient and flexible system to ensure military security, which would guarantee defense of sovereignty, independency, territorial unity and integrity of the country and ensure the security of its citizens. The main goal of this reform is to improve the system of state leadership in the area of national defense, to strictly delimit the powers and responsibilities of civil and military authorities during times of peace and war. One of the main areas of military reform is enhancing democratic control over the army. Article 24 stipulates that the Parliament has the following powers: to approve the concept of national security of the military doctrine of the country; to approve the general structure and the number of staff of the component parts of the army; to approve budgetary allocations for defense; to proclaim martial law or war; to proclaim mobilization and demobilization; to fulfill other tasks in the area of national defense stipulated by legislation.

Also, within the limits of powers provided by the Constitution, the functions of State President in the area of defense of the institution are stipulated. And the Government is responsible for organizing activities and taking actions pursuing national defense within the limits stipulated by legislation. Among the powers stipulated by the law, there is a reference to public relations, civil organizations and information of civil society about the activity of the National Army. Civil society plays an important role in monitoring activities and decision making.

The Law on the status of military staff no.162-XVI of 22.07.2005 prohibits military staff to be part of parties and other social-political organizations or to conduct political activity in their favor during their military service.



Law no. 112 of 22.05.2008 for the approval of the Concept of National Security of Republic of Moldova provides for the establishment of mechanisms for efficient civil control over the army and over the entire sector of national security.

In Republic of Moldova, from the point of view of legislative framework, the effort necessary to set up Parliamentary *de jure* control over the army was made. One of the problems is that despite the fact that the Ministry of Defense (MoD) was lead in the last years mainly by civilians, this institution continues to be very militarized. The military reform was initiated because of the flaws of the current system of ensuring military security of the country, low quality of the army and the military potential of the country. One of the causes for delayed reforms in the military sector was modest allocations of 0.4% of GDP for the army.

Another problem in exercising democratic control over the army is related to the professionalism of the members of Parliament from the Commission for National Security, Defense and Public Order. Due to lack of professional qualification, the activity of members of Parliament is down to monitoring and adopting laws initiated by the Government or the Parliament.<sup>356</sup> Usually, parliamentary control of members of Parliament has manifested through hearings and parliamentary investigations, hearings of reports by Ministers of Defense and other officials from the MoD: peace keeping operations of the National Army in the Nistru security area; sale of weapons and military equipment, including those 21 MIG-29 aircrafts, etc.

Despite the primary role of this sector both for the good functioning of a state of law and for ensuring the necessary conditions for the joint development of the country, the communist majority in the Parliament practically ignored and prohibited any involvement of the legislative body in the area of security policies and the activity of bodies from this sector, leaving full discretionary power in this area to the President.<sup>357</sup>

Another important element of democratic supervision over the army pertains to controlling the budget of the army. The Parliament of Republic of Moldova approves the budget of the Ministry of Defense developed by the executive power. Parliament fractions can participate directly in the monitoring of the budget of the security center by requesting the Court of Accounts (CoA) to supervise the army, but during the past five years, the Parliament made no requests to the CoA to perform specialized verifications of budgets in the security sector.<sup>358</sup> The role of the Parliament should not be only about the formal approval of the budget of the Ministry of Defense, it is also necessary for members of Parliament to be more actively involved in issues related to defense.

Another deficiency of democratic control over the National Army is due to the fact that the army was politicized.<sup>359</sup>

356 Fluri, Philipp/Johnsson, Anders B. (eds) (2003): Parliamentary oversight of the security sector: Principles, mechanisms and practices. Third Edition. Lausanne: Presses Centrales Lausanne S.A., p.15

357 Cojocaru, Gheorghe (2003): "Democratic Oversight and Control over Defense." in: Trapans Jan A./ Fluri Philipp H. (eds.). Defense and Security Sector Governance and Reform in South East Europe: Insights and Perspectives. A Self-Assessment Study, vol. II, Macedonia, Moldova, Romania. Sabac: Dragan Srmic, p. 184

358 Pintea, Iurie (2009): "The Need to Re-Assess the Sector of Security and Defense." in: Sportel Erik/Faltas Sami (eds). The Reform of the Security Sector in Republic of Moldova. Groningen: CESS, p. 43

359 Palade, Veaceslav (2009): "Monitoring the Budget of the Security Sector: the Role of the Parliament and the Court of Accounts." in: Sportel

A special role in the implementation of the concept of democratic control over the army is given to the Individual Action Plan (IAP) between NATO and Republic of Moldova signed in 2006. IAP stipulates actions that are to be taken to implement reforms in the security sector. This document pays special attention to democratic control over the army. Special actions that are to be undertaken in this context refer to consolidating the role of civilians who participate in the decision making process at all levels of the national security system and employing civilians at military institutions as well as implementing NATO standards to restructure the Army and promote access of mass-media and the general public to information on defense and security.<sup>360</sup> Also, it is emphasized that a review of the role and responsibilities of the Supreme Security Council, the President, the Parliament, and the Government related to defense and security is necessary in order to increase efficiency, transparency and democratic control over the military, to reform Carabineers Troops and Border Guard Service. After receiving the “green light” from the Presidency at the initial phase, these essential documents and initiatives were later treated superficially by the Parliament and the Government at the development and approval phase.<sup>361</sup>

Together with the implementation of IAP, Moldova cooperates with the EU and other international organizations actively represented in the country to ensure complementarity and to avoid doublings between IAP, the Partnership and Cooperation Agreement Moldova – EU and the National Development Strategy.

In August 2010, IAP was updated, but maintained the same structure and practically, the same content. IAP consists of 4 chapters:

- 1) political and security issues;
- 2) military and defense issues;
- 3) informing the general public, research and planning for emergencies;
- 4) administrative issues, protection of information and resources.

Updating IAP by keeping most of the actions stipulated in the initial draft of the Plan prove that the commitments taken by Chisinau were not achieved overall. The actions that Republic of Moldova should undertake to reform the security sector were not carried out either due to lack of funding or due to lack of political will. The National Security Strategy, the National Military Strategy were not adopted, the Carabineers Troops and Border Guard Service were not reformed, MIA was not demilitarized, etc. According to some experts, the evolutions in 2008 showed that necessary reforms for the state security fell prey to geopolitical games with the Russian Federation, giving priority to the interests of Russia and not the interests of Republic of Moldova.<sup>362</sup>

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360 Erik/Faltas Sami (ed.). *The Reform of the Security Sector in Republic of Moldova*. Groningen: CESS, p. 79  
 Discussions with our readers: Vitalie Marinuta, Minister of Defense, 22/11/2009, [www.timpul.md/articol/%28foto%29-in-dialog-cu-cititorii-nostri-vitalie-marinuta-ministrul-apararii-5107.html](http://www.timpul.md/articol/%28foto%29-in-dialog-cu-cititorii-nostri-vitalie-marinuta-ministrul-apararii-5107.html)

361 Individual Action Plan of the Partnership Republic of Moldova – NATO Updated, [www.mfa.gov.md/img/docs/new\\_ipap\\_ro.pdf](http://www.mfa.gov.md/img/docs/new_ipap_ro.pdf)

362 Pintea, Iurie (2009): “The Need to Re-Assess the Sector of Security and Defense.” in: Sportel Erik/Faltas Sami (eds). *The Reform of the Security Sector in Republic of Moldova*. Groningen: CESS, p. 43

In general, IAP implementation supplements the Concept of Military Reform initiated in Republic of Moldova. However, the lack of financial resources, lack of political will and internal political instability are the causes that delay this reform to be implemented in three phases until 2014. During the first phase of implementation (2002-2004), the process of preparing the Moldovan independent battalion for peace keeping was supposed to be finalized in accordance with the commitments taken as part of the Partnership for Peace. This objective is currently under development and presumes the creation of two military units. The first unit is Battalion 22 for peace keeping that would allow Moldova to participate in peace keeping missions under the auspices of the UN by 2012; and the second unit is Special Battalion “Fulger” of the Ministry of Defense, which shall be transformed into a permanent fighting capacity unit.<sup>363</sup>

The third phase, according to the Concept of Military Reform, started in 2009 and shall be finalized in 2014. To achieve the objectives stipulated by the law – switching to enrolment for permanent fight preparedness (quick response) units on voluntary principles and contract basis; finalizing the process of supplying modern weapons and military equipment – large amounts of money are necessary. Re-equipping the army with modern weaponry and military equipment is important in order to have a modern army able to deal with current risks and threats. And the military equipment of the National Army is 20-40 years old.<sup>364</sup>

There is a series of deficiencies in the decision-making process of the country security and defense bodies. These issues come into light after the events of April 7<sup>th</sup>. The current security and defense system has proven its incapacity to rapidly find efficient solutions for managing crisis situation and implementing effective security policies, which are in most cases obsolete.<sup>365</sup>

In this context, it is necessary to reform the Supreme Security Council (SSC), which is an action included in the IAP. It is necessary to transform SSC into a decision-making and control body for the national security sector; it is necessary to de-politicize this institution and remove constraints to serve only one state institution.<sup>366</sup> Having consultative functions, the role of the SSC was reduced to meetings and discussions on social issues. SSC should fulfill accumulation, evaluation, coordination and integration functions for strategic information, consultancy, experience and proposals from the Army, and other governmental agencies and think tanks; generating ideas and original solutions in response to threats to state security.<sup>367</sup>

Another issue is that every year there are dozens of offences within the army, most of them related to non-governmental relations, abuses and excess of power.<sup>368</sup> It is necessary to introduce the civil autonomous institution of military ombudsman with the power to promote the fundamental

363 Lupan, Vlad (2009): “The Relationship of Republic of Moldova with the North-Atlantic Treaty Alliance.” in: Sarov Igor/Ojog Igor (ed.). *The Evolution of External Policy of Republic of Moldova (1998-2008)*. Chisinau: Cartdidact, p. 151

364 We need a small, but professional army, 13/092010, [www.allmoldova.com/ro/int/interview/vitalii-marinuta-130910.html](http://www.allmoldova.com/ro/int/interview/vitalii-marinuta-130910.html)

365 Discussions with our readers: Vitalie Marinuta, Minister of Defense, 22/11/2009, [www.timpul.md/articol/%28foto%29-in-dialog-cu-cititorii-nostri-vitalie-marinuta-ministrul-apararii-5107.html](http://www.timpul.md/articol/%28foto%29-in-dialog-cu-cititorii-nostri-vitalie-marinuta-ministrul-apararii-5107.html)

366 Valeriu Mija, Executive Director of PRISA Foundation, Recommendations on the new model of democratic control and supervision as well as hierarchic subordination of the national security system of Republic of Moldova, [www.prisa.md/rom/comments\\_csn\\_040210](http://www.prisa.md/rom/comments_csn_040210)

367 Lupan, Vlad (2009): „The Role of the Supreme Security Council in the New Political Context.” Non Paper, IDIS „Viitorul”, Chisinau

368 Minzarari, Dumitru (2007): “The Draft Concept of National Security – Decisive Test for the Moldovan Political Elite.” Discussion Paper nr.1

rights of the military staff, legal assistance and receiving complaints about violations of the rights of the military.<sup>369</sup>

Since independence, the military staff from the army was not involved in politics and, vice-versa, politics did not involve the army in its games. Probably, the only case when politics got involved in the military is the Decree from March 1996 of the former President of Republic of Moldova, Mircea Snegur, according to which Pavel Creanga was destitute from the position of Ministry of Defense. The reason for destitution was the fact that Creanga supported the Prime Minister Andrei Sangheli with whom Mircea Snegur was conflicting. The conflict between the President and the Government reflected on the military, which could have endangered the activity of the institution and create a precedent of the army getting involved in political games. The Constitutional Court declared unconstitutional the decree of President Snegur.

Finally, free access to information and the important role given to civil society in decision making are two more important pillars of exercising democratic control over the army.

Transparency of the decision making process means participation of stakeholders in the process of making decisions. Thus, from a legal point of view, citizens, the civil society, other stakeholders are entitled to participate at any stage of the decision making process, and public authorities are obligated to take necessary actions to ensure that it is possible for citizens to participate in the decision making process. In general, all the listed laws provide for the necessary minimum to ensure democratic control over the army. We could say that with certain exceptions civil society was involved in several commissions and working groups. For example, representatives of 2 NGOs are in the National Commission for Implementing IAP. Representatives of civil society were involved in the National Commission of Strategic Analysis of Defense and the working group created for the development of the National Security Strategy. Also, decision related projects of the MoD are made public, as stipulated by the law, so that citizens, the civil society, other interested parties are entitled to participate at any stage of the decision making process.

Access to information is ensured in Republic of Moldova. Anyone has access to official information except information which constitutes a “state secret”, “commercial secret” or “confidential information about a person”. However, monitoring reports show a negligent and irresponsible attitude on behalf of most public authorities and institutions towards rigorously complying with current legislation and international standards on access to information.<sup>370</sup> The monitoring report shows that out of 7 requests, the Ministry of Defense answered on time to 4 requests, provided a late answer in case of a request, and did not answer to two requests. (Requests remained unanswered: - The system of psychological assistance for recruits and military staff, its operation and efficiency; - How many contraventions were identified in the National Army during the period of 2004-2007, per year and per categories, including among officers; what sanctions were applied;

369 The General Prosecutor's Office evaluated the situation with the criminality in the army, [www.procuratura.md/md/news1st/1211/1/3551/](http://www.procuratura.md/md/news1st/1211/1/3551/)

370 Parliamentary Assembly (2006): “Report Committee on Legal Affairs and Human Rights.” Doc. 10861 24 March 2006, Human rights of members of the armed forces, [www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/EREC1742.htm](http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/EREC1742.htm)

how many people were subject to trials?; - If it is not a secret, how many officers, including general officers, are part of the National Army; what is the number of retired officers and generals and those that are on pension?).<sup>371</sup>

However, despite these deficiencies, the National Army continues to be the most credible institution among all state structures of Republic of Moldova, with 62.8% out of the total number of respondents.<sup>372</sup> The explanation is that the National Army had a neutral conduct towards political events, and contacts between society and the army are very limited due to peculiarities of this organization and activities of this state structure.

Basing on what was said above, we can draw the conclusion that there are more deficiencies related to exercising democratic control over the army. There are more explanations. First of all, during communist governance, even though several reforms were initiated in order to improve the exercise of democratic control over the army, there was no political will to finalize this process. Second, due to economic issues, the state did not have the possibility to financially support these reforms. Third, due to lack of professional qualification of members of Parliament from the Commission for National Security, Defense and Public Order, the activity of this Commission is diminished to monitoring and adopting laws initiated by the Government or the Parliament. That is why it is necessary to involve consultants and experts to increase the efficiency of the Commission. This is especially important from the perspective of Republic of Moldova intending to switch from mandatory service to professional service. Under these conditions, it is important to consolidate the role of the Parliament in exercising democratic control over the army. It is necessary to improve the legal framework on the operation of institutions responsible for adopting and implementing decisions in the defense sector.

## ***8.2. How publicly accountable are the police and security services for their activities?***

The reform of internal order bodies represents an important stage of the reform of the political system. As a starting point, we should note political will and the premises for setting up as an institutional goal the transformation and reorganization of bodies of the old regime (Soviet police, security service) as part of some democratic authorities, well governed and under parliamentary control, acting based on current legislation and international legislation in the area. But, any reform presumes some implementation models. Immediately after declaring its independence, Moldovan authorities wanted to confer to the security sector a gradual trajectory, slow and balanced in changes, taking into consideration the probable opposition to more radical reforms of the employees of these institutions.

371 The right to Information: on Paper and in Reality, Monitoring Report, "Acces-info Center", Chisinau 2008  
372 Idem.

Transforming and reorganizing the former Soviet police and security bodies were the main concerns of the Moldovan authorities after gaining independence. The goal of these changes was to transform Soviet repression institutions into bodies that service citizens. In other words, the activity of these institutions was to be conducted in accordance with international principles, which means compliance of these bodies with human rights in exercising their activities. Also, changes in the system were aimed at increasing the role of the Parliament of Republic of Moldova as a body that exercises democratic control over the activity of police bodies and security services. The reform of police bodies is a long-term process, which, unfortunately, was not yet finalized. The reports of international institutions identified a series of gaps and infringements of human rights in the activity of the police.<sup>373</sup>

The activity of the police and security services is regulated by the Constitution, the Criminal Code, the Criminal Code of Practice, the Law on policing, the Law on Carabineer Troops (Internal Troops), the Law on the Information and Security Service, the Law on the Status of Information and Security Officers, the Law on state security, the Law on state security bodies and the Law on the Center for Combating Economic Crimes and Corruption.

### *The activity of police bodies*

The police of Republic of Moldova work on the basis of Law no.416-XII of 18.12.1990. Police is organized as state police and municipal police. State police is subordinated to the Ministry of Internal Affairs. Municipal police is subordinated to the Ministry of Internal Affairs and, at the same time, to local public administration authorities. This double subordination generated numerous problems after local elections of 2007 when the position of general mayor of Chisinau was filled by Dorin Chirtoaca, representing an opposition party during that period. Municipal police, subordinated to the MIA, came into direct conflict with Dorin Chirtoaca during the Communist governance sabotaging and ignoring his decisions or even impeding the activity of the city hall. Thus, even though it is municipal police by law, the police are submitted to the Ministry of Internal Affairs. But normally, it should submit to the municipality. It is necessary to clearly define the powers of MIA, municipal police and local public administration bodies. These changes should be part of a more comprehensive reform of the police.

Carabineers Troops are also part of the Ministry of Internal Affairs (law on carabineer Troops (internal troops) of MIA no. 806-XII of 12.12.1991). According to this law, carabineer Troops (internal troops) are to ensure public order together with the police or independently, to defend the rights and fundamental freedoms of citizens, assets of owners, to prevent infringement of legislation. The leadership of carabineer troops is represented by the deputy minister of internal affairs – the commander of the Department of Carabineer Troops through

373 Marketing and Survey Institute IMAS-INC Chisinau, August 2010



unit commanders. There is a normative issue related to carabineer troops that are a component part of the army and participate in the actions to defend the country and, at the same time, these Troops are part of the Ministry of Internal Affairs, being grouped in a department. Similar to the police, carabineer troops should be reformed. As part of IAP, Republic of Moldova committed itself to revise the role and responsibilities of Carabineer Troops and to adequately integrate the respective military capacities in the army.<sup>374</sup> The objective is to refine operational capacities of Carabineer Troops for conducting missions during peace and crises, including peace keeping operations.

According to the Law on the Center for Combating Economic Crime and Corruption no. 1104-XV of 06.06.2002, the Center is free to develop its program of activity and exercise its functions. The Center is lead by a director appointed by the Government for a period of 4 years.

Center for Combating Economic Crime and Corruption (CCECC) is a body which defends legal rules, is specialized in combating economic, financial and fiscal offences as well as corruption. The main powers of the Center are to prevent, identify, investigate and cease economic, financial and fiscal contraventions; to hinder corruption and protectionism; to prevent and combat money laundering and financing terrorism. Employees of the Center are prohibited to use their position in the interest of any party, other social-political organizations, public organizations etc.

The main purpose of the police is to ensure public order, to guarantee compliance with human rights and freedoms, to prevent and cease crimes and other offences. Article 24, paragraph 2 of the Constitution prohibits torture, cruel, inhumane or degrading punishment or treatment. The Law on police stipulated the conditions and limits of applying force, special means and fire arms. Thus, according to the law, police staff exceeding their powers in applying force, special means and fire arms are liable according to the law.<sup>375</sup>

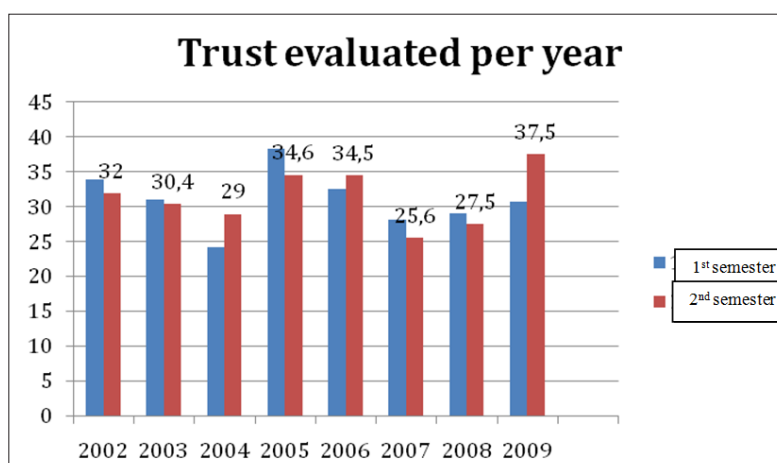
Despite the reformatory rhetoric of Moldovan police bodies, their activity is still very far from European standards. Even if this institution is suppose to ensure public order, to guarantee observance of human rights and freedoms, to prevent and cease crimes and other offences, in reality, policemen are involved in numerous cases of infringement. A survey showed that out of all state institutions, citizens least trust the police, in favor of which only 30.9 percent of respondents voted.<sup>376</sup> According to surveys conducted at the inquiry of the Institute for Public Polices from Republic of Moldova, the low trust rate of the police was registered during 2002-2009 as seen from the diagram below. This kind of attitude towards the police remained unchanged after the governing power has changed.

374 Committee Against Torture, Session 43, Genève, 2-20 November, 2009 Analysis of the Reports Submitted by Member States according to Article 19 of the Convention, Conclusive observations of the Committee against Torture: Republic of Moldova

375 Individual Action Plan of the Partnership (IPAP) Republic of Moldova – NATO, [www.mfa.gov.md/img/docs/new\\_ipap\\_ro.pdf](http://www.mfa.gov.md/img/docs/new_ipap_ro.pdf)

376 Decision on approving special means and rules for their application by the staff of internal affairs bodies and military staff of carabineer troops of the Ministry of Internal Affairs 1275/15.02.93

**Chart 25 „Evaluation of trust in the police per year”**



*Source: developed by the author based on the surveys conducted by the Public Opinion Barometer, IPP 2002-2009 (surveys were conducted twice a year)*

As seen from the diagram, population's trust in police was always below 40%. There are several reasons that explain this lack of trust. Police bodies have a reputation of being politicized state bodies with the mission of complying with the orders of the governing party. This became obvious during the period of 2001-2009 – during the governance of the communist party in Republic of Moldova. Thus, the most important Moldovan opposition politicians, inconvenient for the communist governance found themselves under criminal prosecution. Particularly, CCECC excelled at this. This institution, independent in developing its activity program and exercising its functions according to the law, was often used as a political tool against opposition leaders, business people and former public servants.<sup>377</sup> CCECC files several politicized cases with economic interest, and a series of cases orchestrated by this institution were sentenced by ECHR.<sup>378</sup>

The police was also involved in several scandalous cases. A representative case for this state of facts was the open conflict between municipal police and the mayor of Chisinau, Dorin Chirtoaca. Even though, according to the law, municipal police is subordinated both to the Ministry of Internal Affairs and local public administration authorities, in reality, it came into direct conflict with the mayor of Chisinau, sabotaging and even hindering the application of some decisions issued by Chirtoaca.

Police staff were involved in cases of forging evidence, cases; they forced certain categories of people to pay “protection fees”; there were several accusations related to corrupt practices, according to which police staff requested money to withdraw persecution of people under arrest.<sup>379</sup>

The outcomes of a survey conducted by CBS – AXA in November 2010 at the request of

377 Marketing and Survey Institute IMAS-INC Chisinau, August 2010

378 100 most pressing issues of Republic of Moldova in 2008, / Vitalie Grosu, Ion Guzun, Mihail Salvir [et al.]; coord.: Ghenadie Mocanu; IDIS „Viitorul”, Chisinau, 2009, p. 85

379 CCECC's „Professionalism” sentenced by ECHR, 20/08/2010, [www.jurnal.md/ro/news/-profesionalismul-cccec-condamnat-la-cedo-191530/](http://www.jurnal.md/ro/news/-profesionalismul-cccec-condamnat-la-cedo-191530/)

IDIS „Viitorul” confirms the high level of distrust of Moldovan citizens towards police bodies. The table below shows that only 15.5% of respondents consider that the police operate in accordance with legislation and 57.1% of citizens think that the police often infringe legislation by taking bribes. Other violations stated by respondents refer to the fact that policemen act depending on the influence of the business sector (9.8%) and are often incompetent (8.4%).

**Table 24 „How would you describe the activity of police bodies?” (multiple choice answer)**

Operate according to legislation	15.5%
Often violate legislation by taking bribes	57.1%
Act depending on the influence of business sector	9.8%
Staff are often incompetent, their activity is inefficient	8.4%
NS/NR	9.2%

*Source: CBS – AXA, November 2010 at the request of IDIS „Viitorul”*

Other deficiencies in the activity of police staff are related to the methods that they apply in exercising their functions, especially, torturing. Statements on largely using torture and other forms of ill-treatment in case of detainment by the police were confirmed by several international bodies, including the Special Rapporteur of the UN.<sup>380</sup> Also, an analysis of the Committee against Tortures shows concern because access to lawyers and independent doctors is restricted, especially, at the early stages of detention, despite legal guarantees; the Committee is also concerned about the fact that there is no system for mandatory use of registers in all police precincts as well as the fact that, in practice, detainees are not always registered at police precincts and thus, they are deprived of effective safeguards against acts of torture.<sup>381</sup> The in-depth analysis of MIA activity shows that during communist government, the entire MIA system was virtually deformed, this institution being structured in such a way that all the areas of activity were considered to be policing.<sup>382</sup>

The Delegation of the European Committee for Preventing Torture and Inhumane or Degrading Treatment or Punishment (CPT) has also confirmed existence of credible and consistent accusations of ill treatment by the police, especially, in the context of post-electoral events of April 2009.<sup>383</sup>

The actions of the police after the elections of April 5, 2009 are unspeakable and became the object of some intense national and international discussions. All of the issues with which police bodies dealt with come forward as a result of large protests after the parliamentary elections of April 5, 2009. The investigations conducted by a MIA Commission determined that this institution did

380 100 most pressing issues of Republic of Moldova in 2008, / Vitalie Grosu, Ion Guzun, Mihail Salvir [et al.]; coord.: Ghenadie Mocanu; IDIS „Viitorul”, Chisinau, 2009, p. 88

381 Committee against Torture, Session 43, Genève, 2-20 November 2009, Analysis of reports submitted by countries party under the aegis of article 19 of the Convention, Conclusive observations of the Committee against Torture: Republic of Moldova

382 Ibidem

383 Victor Catan: „I have taken over a ministry that was completely compromised for the state and society”, 13/09/2010, [www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html](http://www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html)

not take adequate actions for the given situation. Due to negligence and abuse, peaceful protests turned into massive disorders because adequate measures were not intentionally taken to prevent this outcome.<sup>384</sup>

The police did not fulfill its own basic mission to ensure public order and during the night of April 7<sup>th</sup> resorted to large scale arrests using various inhumane and degrading measures.<sup>385</sup> Also, the protection of people which are part of criminal cases is not as adequate as it should be. A victim going to the local police precinct to submit a complaint should be protected, but actually nothing is done from the moment a person comes to the police until the complaint reaches court, during which period everything could happen.<sup>386</sup>

The personnel policy was compromised through massive purging of experienced personnel and seriously depreciating the professional core of internal affair bodies, which has a negative influence on policing activities. Thus, according to the current minister of internal affairs, in 2001-2009, 14,223 police staff were fired, most of them highly experienced specialists, which made up the professional core of MIA system; the average age of police staff is 31 years, and of the police staff of the General Police Commissariat – only 23-25 years.<sup>387</sup> During this period, MIA was some sort of police institution out of any democratic control. Even though opposition parties made several requests to call the Minister of internal affairs to answer questions on the activity of MIA, every time the communist majority rejected these initiatives. The numerous attempts of the parliamentary opposition to set up parliamentary inquiry commissions to investigate major cases of irregularities and deviation from legislation of some high level officials faced the resistance of the majority party.<sup>388</sup>

The lack of parliamentary control over police bodies shows a systemic issue which could be solved through a comprehensive reform of police bodies. MIA is a militarized institution that does not support free initiative for police staff. An internal analysis conducted by MIA concludes that the existing model of the police service (according to the existing legal framework) is repressive and controlling.<sup>389</sup>

The existing military-like hierarchy within this institution presumes police being subordinated to MIA. This institution should be demilitarized and there should be a clear distinction between services responsible for developing policies and policing activity. The MIA should be lead by civilians in order to implement proposed reforms and reform proposals should come from political parties in the Parliament. Also, it is necessary for political parties to have political will to reform MIA. And the reform of the Ministry of Interior shall not be successful without reforming the judiciary and prosecution bodies.

384 Report to the Government of Republic of Moldova on the visit carried out in Republic of Moldova by the European Committee for Preventing Torture and Inhumane or Degrading Treatment or Punishment (CPT) of July 27 – 31, 2009

385 Victor Catan: „I have taken over a ministry that was completely compromised for the state and society”, 13/09/2010, [www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html](http://www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html)

386 The Report of the Investigation Commission for Clarifying the Causes and Consequences of Events after April 5, 2009

387 Opinions and perceptions of lawyers on the degree of democracy in Republic of Moldova; survey conducted by CBS – AXA in November 2010 at the request of IDIS „Viitorul”

388 Victor Catan: „I have taken over a ministry that was completely compromised for the state and society”, 13/09/2010, [www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html](http://www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html)

389 100 most pressing issues of Republic of Moldova in 2008, / Vitalie Grosu, Ion Guzun, Mihail Salvir [et al.]; coord.: Ghenadie Mocanu; IDIS „Viitorul”, Chisinau, 2009, p. 51

A solution for the reform of police would be to introduce the concept of community police, which means that it should be organized and should operate in accordance with the needs of local communities. This means that the activity of the police should be appreciated based on performance criteria at local level. Also this concept presumes a decentralization of the activity of police bodies where the role of local public administration would be decisive in setting tasks and appreciating the activity of police. At the same time, decentralizing police bodies would lead to local public administration appointing the management of police. However, there are doubts about successfully implementing this concept. The concern relates to the fact that this system is too expensive and could not yield the expected results due to reduced civil involvement into public order issues. Another solution would be maintaining the current institutional concept by clearly separating the powers of the police and its funding system. This presumes transparency of the employment process within internal affair bodies in order to increase the level of professionalism and efficiency of the institution.

It is also necessary to clearly define the powers of MIA since its functions were taken over by other institutions and are practically doubled by other bodies. There is a confusion through which MIA is perceived solely as a policing body, which is actually the main activity of the ministry. In other words, the leadership of Republic of Moldova should chose between a truly internal affairs ministry and a policing institution.

### *Security system*

The system of security bodies of the country consists of the Information and Security Service of Republic of Moldova, State Protection and Guarding Service, Border Guard Troops Department, Customs Service as well as education institutions and other non-militarized institutions and organizations of state security bodies according to the law on state security no. 618 of 31.10.1995. It is a paradox that the Parliament, head of state, the Government and judicial authorities are not included in the state security system. Several studies and reports identify these and a series of other gaps in the legislation on state security and on state security bodies.<sup>390</sup>

The Law on the Information and Security Services of Republic of Moldova no. 753 of 23.12.1999 regulates the activity of this service. ISS represents a unitary centralized body whose activity is coordinated by the President of Republic of Moldova and is subordinated to parliamentary control. This Service is lead by a director appointed by the Parliament, at the proposal of the President of Republic of Moldova for a period of 5 years. The director is dismissed by the Parliament at the proposal of the President of Republic of Moldova or members of Parliament.

The Law on Border Guard Service no. 162-XVI of 13.07.2007 has the power to oversee and control state border for the purpose of combating acts specific for trans-border crime, includ-

390 Institutional Development Plan of the Ministry of Internal Affairs for 2009-2011, [www.mai.md/planul\\_inst](http://www.mai.md/planul_inst)

ing illegal migration, protecting the interests of Republic of Moldova at state border according to legislation and guarding state border of Republic of Moldova as stipulated by current legislation. The Border Guard Service is lead by a general director appointed and dismissed by the President of Republic of Moldova, at the proposal of the Government. In the context of reforming the security and defense sector as part of IAP, Republic of Moldova set as important priorities aligning its legislation in the area to the *acquis communautaire*, and gradually demilitarizing and increasing the professionalism of the Border Guard Service.

The Law on state security bodies stipulates that the Customs Service contributes within its competences to ensuring the economic security of the country, fighting against international terrorism, contraband, illicit traffic of drugs, weapons and munitions. The general director is appointed and dismissed by the Government.

The Service for State Protection and Guarding carries out the protection and guarding of people who benefit from state protection and guarding as well as guarding items under guardianship. The National Security, Defense and Public Order Commission of the Parliament exercises democratic control over the activity of police and state security bodies.

The Decree of the President of Republic of Moldova no.196 of 9.09.1991 dissolved the State Security Committee of Republic of Moldova and on its basis the Ministry of National Security of Republic of Moldova was established. Law of Republic of Moldova no. 676-XIV of November 1999 reorganized the Ministry of National Security into the Information and Security Service (ISS) of Republic of Moldova, a state body specialized in ensuring state security. From January 2000, the Border Guard Troops of Republic of Moldova are withdrawn from ISS. Law no. 177- XVI from July 2005 on modifying Law no. 753 – XIV of December 23, 1999 on the Information and Security Service of Republic of Moldova excluded the power of criminal prosecution of ISS. Based on the Government Decision no. 84 from February 2010, Special Telecommunication Center is transferred from the Information and Security Service of Republic of Moldova to State Chancellery. As a result of these changes, the role of ISS is to accumulate information and to submit it to the prosecutor's office of MIA.

Even though a series of changes were made aimed at transforming ISS in a body able to protect the vital interests of the country and citizens, however, the image and activity of this institution is controversial. First of all, the image of KGB, which was a repressive organization, hovers over the ISS. In Republic of Moldova, unlike in most Central and Eastern European countries, no law on lustration was passed, which would have meant a rupture with the history and tradition of KGB. A law on lustration would mean de-communization of Republic of Moldova. The goal of such a law would be to prohibit access to state positions to people who were involved in political policing. Opinions on the need of a law on lustration remain to be divided. Several politicians and political analysts<sup>391</sup>, members of the Commission on Studying and Evaluating the Totalitarian Communist

391 Erizanu, Gheorghe (ed) (2006): National Security Council in the process of decision making. Comparative analysis: Republic of Moldova, Romania, and Ukraine. Chisinau: Cartier Minzarari, Dumitru (2007): "Draft National Security Concept – Decisive Test for the Moldovan Political Elite." Discussion Paper nr.1. Sportel Erik/Faltas Sami (ed.) (2009). Reforming the Security Sector of Republic of Moldova. Groningen: CESS



Regime in R. Moldova (established on January 14, 2010 through the Decree of the Acting President of Republic of Moldova)<sup>392</sup> etc. support the development and passing of a law on lustration. The former Minister of Security, Mr. Anatol Plugaru, considers that the agents that worked for the Soviet Union, and subsequently, for Republic of Moldova, represent a national treasure of our country and there is no point to reveal their identities, except those that have committed crimes.<sup>393</sup>

Second, ISS was used by the heads of the country as a tool for promoting political interests. Tudor Botnaru, former Minister of National Security (1990-1991 and 1997-1999), said that Valeriu Pasat was appointed as the head of ISS by the former President Petru Lucinschi to make sure that the latter would receive a new mandate as President, but since Pasat was not a professional, Lucinschi did not receive a new mandate.<sup>394</sup> An official from ISS recently said that during the leadership of Valeriu Pasat, ISS was turned into a limited liability company, which supplied information to certain groups of interest.<sup>395</sup> According to Valeriu Pasat, former director of the Information and Security Service (ISS) and former Minister of Defense, former President Vladimir Voronin would have tried to consolidate his political and financial power with the help of secret services, Pasat being asked to collect compromising information even about the members of the same party as Voronin.<sup>396</sup> During the years when Artur Resetnicov, former advisor to President Vladimir Voronin, was director of ISS, the staff of this institution was subject to a triage campaign, when several highly professional officers were dismissed and replaced with people loyal to the leadership of the country.<sup>397</sup>

Finally, ISS, just like police bodies, is responsible for the way events after the election of April 5<sup>th</sup> have unfolded. The operative services of MIA and ISS did not comply with their working obligations: being infiltrated among protestors, the employees of these services did nothing to identify and remove aggressive people and instigators and it was noted that the cases and information about some foreign countries or their special services being involved in the events of April 7, 2009 were destroyed at the order of the former leaders of ISS of RM.<sup>398</sup> Taking into consideration the way this institution acted during the above-mentioned events and the close connections between the former director of ISS and the communist party, there are doubts about the non-involvement of the Service to pursue the political goals of the former governments.

These facts prove the idea that parliamentary control over ISS was far from being achieved. The institution of parliamentary control was ignored during the communist governance, ISS refusing to provide information requested by opposition members of Parliament. This institution, similar to MIA, should be reformed. The reform of ISS should include developing an active service observing the legal framework and democratic values, the goal of the reform of ISS is to develop institutional capacities of this structure to prevent threats that would endanger state security.

392 About the Law on Lustration and Revealing KGB Files in Republic of Moldova, [www.contrafort.md/2005/131-132/903.html](http://www.contrafort.md/2005/131-132/903.html)

393 The report of the Commission for Studying and Evaluating the Totalitarian Communist Regime from Republic of Moldova, [www.timpul.md/articol/raportul-comisiei-pentru-studierea-i-aprecierea-regimului-comunist-totalitar-din-republica-moldova-12814.htm](http://www.timpul.md/articol/raportul-comisiei-pentru-studierea-i-aprecierea-regimului-comunist-totalitar-din-republica-moldova-12814.htm)

394 Plugaru: „Those that ask to reveal the identity of KGB agents are stupid”, 22/09/2010, [www.jurnal.md/ro/news/plugaru-sunt-tampiti-cei-care-cer-deconspirarea-agentilor-kgb-193108/](http://www.jurnal.md/ro/news/plugaru-sunt-tampiti-cei-care-cer-deconspirarea-agentilor-kgb-193108/)

395 KGB archive transferred to Tiraspol, September 21, 2010, [www.cabinetuldinumbra.jurnaltv.md/?m=20100921](http://www.cabinetuldinumbra.jurnaltv.md/?m=20100921)

396 „The “Black Pages” of ISS, 21/09/2010, [www.ziar.jurnal.md/2010/09/21/%E2%80%9Efilele-negre%E2%80%9D-ale-sis-ului/](http://www.ziar.jurnal.md/2010/09/21/%E2%80%9Efilele-negre%E2%80%9D-ale-sis-ului/)

397 Lie to me - Politics of Moldova: V. Misin, V. Turcan, 2/12/2010, [www.politik.md/?view=articlefull&viewarticle=2352](http://www.politik.md/?view=articlefull&viewarticle=2352)

398 „The “Black Pages” of ISS”, 21/09/2010, [www.ziar.jurnal.md/2010/09/21/%E2%80%9Efilele-negre%E2%80%9D-ale-sis-ului/](http://www.ziar.jurnal.md/2010/09/21/%E2%80%9Efilele-negre%E2%80%9D-ale-sis-ului/)

### ***8.3. How far does the composition of the army, police and security services reflect the social composition of society at large?***

After becoming part of the USSR following the events of the Second World War, the military of Moldova were heavily influenced ideologically and ethnically by Moscow official politics. After becoming independent, the main goal was to ensure military, security and police staff loyal to independent Moldova. The importance of this objective was even greater following the events of March-April 1992, when the Nistru conflict occurred. Republic of Moldova needed loyal army, police and security services to preserve the independence and territorial integrity of Republic of Moldova. Unfortunately, the military bodies of former MSSR from villages and towns on the left bank of Nistru River turned to the service of the separatist regime of Tiraspol.

Republic of Moldova had to create loyalty among the personnel of these bodies, which includes representatives of all ethnic minorities that represent a component part of the state. Only citizens of Republic of Moldova who reached the age of 18 are accepted into the police and security bodies. Unlike other states from the former Soviet Union, Republic of Moldova adopted a law which provided citizenship to all those that lived on the territory of Moldova on the day independence was declared. Thus, poor knowledge of Romanian language was not an obstacle to employment into these bodies. Also, people who held important position during the Soviet period were not prohibited to enter these bodies.

The National Army also consists of citizens of Republic of Moldova. All male citizens are subject to military service. Citizens with the age of 18-27 years are subject to active military service.

According to the data of the last census of population from 2004, the ethnic composition of the population of Republic of Moldova reveals that Moldovans, the majority ethnicity, represent 75.8% of total population, registering an increase of 5.9% as compared to 1989. Together with Moldovans our country is inhabited by Ukrainians, representing 8.4%, Russians with a share of 5.9%, Gagauzians – 4.4%, Romanians– 2.2%, Bulgarians – 1.9% and other ethnicities with a share of 1.0% of the total number of population of the country.<sup>399</sup>

The ethnical structure of police bodies is as follows:

***Table 25 „The Ethnic Structure of Police Bodies”***

No.	Ethnicity	Number of people	Percentage
1	Moldovans	10 647	94%
2	Ukrainians	209	1.85%
3	Gagauzians	200	1.77%
4	Russians	155	1.37%
5	Bulgarians	72	0.063%
6	Romanians	6	0.053%
7	Azerbaijanians	5	0.044%
8	Belarusians	3	0.026%
11	Germans	2	0.017%
12	Jewish	1	0.008%
Total		11 201	100%

*Source: MIA*

399 The report of the Commission for Clearing Up the Causes and Consequences of Events after April 5, 2009

MIA employs 1128 women (9.99%) out of the total number of 11 291 employees.

Moldovan citizens that are part of the major ethnicity of Republic of Moldova dominate in police bodies, which does not reflect the ethnic composition of Moldovan population. Government Decision no. 334 of 08.07.1991 on approving Regulations on employment within internal affair bodies stipulates the general conditions for internal affair bodies employing people. There is also an internal MIA order on the conditions of employment within internal affair bodies. But this internal document is secret and that is why there are a lot of question marks on the correctitude of the employment policy of this institution. The lack of transparency in employment conditions into internal affair bodies of Republic of Moldova makes it impossible to control the selection process for the staff of this institution. Such a system encourages cronyism, nepotism and corruption in general in terms of the employment policy of MIA. This is indirectly confirmed by the current Minister of Interior, Victor Catan, who said that during 2001-2009, 14.223 police staff were dismissed, most of them highly experienced specialists, which formed the professional core of MIA system, the average age of police staff being 31 years, and for criminal police of the General Police Commissariat – only 23-25 years.<sup>400</sup> The political bias of this ministry during the period of 2001-2009 also confirms the idea that there is a serious problem in the process of employment into internal affair bodies of Republic of Moldova.

#### ***8.4. How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?***

The state is the institution that holds monopoly over power and decides when force can be used. Except guarding service, the police, order maintaining troops and the army represent institutions that are exclusively state institutions, which uses them in accordance with current legislation under parliamentary control. Republic of Moldova is an acknowledged case of cohabitation of constitutional state bodies, recognized at international level, and the bodies of a separatist administration, which is not recognized at international level, but has the necessary resources to protect the area over which it gained control as a result of the secession conflict caused by forces hostile to Republic of Moldova in 1992. As a result of this frozen conflict, Republic of Moldova faces the existence of a large number of entities hostile to the principles of a state of law, sovereignty and independence on an internationally recognized territory, persisting as elements of increased risk and threat for citizens of this country. Among these risk elements are the army, police and security bodies of the Transnistrian separatist regime massively supported by the Russian Federation. Unfortunately, the peace keeping mission set up in the region by the Russian Federation constantly aligned with these separatist entities failing to fulfill its initial role of arbitration and demilitarization of this region, a component part of the unitary and indivisible territory of Republic of Moldova, becoming

400 9 On the totals of the census of population of 2004. Demographic, national, linguistic, cultural characteristics <http://www.statistica.md/news-view.php?l=ro&idc=168&id=2358>

an element of the architecture of protecting separatist forces instead of contributing to amiably settling the conflict in this region. However, in addition to public order bodies, the legislation of many countries allows and regulates the operation of private guarding and security services. In Republic of Moldova, these services are regulated by many legislative acts adapted to international standards. In particular, the Law on private detective and guarding activities no. 283-XV of 04.07.2003 regulates the principles, goals, subjects and the manner to provide private investigation and guarding services to physical and legal entities, including foreign, under the law. According to MIA with reference to cases of infringement of legislation by private security agencies, in Republic of Moldova there was one case of a contravention act, insult of the filming team of “Publika TV” by an employee of the private guarding agency “Argus-S”, as a result of which that person received a contravention sanction in the form of fine. No other infringements of legislation by private security agencies or their employees were registered since 2005.<sup>401</sup> In the answer of MIA there is no reference to the case of Gheorghe Stepuleac, former owner of the guarding agency “Tantal”. In December 2005, he was arrested together with his brothers and charged with blackmail. Subsequently, his company was closed, after having its license withdrawn. ECHR ruled that there was a violation of article 5 § 1 of the Convention related to the two arrests of the claimant without any reasonable doubt that he has had committed an offence.<sup>402</sup>

The Law on people’s guards no. 1101 of 06.02.1997 regulates the participation of citizens to maintaining public order and preventing offences and contraventions by organizing people’s guards. Their activity was insignificant until August 2002 when the government made it mandatory for local public authorities to implement a series of “organizational measures to foster the activity of people’s guards” proposed by the Ministry of Internal Affairs. The measures proposed by MIA stipulated that local authorities were to ensure people’s guards with rooms, telephone, transportation, furniture, funds for maintenance until October 1, 2002. In 2009, according to MIA data, there were 1186 units of people’s guards with 14997 members in the country: under town/village halls - 884 units, with enterprises - 212 units and with education institutions - 90 units.<sup>403</sup> Even if MIA commended the activity of people’s guards, there is evidence that shows their political commitment to the CPRM as far as 2009. In March 2009, prior to parliamentary elections of April, the former President of Republic of Moldova, Vladimir Voronin, organized together with the Ministry of Internal Affairs a meeting with the representatives of people’s guards. This event revealed instigators involved in several actions against opposition parties.<sup>404</sup> Moldova Noastra Alliance says that at the end of March 2009, the leader of the party from Balti was physically attacked by the members of the local so-called “people’s guards” consisting of boxers from a sports club from Balti.<sup>405</sup> Also, the Minister of Interior, Gheorghe Papuc, organized on July 16, before the parliamentary elections of July 29, 2009, an election meeting with protection and guarding agencies, detectives, people’s

401 Victor Catan: „I have taken over a ministry that was completely compromised in the eyes of the state and society”, 13/09/2010, [www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html](http://www.timpul.md/articol/victor-catan--am-preluat-un-minister-total-compromis-in-fata-statului-si-a-societatii-15346.html)

402 MIA of Republic of Moldova, Police Department, General Directorate of Public Order Police

403 Resolutions and decision of the European Court for Human Rights on Moldovan Lawsuits vol. VI 1 July 2007 – 31 December 2007, Ed. Gunivas, Chisinau 2007, p. 347

404 MIA Press Center, 11 August 2009

405 Due to recent MIA speculations the Youth Organization of MNA cancelled the picketing of today’s meeting of President Vladimir Voronin with the so-called “national guards”, 21/03/2009, [www.amn.md/etichete-449-425-0.html](http://www.amn.md/etichete-449-425-0.html)

guards and the Association of Hunters and Fishermen to threaten them that they would lose their businesses if they would not campaign for the CPRM.<sup>406</sup> These acts prove the idea that people's guards were used by the communist party for certain tasks against opposition parties. People's guards were to conduct certain missions that police bodies could not conduct or did not manage to cover in their activity.

Based on the considerations listed above, there are doubts about the need to have people's guards. Their possible involvement in political games brings the need to improve the legal framework regulating their activity.

### ***8.5. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

Republic of Moldova has the legal framework regulating the principle of democratic control over the security sector, however, for various reasons, there are several factors that hinder the achievement of this goal. Democratic control over the security sector is in close connection with the process of democratizing society. Unfortunately, Republic of Moldova experienced a kick back from democratic values during communist governance, which had a direct impact on the democratic control over the security sector.

The reform of the security sector is a pre-condition for exercising democratic control over this sector. The lack of political will is the cause for delaying reforms in the Ministry of Defense, Ministry of Internal Affairs and Information and Security Service. At rhetorical level, the reform of the security sector and placing the latter under democratic control is a priority for all political parties.

Several measures were taken in Republic of Moldova to settle the issues identified in this area. First of all, the Concept of Military reform was approved in 2002, this reform it to be finalized in 2014. In 2006 Republic of Moldova and NATO signed the Individual Action Plan (IAP). This Plan stipulates consolidation measures for the role of civil personnel who participates in the decision making process at all levels of the national security system and employing civilians at military institutions as well as implementing NATO standards for restructuring the army and promoting mass-media and general public access to information on security and defense. The fact that in August 2010 IAP was updated, preserving the same structure and almost the same content, supports the idea that until the change of the governing party in 2009, IAP implementation was faulty.

Discussions on the reform of MIA were also initiated. For the moment, even though some processes were started, the Ministry of Internal Affairs remained an un-reformed institution. The

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406 Due to recent MIA speculations the Youth Organization of MNA cancelled the picketing of today's meeting of President Vladimir Voronin with the so-called "national guards", 21/03/2009, [www.amn.md/etichete-449-425-0.html](http://www.amn.md/etichete-449-425-0.html)

situation is identical for ISS. Certain changes were made, but the process of reform was not finalized.

The reform of the security sector is a priority for governing parties. Also, Moldovan citizens support the process of reforms. All surveys show that citizens find the police to be the least trustworthy institution, which is considered to be corrupt and employing a lot of incompetent staff. These findings prove the idea that the process of reforming the security sector is a priority and a need for the good functioning of the state. And the reform of this sector should be implemented at institutional level together with all the bodies responsible for applying the law – the judiciary system and prosecution system.

	Very good	Good	Satisfactory	Poor	Very poor
8.1			X		
8.2				X	
8.3		X			
8.4					X
8.5				X	

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## 9. MINIMIZING CORRUPTION

*Lilia Ioniță*

### ***9.1 How effective is the separation of public office, elected and unelected, from party advantage and the personal business and family interests of office holders?***

#### **9.1.1 Legal Framework regarding the prevention of conflicts of interest**

The separation of the civil service from personal matters and from the private interests (family) of the civil servants, i.e. the prevention and avoidance of conflicts of interest, is a challenge for any democratic state. The achievement of this separation is not only an efficient way to prevent corruption in the public sector, but more generally, an indicator of the level of democratization of the state. In the Republic of Moldova, this issue is regulated by the Law on conflicts of interest passed on February 15<sup>th</sup> 2008<sup>407</sup> (henceforward, the 16/2008 Law). This Law regulates “incompatibilities and restrictions imposed on civil servants who hold official positions or other positions outlined in this law, the resolution of conflicts of interest, as well as the procedure for declaring a conflict of interest”<sup>408</sup>. According to Art. 2 of the 16/2008 Law, a conflict of interests is defined as “the case when a person holding a public office has to make a decision or partake in the making of a decision, or to undertake, in the course of his duties, other actions which influence or can potentially influence his personal interests”. The persons that are affected by the 16/2008 Law<sup>409</sup> include almost all state officials: from persons holding high offices (The President of the Republic of Moldova, The President of Parliament, The Prime-Minister, vice-ministers and other members of the Government, judges, officials at Legal Institutions, etc.) to local councilors. Furthermore, the 16/2008 Law specifies that its provisions are also applicable to chiefs and deputy chiefs of public institutions, of state and municipal companies, commercial entities where the state holds a majority of shares, as well as to persons who have the authority to make decisions regarding goods and monetary funds owned by the state.

407 Minister Papuc threatens guarding and protection firms, detectives and the Hunters' Association with losing their business if they refuse to campaign for the CPRM, 22/09/2009, [www.unimedia.md/?id=12106&mod=news](http://www.unimedia.md/?id=12106&mod=news)

408 Law N. 16-XVI passed on 15.02.2008, published in the Official Gazette N. 94-96/351 on 30.05.2008

409 Article 1, ibidem

The 16/2008 Law describes in general terms the procedure of declaration of personal interests, the handling and solving of a conflict of interest, general provisions regarding the form, the content and the terms of declaring personal interests. However, it does not include a concrete template for the declaration. According to Art. 17 of the 16/2008 Law, the verification of the declarations is to be done by the Central Ethics Commission. At the request of the Commission, the verification can be done by institutions that have it in their legal authority to control information. The Law provides that the establishment of the Central Ethics Commission, as well as its role and composition are regulated by Parliament statute.

The Legal regulation of conflicts of interest is undoubtedly a necessary and important step in preventing corruption and can be qualified as a positive evolution. The adoption of a law to this effect also ensures the respect of certain commitments made to international organizations<sup>410</sup>. However, the actual way that conflicts of interest are regulated by law has aroused a series of significant concerns and objections from civil society organizations, which have criticized this law for its many gaps.

Thus, a recent study done by Transparency International Moldova mentions that “the Law on conflicts of interest gives an erroneous interpretation of the notions of “conflict of interest” and “personal interest”, takes a narrow approach to the category of close acquaintances and doesn’t include certain obligations and responsibilities of public institutions in dealing with conflicts of interest”<sup>411</sup>. Another study<sup>412</sup> notes a series of gaps in the law: “1) *The Law doesn’t include a template for declaring the civil servants’ personal interests*; 2) *Despite the significant role of the Central Ethics Commission, the Law doesn’t have any articles on this key institution*; 3) *The Law only provides the penalty (disciplinary, administrative, civil or penal) for the neglect on the part of the civil servant to declare immediately the emergence of a conflict of interest; however, the Law doesn’t provide for specific cases of individual punishment*; 4) *The Law on petitions provides for the public declaration of a conflict of interests only on request within 30 days; this is not a quick and efficient enough way for citizens to protect themselves in a timely manner against the adverse effects of a decision made involving a conflict of interests*”.

### 9.1.2 The implementation and efficiency of regulations

Although the 16/2008 Law will soon “turn” 3, its role in the prevention of corruption is null. As long as the lawmakers don’t consider adopting in a timely manner bills related to the Law on conflicts of interest which would establish the enforcement “infrastructure” for it, an evaluation of its implementation and efficiency cannot be carried out. To date, the provisions of the Law have practically not been enforced.

This is also confirmed by the Transparency International Moldova (TI-Moldova) study

410 Article 3, *ibidem*

411 See for example the Compliance Report for the Republic of Moldova issued at the 40th plenary meeting of GRECO (Strasbourg December 1st – 5th 2008): “Recommendation ix.: to pass legislation that clarifies the issue of conflicts of interest, including the transition of public agents into the private sector and to implement an efficient control system of declarations of property and interests of public agents”

412 “The handling of conflicts of interest in the public service: evolution or stagnation”, Iana Spinei, Published by “Bons Offices”, Chisinau 2010, page 4

mentioned above<sup>413</sup>, which asked if civil servants are familiar with the provisions of the legal framework which regulates conflicts of interest. The study also evaluated the applicability of the law by public institutions. The study included 16 central public authorities/institutions and was based on a survey of employees on the perception of conflicts of interest. Some of the findings below:

- the procedure of declaration of personal interests and situations of possible conflicts of interest has not begun yet;
- none of the public institutions have confirmed that they have included the requirement of declaring one's personal interests in their internal procedures, nor in the contracts that regulate the hiring, election or appointment of civil servants;
- about 50% of respondents confuse the concept of a conflict of interests with corruption;
- unawareness of or the erroneous interpretation of the notion of "personal interest" persist;
- a number of respondents don't know what the declaration of personal interests is, confusing it with the declaration of income and property

Consequently, this seems to be a situation quite typical in the Republic of Moldova, when laws are being adopted, but not adequately implemented. This is also confirmed by the results of a qualitative study, carried out throughout November 2010 by CBS-AXA at the request of IDIS "Viitorul". According to the study, *"throughout the last 10 years laws are being adopted, but remain essentially inefficient because the mechanism for the implementation and financing of the law is not stipulated. Thus, the law is left without financial backing. The law does exist de jure, but it is not enforced for the lack of efficient implementation mechanisms... A lot of laws are adopted just for the sake of the international community". Unfortunately, the lawmakers don't seem to understand the crucial importance that these laws have for the country's development"*

Although the 16/2008 Law is not de facto enforced, this does not mean that the phenomenon of conflicts of interest does not exist in the Republic of Moldova. However, in contrast to other countries where the mechanism for declaring conflicts of interests is functional and monitored by special institutions, mass-media institutions and civil society organizations have assumed this responsibility in Moldova. They have made public cases of conflicts of interests<sup>414</sup> that have not been investigated by law enforcing agencies. This kind of reaction, or lack thereof, is somewhat foreseeable because the current legislation doesn't provide for any concrete penalty for violating the Law on conflicts of interests. Thus, the statement that *"as long as there are gaps in the Law on conflicts of interest, its efficiency in preventing corruption is similar to that of a scarecrow for civil servants, of which they aren't really afraid"*<sup>415</sup> is justifiable.

413 "The efficiency of anti-corruption policies and actions in relation to the EU-RM Action Plan", Cristina Cojocaru, Chisinau 2009, pages 101-102

414 "The handling of conflicts of interest in the public service: evolution or stagnation", Ianina Spinei, Published by "Bons Offices", Chisinau 2010, pgs. 41-43

415 A series of cases of conflicts of interest of the Balti mayor Vasili Panciuc, of the ex-president of the Republic of Moldova Vladimir Voronin and of the ex-Minister of Construction and Regional Development Vladimir Baldovici were revealed in the investigative article "Every man wishes water to his own mill or how public officials hide their interests and run for elections" <http://www.investigatii.md/index.php?art=372>; <http://www.api.md/articles/7613/index.html>

### 9.1.3 New Initiatives

Taking into account the inapplicability of the 16/2008 Law and the recommendations of international institutions and of civil society organizations, the Ministry of Justice has recently submitted two bills: a Bill to modify and supplement several laws and a Bill regarding the Central Ethics Commission, its structure and operations<sup>416</sup>. The purposes of these two bills are: “1) the revision of the current mechanism for the declaration of income and property of public officials, judges, prosecutors, civil servants and of persons who hold leadership positions, through empowering the Central Ethics Commission to verify these declarations and the revision of other legal provisions in both the Law on declaring and verifying income and property of public officials, judges, prosecutors, civil servants and of persons who hold leadership positions, the bill modifies the list of persons subject to declaring income and property, and in the Law on conflicts of interest; 2) to develop and establish the status of the Central Ethics Commission; to set up the Central Ethics Commission’s responsibilities; to establish its structure and organization; to develop the procedure for examining and resolving conflicts of interest and for verifying the declarations of income and property and personal interests”.

The main legal modifications that these 2 bills introduce have to do with:

- “- the revision of the penalty for violating the Law on declaration and verification of income and property of public officials, judges, prosecutors, civil servants and of persons who hold leadership positions and establishing a penalty for violating the Law on conflicts of interest;*
- the amendment of the Law on declaration and verification of income and property of public officials, judges, prosecutors, civil servants and of persons who hold leadership positions;*
- the repeal of the Law on approving the Regulation on the organization and operations of the Central Commission that verifies declarations of income and property; and the Regulation on the organizations and operations of departmental commissions that verify declarations of income and property;*
- the amendment of the Law on conflicts of interests (to modify the term limit for submitting a declaration of personal interests, the group of persons subject to the declaration of personal interest, the clarifying of the norms that establish the penalty for violating this law, as well as establishing a template for the declaration of personal interests);*
- the establishing of penalties for violating the terms of the declaration of income and property or of personal interests;*
- creating a sanctions mechanism for persons who are in a state of conflict with the Law and who have not done anything to amend this situation, as well as for persons who have executed/issued administrative or judicial acts in violation of the Law on conflicts of interests;*
- supplementing the Law N. 355-XVI passed on December 23<sup>rd</sup> 2005 on the remuneration system in the public sector, in order to set the salaries of Commission officials, including the president and*

416 “The efficiency of anti-corruption policies and actions in relation to the EU-RM Action Plan”, Cristina Cojocaru, Chisinau 2009, pg. 104

*the vice-president;*

- *including certain norms for the transition from the current system of declaration of income and property to the newly created one; and from the current system of declaration of conflicts of interests to the newly created one;*
- *establishing the status of the Central Ethics Commission as a permanent independent entity with judicial authority, which cannot be influenced by any public authority – be it an individual or a legal entity - in the execution of its obligations;*
- *establishing the responsibilities of the Central Ethics Commission: regarding the verification of the declarations of income and property and of personal interests;*
- *establishing the structure of the Commission, which will comprise 26 units, including a president and a vice-president; the Commission will have a permanent status etc.”<sup>417</sup>*

Consequently, it is important to mention that the Moldovan authorities have recognized the need to “resuscitate” the Law on conflicts of interests and to cardinaly change the situation in the resolution of conflicts of interests. Furthermore, these new legislative initiatives will contribute to the enhancement of the mechanism for declaring income and property, which at this point is purely formal<sup>418</sup>. The two legislative initiatives can contribute to the improvement of the situation, but they depend directly on the goodwill of the political-administrative public authorities and on their true intention to implement the new provisions.

The passing of the two bills will be a challenge for the XIX Parliament, which will have to get rid of the inertia and apathy present in the previous parliaments and show courage and perseverance in regulating this sensitive field. Also, the important and even decisive role of the central and local public authorities need not be neglected because they will be responsible for effective enforcing the new regulations. Remember that a good law is nothing more than an expression of good intentions if it is not supported and enforced by the government.

## ***9.2 How effective are the arrangements for protecting office holders and the public from involvement in bribery?***

### **9.2.1. An analysis of the legal framework, of the implementation and the efficiency of regulations**

The law on corruption prevention and control<sup>419</sup>, passed in April 2008 sets up a series of “guarantees of corruption prevention”, applicable to civil servants and to society as a whole.

417 <http://justice.gov.md/file/acte%20normative%20spre%20examinare%20Guvernului/final%20remis%20Guvern.doc>

418 Information Notes for the bills mentioned above, which can be accessed through the aforementioned link.

419 Study on the “Declaration of income and property of public officials, judges, prosecutors, civil servants and of persons with leadership positions: problems and resolution prospects in the Republic of Moldova”, Published by “Bons Offices”, March 2009, pgs.112-117



These guarantees refer to:

- 1) the organization of public authorities' activities;
- 2) anti-corruption expertise and the evaluation of institutional corruption risks;
- 3) public procurements; the way to constitute and administer public finances;
- 4) the participation of civil society in corruption prevention and control; their access to the decision-making process;
- 5) the cooperation between the public and private sectors;
- 6) the prevention of legitimization of unlawful incomes
- 7) the political and electoral process.

Regarding the **organization of public authorities' activities**, the following components are relevant to the prevention of corruption: "the strict delimitation of the responsibilities of public authorities and of civil servants, based on the principles of transparency and objectivity; top-down and bottom-up (civil society) monitoring of the activities of public authorities and of civil servants; enhancing the structure of the civil service and of the resolution procedure of issues having to do with the personal interests of individuals and of legal entities; ensuring a material base and a social guarantee for the execution of duties that are in the competence of and the responsibility of a particular official position; establishing certain special standards, restrictions and interdictions, employment, appointment and promotion criteria necessary for the exclusion of conflicts of interest, for the defense of the Constitutional regime, of the rights and legitimate interests of individuals and of legal entities; an adequate equilibrium between the judicial immunities granted to certain categories of civil servants". The latest legislative developments in the civil service<sup>420</sup> show the willingness of the Moldovan authorities to comprehensively regulate the status, the competences and the limits of the authority of civil servants. However, certain concerns regarding the enforcement of these regulations persist:

- the public authorities' decision-making transparency is not fully ensured<sup>421</sup>;
- the resolution of the issues of individuals and legal entities, including through the current petitions system, does not fully respond to the needs of those persons<sup>422</sup>. Furthermore, recent modifications to the Law on petitions<sup>423</sup> exclude the possibility of examination of anonymous petitions by public authorities and this will discourage citizens from going to the authorities to prevent acts of corruption. A solution which would justify this amendment would be for the Parliament to pass the bill on the protection of whistle blowers, a bill drafted by the CCECC with the purpose of "encouraging citizen involvement in detecting violations of the law<sup>424</sup>". The need for the passing of this bill is emphasized by civil society<sup>425</sup>;

420 Law N. 90-XVI, Art. 5, passed on 25.04.2008 (the Official Monitor of the Republic of Moldova N. 103-105/391, published on 13.06.2008)

421 Implementation of the Law on civil service and the status of the civil servant, N. 158/2008, the Law on the verification of civil servants and of candidates for civil service, N. 271/2008, the Law on the status of employees in the offices of public officials, N. 80/2010, the Law on the status of public officials 199/2010, the Law on decision-making transparency 239/2008

422 Monitoring Report on decision-making transparency, April - June 2010, written by the Association for Participatory Democracy, <http://www.e-democracy.md/files/raport-monitorizare-respectarii-transparentei-decizionale-aprilie-iunie-2010.pdf>

423 "The petitions system: monitoring and improvement of" Study, Efim Obreja, Transparency International, Chisinau 2010.

424 The Law to modify certain legislation, N. 73/2010

425 The Bill is published on the CCECC website under the "Decision-making Transparency" directory

- the issue of conflicts of interests within the civil service has not been resolved (see the comments from 9.1)
- the issue of judicial immunity given to certain categories of civil servants has not been resolved. To date, there is no staunch position of the public authorities on either the need to maintain the institution of “immunity” or its abolition for all beneficiaries. Initiatives to abolish judicial immunity were put forward in the 2010 election campaign<sup>426</sup>, but enacting this reform would require modifications to the Constitution and a prudent approach that would uphold the independence of certain branches of state authority;
- the salary levels and social guarantees offered to civil servants remain inadequate.

Another measure in the fight against corruption is the “**evaluation of institutional risks of corruption**”, which also entails identifying and analyzing factors contributing to or capable of contributing to corruption and drafting recommendations to rule out possible effects of the aforementioned risks”. To date, corruption risk evaluations have been carried out at the central public authorities’ level without being implemented at the local level.

According to the law, corruption prevention and control in the **public procurements system**, in the raising of and administering public finances, is ensured by: the transparency and public posting of information regarding public procurement procedures; using objective criteria in the decision making process; ensuring ways of redressing grievances in case of violation of laws or established procedures; applying efficient accounting, audit and control models; the legal and purposeful use of public finances, taking into consideration cost savings and efficiency.

According to a study by TI-Moldova which looked at the procurement process in Chisinau, the following problems were identified:

- *civil society’s access to public procurement information is very limited;*
- *the frequent violation of public procurement procedures set up by the current legislation and of clauses of public procurement contracts;*
- *the lack of an efficient mechanism, involving civil society, to monitor the execution of procurement contracts;*
- *the business environment is significantly affected by public procurement procedures and by the frequent violation of these procedures.*

One of the conclusions of the study mentioned above is that “the phenomenon of corruption in the Republic of Moldova increases the costs of public procurement projects by 34% - 58%”. This conclusion was made after analyzing the procedures employed in and the costs incurred for the rehabilitation of the “Military Glory” Complex and of the “Eternity” civil cemetery.

<sup>426</sup> “The petitions system: monitoring and improvement of” Study, Efim Obreja, Transparency International, Chisinau 2010, pg. 79.

In 2009 the Court of Accounts carried out a performance audit of several objectives set forth in the 96/2007 Law on public procurements<sup>427</sup>. Issues having to do with the quality of the services provided by the contractors (public agents) and with obstacles encountered by businesses bidding on the public procurements were identified by this audit. The Court of Accounts mentioned that *“the fact that ARMAPAU, the Ministry of Finance and the Government of the Republic of Moldova are not examining these issues thoroughly in order to find an optimal solution to merge the principles of cost savings and efficiency in the distribution and use of budgetary means through public procurements, with protection and support for the economic activities of businesses participating in public procurements. On the other hand, the lack of determination of the authorities will contribute to the persistence of the risk of the inefficient use of public funds and of public procurements fraud. Good practices show that in the conditions of a free market, the combination of increased competition, professionalism and effective public procurement procedures can ensure lower prices and better quality. Consequently, it can lead to the improvement of cost efficiency in the public sector by providing the public a greater number of quality services in a timely manner”*.

Other measures initiated by the authorities of the Republic of Moldova for the prevention of corruption and of civil servants and population's involvement in acts of corruption, include: the **set-up of hot lines** within specialized central public authorities and the implementation of **the “One-stop-shop” principle** in the operations of public authorities responsible for authorization, licensing and other activities.

Although almost all ministry and public agency websites encourage citizens to use the “hot line” when encountering acts of corruption, various studies carried out by civil society and journalistic investigations have shown that calling these “hot lines” seems to be inefficient<sup>428</sup>. It is certain that the efficient functioning of these “hot lines” would tremendously benefit public institutions. They would be more aware of the state of things in their field and would be able to swiftly intervene to sanction corrupt employees. On the other hand, citizens would be able to inform these institutions more promptly when their rights have been violated and thus, contribute to the penalization of persons who ask for inappropriate remunerations for providing certain public services.

The “One-stop-shop” principle is the procedure by which the public authority, together with other public authorities or institutions with the authority to regulate and control, verify the authenticity of the information submitted by the solicitor and/or forward the submitted documents to specialized institutions for approval. If the legislation allows for it, the documents can be approved electronically. Otherwise, the public authority can choose the way to approve the documents, without the involvement of the solicitor. This principle has been applied for some time within the Chamber of Licensing and the Customs Service and recently, it became available for the operations of the State Registering Chamber<sup>429</sup>.

427 The Liberal Democratic Party of Moldova brought forward the electoral initiative to abolish immunity for members of parliament and judges.

428 Court of Accounts Decision N. 19 passed on 28.05.2009 regarding the Audit Report “Several objectives of the Law on public procurements N. 96-XVI passed on 13.04.2007 were achieved, but improvements are needed” (the Official Gazette of the Republic of Moldova N.118-120/17 published on 31.07.2009.

429 “Hot Corruption and the Cold Telephone” Article, Ziarul de Gardă, N. 188 published on 17.07.2008 <http://www.zdg.md/exclusiv/coruptia-fierbinte-si-telefonul-rece>

We can conclude that the efforts made by the public authorities, especially at the legislation level, have a noble purpose. However, in order to ensure their consistency and proper functioning, the legal regulations need to be enforced effectively. The true harnessing of these “noble intentions” has not happened to date. Neither has the recognition of the utility of these relatively new instruments in corruption prevention within public institutions.

### ***9.3 How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests?***

#### **9.3.1 An analysis of the legal framework**

The rules regarding the financing of elections of electoral candidates are set forth in the Law on political parties<sup>430</sup> and in the Electoral Code.

Article 25 of the Law on political parties mentions that “the sources of financing political parties are: party member fees; donations, including those raised during entertainment, cultural and sports events or during other mass events organized by the party; subsidies from the state budget, according to the current legislation and to the annual state budget; other legally acquired incomes”. Article 31 of the same Law regulates that parties will pay for electoral campaigns in a publicly transparent way; they will also periodically submit a statement to the Central Electoral Commission on the financial capital of the party, including expenses incurred throughout the electoral campaign and the sources of these means. The Law on political parties has an explicit provision that “in case that during the assessment carried out at the request of the Central Electoral Commission by the specialized institution, it is revealed that the political party registered as an electoral candidate has received or used financial means in violation of the law, the Central Electoral Commission will address the Supreme Court of Justice with a petition to repeal the registration of this entity as an electoral candidate”.

On its end, in Article 38 the Electoral Code regulates the conditions and ways of paying for electoral campaigns: the publication of information regarding financial resources and other material support offered to electoral candidates; candidates need to open bank accounts entitled “The Electoral Fund”; money donations from legal entities into the candidates’ accounts is only done through transfers; establishing restrictions on the financing and financial support of electoral campaigns by: citizens of Moldova that haven’t turned 18, public organizations, anonymous persons, charity or religious organizations, etc.

430 Law to modify and supplement certain legislation, N. 127/18.06.2010 (the Official Gazette of the Republic of Moldova, N.155-158/543 passed on 03.09.2010)

In November 2009, the Parliament of the Republic of Moldova has suspended the public financing of political parties, so that the provisions of Article 28 which outline the procedures for the public financing of political parties, will be enforced for parliamentary elections starting with July 1<sup>st</sup> 2013 and July 1<sup>st</sup> 2011 for local elections<sup>431</sup>.

### 9.3.2. Implementation and efficiency of the regulations

The enforcement of national legislation regarding political party financing has raised concerns and objections from civil society and international institutions.

A study by IDIS “Viitorul” notes that “having a very narrow base of contributors or persons who would be able to individually contribute to the campaign and taking into account the actual funds raised for electoral campaigns, parties depend on big financiers and on the circles where they can collect these resources rather than on their constituencies”<sup>432</sup>.

Civil society experts have voiced concerns regarding the regulation on donations: the provision that allows for individuals to finance political parties with donations of up to 500 minimum salaries annually and up to one thousand minimum salaries for legal entities, is exaggerated because it doesn't correspond to the standard of living of the population. Based on the average monthly salary for 2008, the maximum allowed donations would be approximately 1.3 million Lei and 2.6 million Lei respectively, which are great amounts and could lead to the “buy out” of the political party which is in violation of the abovementioned law.

In addition, concern has been expressed regarding the fact there is no regulation which requires the publication of the identity of the donor if his donation has exceeded a certain amount. It's also been noted that certain provision of the law are very vague and can have multiple interpretations. The State Fiscal Inspectorate executes the financial review of political parties. However, throughout political campaigns the CEC has this responsibility. This duplication of institutions which execute the financial review of parties means a lower degree of transparency<sup>433</sup>. According to the authors of the “Financing of political parties: between transparency and obscurity”<sup>434</sup> study, there are multiple ambiguities and incongruities regarding the financial monitoring and review of political parties during political campaigns, as well as between them. One of the confusing aspects is that there are multiple institutions with the authority to monitor and review the financial activities of parties in different time periods and in different fields: the CEC, the CCECC, the Court of Accounts, the Ministry of Finance and the Ministry of Justice. A conclusion of the aforementioned study is that *“the great number of institutions meant to review the financing of political parties doesn't ensure transparency and effective monitoring; ... another important aspect that jeopardizes transparency and an efficient review of financing is the fact that these institutions are not*

431 Law N. 294/21.12.2007 on political parties (the Official Gazette of the Republic of Moldova N. 42-44/119 published on 29.02.2008)

432 Law N. 64/12.11.2009 (the Official Gazette of the Republic of Moldova N.171-172/533 published on 27.11.2009)

433 “Political parties in the Republic of Moldova: laws, practices and reforms” Study, Igor Munteanu, Published by Cartier, August 2010, pg.

142, [http://www.viitorul.org/public/2922/ro/Partide\\_politice\\_viitorul.pdf](http://www.viitorul.org/public/2922/ro/Partide_politice_viitorul.pdf)

434 <http://www.info-prim.md/?a=10&ay=21050&nD=2009/01/31>

*politically independent and can be utilized as instruments to intimidate or repress political opponents”.*

The mass-media has constantly highlighted the fact that there are grave problems with the financing of political parties. This fall’s electoral campaign has drawn attention to several of these issues:

- a hidden camera video was shown during a program at a private TV station where a party leader was offered a large sum of money in exchange for the “shadowy donor” to enter the political scene in the Republic of Moldova<sup>435</sup>;
- mass-media articles and TV talk-shows have highlighted the issues related to donations into the candidates electoral funds and their sources<sup>436</sup>;
- the authorities’ response/interventions in the identified cases have been rather amorphous and futile.

The issues that came up during the fall 2010 electoral campaign have actually drawn attention to the deficiencies in the legal framework. These gaps were previously noted by civil society at the drafting stage of the new Law on political parties.

## ***9.4 How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?***

Article 12 of the Law on corruption prevention and control states that the prevention of corruption in the political and electoral processes is ensured by: establishing certain rules to control the activities of political parties according to the current legislation; the exclusion of the possibility of an unlawful intervention from internal or external actors, which advocate for their interests in the political decision making process; the holding of elections on the basis of democratic principles. In contrast to the guarantees meant to prevent corruption in other fields, the legal provisions on political corruption are rather brief.

It is important to mention that the problem of the influence of the business sector on public policies has not been comprehensively analyzed in the Republic of Moldova, while the influence of the public sector on businesses has been examined. Nevertheless, the identified issues with the financing of political parties and electoral campaigns show that representatives of the corporate world, whether on the party list or “just” financially supporting a party, play an important role in the development and implementation of public interest policies. It is also important to note that the role of members of parliament coming from the business world becomes more prominent in the drafting of the Parliament

435 [http://www.viitorul.org/public/3118/ro/POLITICI\\_PUBLICE\\_8\\_finante%20partide.pdf](http://www.viitorul.org/public/3118/ro/POLITICI_PUBLICE_8_finante%20partide.pdf), Chişinău, IDIS Viitorul, 2010, (Public Policies; N. 8), pg. 10

436 “Fabrika” TV program aired on Publika TV on October 26th 2010 <http://www.publika.md/>



agenda, which “is an extremely attractive venue for those who want to find supporters for: the modification or promotion of certain tax breaks by parliamentary decision, the emergence or dissolution of certain institutions, the endorsement or disapproval of high-level officials in the judicial system”<sup>437</sup>.

An August 2010 study mentions that: “an analysis of the legal framework which regulates political party financing easily leads to the conclusion that a major problem of the existing system is the overwhelming influence of big donors on parties, through both legal and illegal means”<sup>438</sup>.

The issue of the influence of business interests on politics in the Republic of Moldova has also been highlighted by civil society experts. According to them, “the main objectives of the legislation on party financing – the reduction of dependence on private donors, the control of political corruption and the institutionalization of a more equitable framework in regards to the access of smaller and poorer parties to state financial resources – have not been accomplished”<sup>439</sup>.

An analysis of the legislative process in the Republic of Moldova has shown that the majority of bills “promoting private interests in the detriment of the public good” come from members of parliament. A three year study of this issue has revealed that out of all the bills initiated by the representatives, 43% can be qualified as promoting private interests<sup>440</sup>.

Throughout the April 2009 parliamentary elections, the “Campaign for a Clean Parliament” was implemented for the first time, initiated by a group of civil society organizations. This campaign entailed the monitoring of the persons on party lists by civil society institutions. An investigative article written after the abovementioned campaign had emphasized the connections between the interests of businessmen and the persons who run in the elections<sup>441</sup>: “It is a well known fact that big business is inclined to sponsor the electoral campaigns of political parties in order to then benefit when these parties get into office and implement public funds. A couple of companies have stood out from all the businesses which have financed the two electoral campaigns of this year: Elat-Profit LLC and ITS-Grup have donated to the electoral campaign of the CPRM 1.5 million lei and 1 million lei respectively”. Furthermore, the authors of the article mention that one of the companies that donated to the electoral Fund of the CPRM had benefited from the purchase of shares in a state-owned company at a minimal price.

The existence of occult connections between the business world and government has also been publicly stated in Parliament. In his October 29<sup>th</sup> 2009 speech, Mihai Ghimpu, the Speaker of the Parliament of the Republic of Moldova, mentioned that “there was a corruption scheme in the import of meat, fish and of other products. Studies on the efficiency of the Moldovan economy show that in the last few years there have been serious customs violations in the import and sales of meat and meat products on the domestic market. Certain corporate interests have been consolidating for some time now in the meat mar-

437 <http://www.allmoldova.com/ro/experts/288.html>, [http://www.infopress.md/?action=News&title\\_id=17&id=1406&id\\_cat=8](http://www.infopress.md/?action=News&title_id=17&id=1406&id_cat=8), <http://jurnal.md/ro/news/pcrm-recidiveaza-195247/>

438 “Political Corruption: context and significance”, V. Popa, I. Munteanu, N. Izdebschi, I. Cuhai, published by Cartier, 2001, pg. 47-48

439 “Political parties in the Republic of Moldova: laws, practices and reforms” Study, Igor Munteanu, Published by Cartier, August 2010, pg. 142, [http://www.viitorul.org/public/2922/ro/Partide\\_politice\\_viitorul.pdf](http://www.viitorul.org/public/2922/ro/Partide_politice_viitorul.pdf)

440 “An analysis of the financing of political parties and electoral campaigns in the Republic of Moldova” Study, Sergiu Lipcean, Chisinau, IDIS Viitorul, 2009, (Public Policies; N. 5), pg. 6

441 “The efficiency of the mechanism to analyze the corruptibility of legislative bills in the Republic of Moldova between 2006 and 2009” Study, pg. 25, [http://capc.md/docs/Studiu\\_2006-2009.pdf](http://capc.md/docs/Studiu_2006-2009.pdf)

ket, using lobbying, protectionism and corruption at the highest levels, with the involvement of several public officials. Consequently, this has directly disadvantaged the Moldovan citizens and the state budget”<sup>442</sup>.

The case with the Law on the liquidation of financial tribunals cannot be ignored either. During one session of Parliament, two of the three representatives that were against the law on the liquidation of financial tribunals were businessmen. Consequently, this was interpreted by parliamentary colleagues as an endorsement of the interests of the judges of financial tribunals, and these in turn were based on the business interests of the two deputies.

The objective of the “Anti-Mafia” campaign, launched in the summer of 2010 and then morphed into the electoral platform of a political party, was to reveal and condemn several occult corruption schemes, which would demonstrate the influence of the business world on governance. This campaign looked at all government institutions and allegedly uncovered a number of fraudulent schemes in which high-ranking public officials – judges, prosecutors, civil servants – were being influenced or controlled by business interests.. As a reaction to this campaign, the Supreme Security Council of the Republic of Moldova<sup>443</sup> was convened. The Council gave orders to state enforcement institutions to investigate the cases brought up by the campaign initiators. The consequent investigations, carried out by the respective government institutions, did not officially confirm the accusations raised by the campaign initiators.

**We can conclude** that in the absence of strict regulations which would exclude corporate influences on governance, we will continue to witness cases where politicians promote corporate interests and “when these politicians get into office, they’ll have to pay certain dividends to these donors”<sup>444</sup>.

## ***9.5 How much confidence do people have that public officials and public services are free from corruption?***

The measurement of the degree of trust of the population – that neither civil servants, nor public officials will get involved in corruption – is carried out by many international institutions and Nongovernmental organizations from the Republic of Moldova. The most popular indicator to measure corruption is the Corruption Perceptions Index (CPI), measured by *Transparency International*. This is an aggregate index that shows the levels of corruption perception in various countries around the world and ranks these countries by the degree to which corruption is perceived among civil servants and politicians. The index uses a scale of 0 to 10, 0 being the grade of a totally corrupt country and 10 – the grade of a country without any corruption.

According to the 2010 CPI, the Republic of Moldova was downgraded to its 2008 score - a 2.9 score and ranked 108 out of 178 countries included in the scale (to compare, in 2009 the Republic of Moldova obtained 3.3 points and was ranked 92 out of 180 countries)<sup>445</sup>.

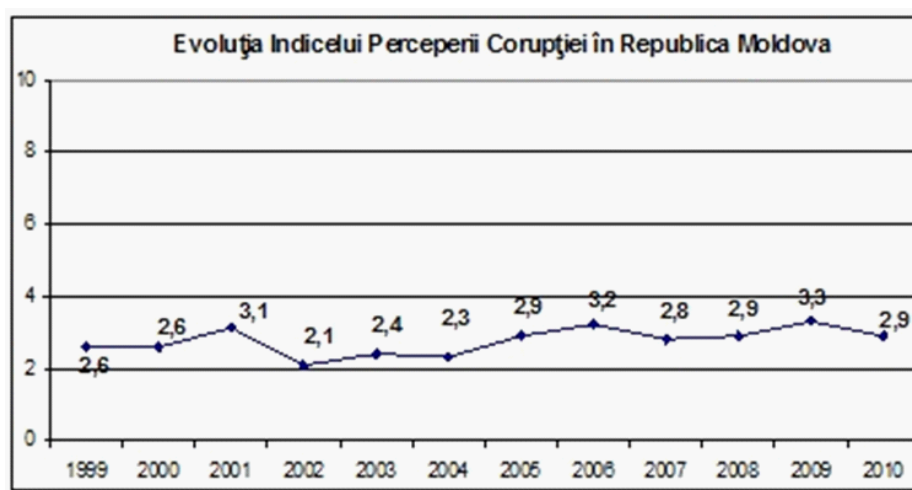
442 Investigative article “How much does a parliamentary mandate cost”, <http://investigatii.md/index.php?art=384>

443 [http://www.pl.md/libview.php?l=ro&video\\_id=71&idc=78&id=1295](http://www.pl.md/libview.php?l=ro&video_id=71&idc=78&id=1295)

444 Supreme Security Council meeting from September 3rd 2010

445 <http://www.azi.md/ro/story/14457>

**Chart 26 “The fluctuation of the Corruption Perception Index in the Republic of Moldova”**



The Barometer of Public Opinion (BPO) measures the concerns of the population regarding the spread of the phenomenon of corruption and the degree of satisfaction of the people with the efforts made by the country leadership in combating corruption. The BPO is a public opinion survey carried out twice per year by the Institute for Public Policies (IPP). The main themes of the survey are the ones that concern the population most, including corruption perception.

The flux of the population's concern regarding corruption and their degree of satisfaction with the Government efforts are presented in the table below<sup>446</sup>.

**Table 26 “The population's concern in relation to corruption and the degree of satisfaction with the efforts made by the Government in fighting corruption”**

To what degree are you satisfied with what the country leadership is doing to fight corruption? (“Satisfied/Very Satisfied”)											
Feb. 2005	Dec. 2005	Apr. 2006	Nov. 2006	May 2007	Nov. 2007	Apr. 2008	Oct. 2008	March 2009	July 2009	Nov. 2009	May 2010
17%	10%	13%	12.2%	11.6%	9.4%	8.6%	7.5%	13.7%	12.5%	14.2%	9.9%
What are the issues that currently concern you most? (percentage of responses that involved corruption)											
Feb. 2005	Dec. 2005	Apr. 2006	Nov. 2006	May 2007	Nov. 2007	Apr. 2008	Oct. 2008	March 2009	July 2009	Nov. 2009	May 2010
24%	22%	24%	24.3%	27.0%	28.2%	23.1%	25.5%	26.6%	26.6%	23.7%	20.5%

Source: *The Barometer of Public Opinion*

The perception of corruption in the Republic of Moldova and its fluctuations were measured by several public opinion surveys carried out by IMAS-INC Marketing and Polls Chisinau<sup>447</sup>. According to these sociological studies the following can be noted:

- the most urgent problems in the Republic of Moldova currently are: corruption (45%), unemployment (43%) and poverty (42%);

<sup>446</sup> <http://www.transparency.md/content/view/875/49/lang.ro/>

<sup>447</sup> The Public Opinion Barometer, May 2010 [http://www.ipp.md/public/files/Barometru/2010/Brosura\\_BOP\\_05.2010\\_a\\_doua\\_parte.pdf](http://www.ipp.md/public/files/Barometru/2010/Brosura_BOP_05.2010_a_doua_parte.pdf)

- three fourths of the population (75%) believe that the majority or all civil servants are involved in corruption (compared to 79% in 2007 and 77% in 2005);
- policemen (71%), customs officials (69%) and doctors are the professions which are regarded as the most corrupt; 6-7 out of 10 people believe that the majority or all of professionals in these groups are involved in corruption;
- the institutions that are perceived as very corrupt by the population are: the police, the customs, the hospital, the Presidency and the Parliament.

**In conclusion**, we can affirm that the efforts made by the public authorities to prevent and control corruption were not consistent and have not convinced the population of the audacity of their actions to reduce the corruption level. Public opinion surveys show a high degree of dissatisfaction with the authorities' performance in this field.

#### **Summary: progress achieved over the last 3-5 years**

	Very good	Good	Satisfactory	Poor	Very Poor
9.1				X	
9.2			X		
9.3				X	
9.4					X
9.5				X	

**Important Achievements:** 1. Multiple bills have been drafted to improve the prevention, handling and resolution of conflicts of interest and to mandate the declaration of income and property by high-ranking public officials and civil servants. 2. The implementation of the “One-stop-shop” principle in three public institutions.

**The most serious problems:** 1. Numerous declarations of income and property of public officials have not been published; multiple gaps persist in the declaration and control of income and property of public officials; the penalization of false declarations of income and property is not enforced; 2. The lack of efficient mechanisms to protect persons who declare cases of corruption. 3. Major deficiencies in the regulations on political party financing and in the adequate enforcement of these regulations; the delay in the implementation of legal provisions on political party financing from the state budget. 4. The existence of political corruption: there are certain occult connections between the interests of businessmen and persons who run for office or already hold high-ranking positions; neither the penal, nor the misdemeanors legislation prescribes any penalty for the “corruption of voters”. 5. Concerns regarding corruption prevention persist; the effects of anti-corruption measures don't testify to the existence of true willpower on behalf of the authorities in this field.

**Recommendations:** 1. Ensuring the endorsement and the passing of bills that will contribute to an efficient control of conflicts of interest and of income and property of high-ranking public

officials and civil servants. 2. The enhancement of regulations on financing of political parties and electoral campaigns. 3. Extending the “One-stop-shop” principle to other public institutions which issue authorizations. 4. Researching the breadth of political corruption in the Republic of Moldova, its manifestations and proposing legislative solutions to this problem.

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## PART III

# CIVIL SOCIETY AND POPULAR PARTICIPATION

## 10. THE MEDIA IN A DEMOCRATIC SOCIETY

*Cornel Ciurea*

### ***10.1 How independent is mass media in the Republic of Moldova?***

The status of mass media in Republic of Moldova changed most of the times depending on political fluctuations in the country. The political intervention itself should not be necessarily treated as a negative factor, even though free ideology does not welcome the co-habitation of politics and mass media. However, the interference of politics in mass media often proves to be a positive factor, acquiring the sources necessary for mass media to survive, but also setting the standards necessary for good functioning (this factor is valid especially for public television and radio). However, the often obscure and clandestine way policy makers try to influence mass media institutions and the lack of transparency in this area rise legitimate reproach. During 2001-2009, it was almost unanimously perceived as faulty the way policy makers ensured the freedom and objectivity of mass media; however, EIA coming to power brings a radical change of paradigm, favoring a more positive approach of mass media institutions. However, the change of governance also determined a boost of confrontations in this area.

Therefore, we could conventionally divide the situation of mass media after the CPRM coming to governing in 2001 into two periods. During the first period, there was a serious decline of domestic mass media. Its behavior, but also the conduct of the ruling party towards the “watch dog of society” during election campaigns in 2009 as well as during the events of April 2009 showed serious disfunctions on free expression and information; the independence and freedom of press from any political influence, from censorship and self-censorship; integrity and respect for the law on behalf of state institutions, but also on behalf of the press etc. The conduct of public mass media institutions, especially IPNA “Teleraudio Moldova” Company and the regulator of the sector – the Coordinating Broadcasting Council (CBC) was symptomatic. National and international reports signaled serious breaches from legal norms on public radio broadcasting service, and CBC, which

is the guarantor of public interests and seeks to coordinate broadcasting activities, exercised its authority as a barely influential body.<sup>448</sup>

During the second period, following the European Integration Alliance (EIA) coming to power, a certain opening towards the issues of the press is registered and the pressure on mass media is decreasing. Under such conditions, the representatives of mass media take advantage of favorable times and request the new governance to prove its devotion towards European norms on mass media and freedom of expression in order to strengthen the democratic process initiated in Moldova. Non-governmental organizations fighting for freedom of mass media, freedom of speech and unhindered access to information outlined a menu of solutions for the most stringent issues in this area. Being aware of the decline of freedom of press in our country, the current governance initiated some reforms of the legal framework. Some of these actions were appreciated by mass media institutions and NGOs as welcomed (e.g. opening new private news channels or liberalizing National Public Television), while the former power and affiliated mass media criticized bitterly the actions of the EIA in this sector.<sup>449</sup>

## ***10.2 How representative are the media of different opinions and how accessible are they to different sections of society?***

The international non-governmental organization *Reporters without Frontiers*, with its headquarters in Paris, published its report for the previous year, where they analyze the progress of mass media in 178 countries around the world. Moldova is ranked as 75<sup>th</sup>. In 2009, freedom of mass media in Republic of Moldova has significantly deteriorated as compared to 2008, when our country was ranked on the 98<sup>th</sup> position in the report of *Reporters without Borders*. In 2010, Moldova is outrun by Kenya and followed by Mongolia as to the freedom of mass media indicator. This indicator is better for our country than in the previous years, which could be explained by the fact that in 2009 there were more occurrences of a higher degree of freedom of press, i.e. there were less political pressures on mass-media and there was more freedom to express various opinions. At the same time, in the past year, there was a genuine media boom in Republic of Moldova since many new mass media institutions were established, including several television channels, radio stations and newspapers. This definitely means greater pluralism for the media market. But a larger number does not necessarily mean better quality of information which is disseminated by mass media institutions. There is still a lot of room for improvement in this area and even monitoring reports on presenting election campaigns show that there are sufficient deontological issues within the Moldovan press for us to be able to talk about free expression of opinions, which is at the same time fair from a deontological point of view.

448 Research Report "The fluctuation of corruption perception in the Republic of Moldova 2005 – 2009", a product of the Common Project of the European Commission and the Council of Europe, co-financed by the European Commission, the Swedish International Development Cooperation Agency and the Council of Europe

449 [http://alegeliber.md/files/rapoarte/raport\\_1\\_cij\\_rom.pdf](http://alegeliber.md/files/rapoarte/raport_1_cij_rom.pdf), Monitoring mass media during the campaign for parliamentary elections 2009, Report 1, 5-18 February 2009

**Table 27 „Freedom of Press Indicator, 2010”<sup>450</sup>**

Country	Score	Higher/Lower than in 2009
1. Finland	0,00	=
2. Island	0,00	higher
3. The Netherlands	0,00	lower
10. Ireland	2,00	lower
20. USA	6, 75	=
30. Latvia	8,50	lower
40. Portugal	12,36	lower
50. Italy	15,00	=
53. Romania	16,00	lower
60. Togo	17,00	higher
70. Benin	19,00	higher
75. Moldova	19,13	higher
100. Georgia	27,00	lower
131. Ukraine	46,83	lower
140. Russia	49,90	higher

At the same time, the following two trends were registered by the Moldovan mass media. First of all, they are divided based on linguistic criteria, where we have Romanian language mass media and Russian language mass media. Second, the mass media system reflects the search of identity in the entire country and often serves as a mechanism for building and consolidating various identity options. These significant divisions separate the media environment into two parts, isolating various segments from one another and forming parallel communication channels. Despite having four television channels with national or quasi-national coverage, there is no unified media environment accessed by the entire population of Republic of Moldova. This fact brings doubts about the project of building statehood since constituting a single media environment together with particular environments represents a priority task for democratic countries. For the moment, public television does not have sufficient capacity to be able to settle this issue on its own.

This is also proven by the popularity ratings of televisions, where TVM is not the indisputable leader. The ATS-based measures taken in spring-summer 2010 testify a delicate dominance of Prime channel, which in March<sup>451</sup> was watched twice as much as its main competitors (i.e. watching daily television). Moldova 1 is on the 2<sup>nd</sup> – 4<sup>th</sup> position together with TNT and N4, but the ranking of this television is decreasing. At the same time, the popularity of niche televisions such as Jurnal TV and Publika TV is increasing.

The legitimate question in this context would be as follows – is the information market divided on linguistic criteria an indicator of pluralism? In this context, two aspects should be emphasized. Until now, the Moldovan mass media system seems to confirm the idea that “media is the message” – in other words, we can say that linguistically divided mass media spreads totally opposite messages, the linguistic choice being an indicator of the political choice, and even geopolitical one.

On the other hand, it could be said that in Republic of Moldova there are well formulated choices for two different languages and this fact is reflected by mass media. This reflection is indeed a criterion of pluralism, but this pluralism is weak because mass media pluralism does not mean only reflecting the situa-

<sup>450</sup> [http://www.adevarul.ro/international/foreign\\_policy/europa\\_fp/arata-presa-moldoveneasca\\_0\\_385162131.html](http://www.adevarul.ro/international/foreign_policy/europa_fp/arata-presa-moldoveneasca_0_385162131.html)

<sup>451</sup> [http://en.rsf.org/press-freedom-index-2010\\_1034.html](http://en.rsf.org/press-freedom-index-2010_1034.html)

tion existing within the society. This would mean that mass media reflects only the existing situation (being a mere observer). However, pluralism remains an imperative normative concept of a democratic society, so that everyone that was not able to make themselves heard have equal access to mass media. In Republic of Moldova there are people who speak other languages than Romanian and Russian, but can make themselves heard only to an insignificant extent. Therefore, the Moldovan media market divided based on linguistic criteria does not represent a genuine pluralism, but rather illustrates the major tensions within society.

### ***10.3 How effective are the media and other independent bodies in investigating government and powerful corporations?***

There were several cases of mass media getting involved in campaigns to unravel complicities between the power and oligarchs. The most recent case was a scandal in Chisinau focused on businessman Vlad Plahotniuc, which started after the harsh accusations made by the former presidential advisor Sergiu Mocanu. The latter accused Vladimir Plahotniuc to have coordinated from behind some parts of the police, general prosecutor's office and the judiciary, including to have had illegally acquired several businesses, among which Carmez, Gemenii, Codru, Victoriabank, etc. The businessman let to be understood that mass media reporting on the scandal related to the accusations brought to him by a series of policy makers and business people from Republic of Moldova shall be sued. In the opinion of several journalist associations this case represents an extremely dangerous case of economic power abuse. In fact, this is an unmasked blackmail against free press. It is an attempt of the businessman to profit from his fortune and social position to shut journalists up, to arrogate to himself the illegal and unconstitutional privilege of avoiding critique and suppressing any information in mass media that he considers undesirable. However, it is impossible to develop and consolidate democracy in a state of law without freedom of expression.

Another important case is following the activities of the son of former President of the country, Oleg Voronin. At the beginning of 2010, the anonymous breakdown of expenditures from one of the banking cards of Oleg Voronin was publicized in Moldovan mass media, according to which, he spent 67 million Moldovan lei (5.25 million dollars) from his banking cards in the last 16 months. According to this data, Voronin-junior spent money in Baden-Baden, Cyprus, Vienne, Frankfurt, Hamburg, Saint-Moritz (Switzerland), Munich, Paris, Moscow, London, Geneva, Oslo, Greece, Odessa, Roma, Dubai to pay for hotel accommodation and shopping in expensive stores. As a result of these investigations, the Criminal Prosecution Department of the General Prosecutor's Office and CCECC initiated a cause against the son of the former President.

At the same time, mass media is the one that "formats" these corruption scandals. The matter of Plahotniuc and the mafia "octopus" taking over the entire Moldovan political system represents a genuine media working with a profound impact on the collective psyche of the country. Even if the topic of "oligarchy conspiracy" was persistently treated in other historic periods (Bernstein, Oleg Voronin), only recently, the idea of such an overwhelming influence over the darkest pits of public life gained such a large audi-

ence. The myth of total subordination of politicians to the business and of the possibility of their infinite manipulation becomes the main grid of interpretation through which political actions are appreciated. It is a paradox that this happens when recently four parties came to power with the main slogan of honesty, moral integrity and fighting corruption. Mass media is the main handyman of such a change of perception in society, being the institution that weaved a true drama around this topic. This staging of conspiracy of magnates has both positive and negative significance. Among positive are open and active debates over corruption, which could place under a stricter control public authorities and create an intrigue capable of focusing the attention of the general public on the political life in the country, and among the negative ones are, first of all, continuously disseminating unconfirmed, unverifiable and controversial information that can be classified as attempts to deviate discussions among the general public towards sensational, superficial and ludicrous topics.

Even if mass media is the main producer of corruption scandals by unraveling some alleged and occult relationships, it often becomes the target of scandals, being held in infamy by other social actors who see behind apparently innocent and unbiased journalists some malefic and non-transparent interests. At present, most media institutions are suspected of being accomplice to those groups of interest where business and politics bind together to the point of becoming indistinguishable. The main accusations target the fact that the real owners of these institutions are not known and transferring mass media bodies from one owner to the next without any transparency. Also, even if they declare themselves to be impartial and unbiased, some television channels act in a way that feeds suspicions related to their dependency on certain political clans. These suppositions affect the image of journalism in Republic of Moldova and reduce the trustworthiness of journalists in front of the general public.

Moldovan journalism is subjected to a difficult trial due to certain relationships between politics and mass media. This complicity between the press and the power (politicians and businesspeople are part of it) is no longer direct and univocal (for example, party affiliated newspapers and televisions), but are reconfigured using new patterns, which are less visible, and where alliances are created behind the curtain and are surrounded by mystery and obscurity. Under these conditions, mass media does not hold exclusively the role of de-mystifier and revelator, but itself is to be subjected to rigorous radiography that could unravel its shortcomings and fraternization with politics.<sup>452</sup>

## ***10.4 How free are journalists from restrictive laws, harassment and intimidation?***

During the communist governance, journalists from Republic of Moldova were subjected to a great number of abuses. According to a report of the Independent Journalism Center, over 60 journalists from Republic of Moldova were victims of abuse in the first half of 2009. During this period, journalists worked in difficult, dangerous and even degrading conditions in terms of their role within society,

452 Business Class Magazine, July-August, 2010, Nr. 7-8

ending up at the receiving end of many attacks. Also, the division between pro- and contra- government institutions becomes deeper.

Also, in May 2008, 8 non-governmental organizations from Moldova launched a statement on freedom of press in Republic of Moldova where they show that usually laws do not determine the daily activity of mass media, but ideological and bureaucratic customs and reflexes, the interests of the governing party and its allies. „By controlling through the Coordinating Broadcasting Council (CAC) the issuance of licenses, the power continued to take over independent radio and television stations through intermediaries, ensuring its monopoly over TV channels with national coverage”, also says the statement.<sup>453</sup> In this context, the authors of this document refer to the case of former municipal radio station and television channel „Antena C” and „Euro TV Chisinau”. According to them, „it is eloquent that the new members of CBC started their work with requests that sped up the division of „Antena C” and „Euro TV Chisinau” among the CPRM and the PPCDP before the local elections of 2007.”

Another CAC decision that scandalized public opinion was withdrawing at the beginning of 2007 the frequency of radio station „FM 103,5” from Balti, which was broadcasting since 1994 in the favor of a bidder registered shortly before submitting documents for the tender. Moreover, a statement of the founders of „Vocea Basarabiei” radio station from December 19, 2007 said that CBC did not provide them with any frequency out of 10 requested. Instead, at the same meeting of CBC, the NIT television received licenses for all channels posted for tender, the latter being the television where President Vladimir Voronin shows up more and more frequently. NIT is also the television that was criticized for its ribald language in the show “Stories with Masks” (“Povești cu măști”), this matter being discussed in the plenary session of the Parliament.

But even after the events of April 2009, several cases of limiting access to information and intimidating journalists were registered. On May 26, a team of journalists from „Jurnal TV” was prohibited to assist at a press conference at the Ministry of Interior. On June 24, 2009, President Vladimir Voronin, leader of the CPRM, accused the daily newspaper „Timpul de dimineata” to have called for blood shedding after the parliamentary elections of April 5<sup>th</sup>, and Grigore Petrenco, member of the CPRM, accused the radio station „Vocea Basarabiei”, the newspapers “Timpul de dimineata” and „Ziarul de Garda” to have promoted extremist and xenophobic ideas. On June 29, the Prosecutor’s Office of Chisinau municipality informed the State Enterprise „MoldData” about some visitors posting on the „Unimedia” website on April 6, 2009 some comments that “slander R. Moldova, call to violence and massive disorders”, which represent public calls for overthrowing and violently changing the constitutional order in R. Moldova”.

At the same time, in the last months of 2009, the media market in Republic of Moldova entered a natural process of democratization, when healthy competition among media institutions shoot out and a favorable climate for media was created. Several mass media institutions were established, the procedures of issuing licenses became more transparent, TVR was brought back and the reform of the public audiovisual communications was re-launched.

453 Cornel Ciurea, “Mass Media between Referendum and Corruption”, 14.09.2010, <http://www.viitorul.org/libview.php?l=ro&idc=309&id=2999>



## ***10.5 How free are private citizens from intrusion and harassment by the media?***

The Law on freedom of expression, which came into effect on October 9, 2010, is very generous with journalists, raising question marks about being too indulgent, including on using personal data. At the end of the day, the protection of citizens depends more on the ethical professional norms of journalists, but also the balance between public interest and protecting privacy. At the same time, the legislation of Republic of Moldova does not outline clearly enough the line between the public interest and protecting privacy, which could allow mass media interested in sensational news to exploit this vulnerability of principle. Thus, there are often situations when television channels show the faces of children who were sexually abused or the personal data of people whose guilt was not proven in court. As long as professional ethics depends on a personal decision and not a legal norm, there is a lot of room for interpretation. In the end, common citizens shall suffer the consequences.

At present, the National Center for Protecting Personal Data, which should watch over observance of confidentiality and security of data, which should not be available to everyone, does not have legal leverage to intervene. For more than a year the Requirements for Ensuring the Security of Personal Data during their processing by personal data information systems and the Regulations of the Manual Register of Personal Data Holders are pending approval by Government. Without these documents, the operation of the Center is rather paralyzed. Among the most problematic sectors are medicine, mass media, intercepting phone conversations, but also funding political parties.

Due to legislative gaps and infringing deontological norms, democracy in Moldovan society is permanently endangered. Nobody could know when the state or mass media are going to interfere in the private life of citizens. Even the most influential figures in the country are exposed to this risk, such as intercepting phone conversations of Serafim Urechean, Veaceslav Untila, Alexandru Tanase. This kind of abusive interference shows that democracy as a show-off political system can function relatively acceptable, but people would still remain at the mercy of the state that would exercise undefendable influences over them. That is why the law on protecting personal data, even if it is a product of the state as well should be strongly supported in its most radical form. Even though the protection it provides to citizens is rather weak, it represents a means of protection at all negligible for the citizens of Republic of Moldova.<sup>454</sup>

## ***10.6 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

All the countries from this region went through the so-called “colonization” and “Italianization” of press, especially, public television channels. Coming out of Soviet state control and becoming public,

<sup>454</sup> Statement on the Freedom of Press in Republic of Moldova, 3 May 2008 – 3 May 2009, [www.interlic.md/download/478/](http://www.interlic.md/download/478/)

televisions continued to be controlled by the state during communist governing, and commercial televisions were subject to a process of colonization by various political parties. Thus, NIT was 100% controlled by the Communist Party of Moldova, and Antena C and EURO TV were chaperoned first by Serafim Urechean, and then transferred under the sponsorship of PCDP and Iurie Rosca.

The governance of the European Integration Alliance changed the terms, signaling an attempt to a new approach. This attempt targeted first of all „Teleradio-Moldova”, which got rid of the ties of strict state control (for the moment), ending up in the hands of managers coming from civil society who cannot be suspected of occult political partisanship. Is this change a genuine “revolution” in the media sector of Moldova or is it just a short intermezzo that shall be followed by a state come back, this time in a “soft” form. It remains to be seen. For now we can say that these changes precede an unprecedented modification of public television, which proved to be extremely short in duration in other East European countries (let’s remember only 2 years of management of Alina Mungiu-Pippidi at TVR in Romania). At the same time, the colonization of commercial televisions from Moldova becomes less and less obvious. Only NIT remains openly controlled by a political party, while other televisions make consistent efforts to get rid of the image of televisions anchored to some political group. This phenomenon is similar to that occurred among local press at the beginning of the 2000s, when party newspapers tried to get rid (never to the end) of the protective tutelage of politicians.

A closer look at the situation reveals that the trajectory of evolution of domestic press is not different from the development of mass media in Poland, Czech Republic, Hungary and Ukraine. The only thing to mention is that changes in Moldova occurred slower and we are delayed as compared to the countries listed above. Among the main actions that need to be taken to enhance the situation of the media in Republic of Moldova, the following should be mentioned

- the Coordinating Broadcasting Council, as an independent institution, should be held accountable in front of citizens for the decisions it makes. Many of them are lacking impartiality and are dictated by compensatory intentions towards those that were wronged previously. Accountability can be achieved in two ways – exact representation of parties accessing the Parliament in CBC (thus, there would be an accurate representation of political choices in the Parliament) or establishing an independent CBC, which would continue to be under parliamentary control. The main objectives of parliamentary control aim at imposing CBC to motivate its decisions, monitor broadcasts and accurately apply sanctions, and the main tool could be public hearings. At the same time, a mechanism for the accountability of CBC members could be developed.

The intention of authorities to protect domestic shows in the official language is understandable. But, restrictions should not enhance even further the linguistic division of mass media. That is why it is necessary to gradually implement this reform and ensure a grace period for radio broadcasters. At the same time, it is necessary to modify some of the provisions of article 11 of the Broadcasting Code (or respecting existing ones) and introduce some changes in the Law of Advertising of Republic of Moldova from 1997. First of all, this is about observing the provisions on dubbing, subtitling and adding sounds to a broadcast

in a foreign language, clarifying the definition of own production and increasing the share of broadcasting in Romanian for domestically produced shows, removing the requirement to obligatory broadcast in the state language only informative and analytic programs. Second, article 13 of Law on advertising could be subjected to gradual modification by introducing a provision about all advertising on radio and TV being placed only at domestic production.

	Very good	Good	Satisfactory	Weak	Very weak
10.1			X		
10.2			X		
10.3				X	
10.4		X			
10.5				X	

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## 11. POLITICAL PARTICIPATION

*Cornel Ciurea*

### ***11.1 How extensive is the range of voluntary associations, citizen groups, social movements, etc, and how independent are they from government?***

There are over 8000 non-governmental organizations in various areas of activity registered in Republic of Moldova. This is an imposing number that, at first sight, can be treated as a visible indicator of the degree of participation of citizens. However, out of this total number only a small part are active organizations, most of them being located in urban areas and focusing their efforts especially on nation-wide issues, and less on local issues. These organizations are not financed by the governing power and thus depend on alternative funding, especially, from international donors. Even if they are often criticized for their passivity, lacking necessary functional capacities, we could identify a rather high number of organizations that are actively involved in various areas. According to the estimates made by the most important donors of Republic of Moldova, approximately 200 NGOs are active. Overall, the state protects the interests of the civil sector. These organizations enjoy relatively simple registration conditions.

According to the survey carried out by the Contact Center, the most popular legal form of non-governmental organizations is the public organization (91%). The largest number of non-governmental organizations operate for 1-3 years (37%) and for 1 year (19%).<sup>455</sup>

As to cooperation between civil society and the governing power, it took place either as imitational democracy or did not occur at all. Until 2006, state institutions ignored the existence of these institutions, intermittently accusing them for being the fifth column of some external forces and threatening them with transferring to state control their funding (which finally was not done). At the end of 2005, however, several state institutions, first of all, the Parliament and the Ministry of External Affairs announced their intention to institutionalize their relationship with the non-governmental sector. Together with the Bureau of Council of Europe, the Parliament of Republic of Moldova approved the Concept of Cooperation with Civil Society (December 29, 2005). Based on this Concept, non-governmental organizations acquired the possibility to get directly involved in the legislative process in the following ways: expert councils, permanent consultations, ad-hoc meetings, public hearings, annual conferences. Experts say that one of the main impediments for the cooperation between the government and the civil society is the recommendation nature of the inputs of civil society, which seems to be too little. The problem consists in the fact that even as for recommendations, this cooperation is limping, since very few of civil society suggestions were taken seriously by governmental institutions.

<sup>455</sup> Cornel Ciurea "The Role of the Law on Protecting Personal Data in a Non-Protected Society", 06.10.2010, <http://www.viitorul.org/libview.php?l=ro&idc=309&id=3036>

**Table 28 „Forms of Organization, Sectors and Areas of Activity of Non-Governmental Organizations”**

	Public Organization	Public Movement	Public Institution	Foundation
<b>Level of organization</b>				
National	88%	2%	6%	4%
Local	96%	2%	1%	1%
<b>Areas</b>				
Education, research	88%	4%	6%	2%
Mass media	86%	0%	7%	7%
Economic and community development	88%	0%	5%	7%
Defending human rights	93%	4%	3%	0%
Social services	94%	0%	6%	0%
Ethnic minorities	92%	0%	0%	8%
<b>Area of residence</b>				
Urban	89%	3%	5%	3%
Rural	100%	0%	0%	0%
<b>Region</b>				
North	99%	0%	1%	0%
Center	88%	3%	5%	4%
South	98%	2%	0%	0%

Following July 29, 2009, the relationship between the state and the civil society is considerably improving without, however, acquiring guaranteed continuity and consistency. Such structures as the National Council for Participation, founded on December 29, 2009, are established. The Council activates under the Government and is based on two main components: participation in the process of developing, monitoring, and evaluating national policies and developing the institutional consultation framework at central public authorities' level. Representatives of networks, alliances, coalitions, unions, umbrella organizations, members of several NGOs with extended experience in evaluating and monitoring national policies are included in this Council. Its members were selected on the basis of an open and transparent tender at the initiative of Prime Minister, Vladimir Filat, and made public during a meeting with the representatives of civil society.

The National Council for Participation took over the functions of a series of non-governmental consultation bodies, including the Economic Council of the Prime Minister and the Participation Council for the process of development, monitoring and evaluation of the NDS, institutionalized as forms of consultation on the process of strategic planning for the country at Government level.

However, it is not yet possible to say that these combinations of civil society and the state overcame the phase of imitational democracy. The issues of cooperation between the associative sector and the government are related to the reluctance of public authorities towards this type of organizations, which are considered more of a competitor or enemy than a colleague. State institutions often prefer to communicate as little as possible and avoid entering into sustainable partnerships with the non-governmental sector, which weakens considerably the governing potential of political actors.

## ***11.2 How extensive is citizen participation in voluntary associations and self-management organisations, and in other voluntary public activity?***

The human resources available to Moldovan civil society has a significant influence on the degree of functionality and the efficiency of these institutions. According to the survey conducted by the Contact Center, over 59% of these institutions have no employees. Organizations with up to 5 employees represent 24%. The number of temporary employees is also rather insignificant, 76% of organizations refuse to use their services. These estimations indicate another issue facing the civil society from Republic of Moldova related to the deficit of human capital and its rather insufficient quality.<sup>456</sup>

The institutional capacities of the civil society can be influenced by the way potential employees are selected. Only 22% of all organizations use tenders as an employment tool. On the second and third place are those organizations that select future employees among members (19%), volunteers (17%) or personal contacts (17%). This often leads to non-governmental organizations turning into rather amorphous institutions with minimum openness to the entire society and a limited level of competitiveness.

Limited management capacities and the modest coverage of the civil society is also proven by the fact that only 14% set up collaboration relationships, 13% are able to identify a problem and 12% have the knowledge and skills to develop and implement projects. The survey also shows that only 11% of analyzed organizations resort to involving the community in settling issues. That is why the trustworthiness of civil society organizations is rather low with the general public as compared to other private and public institutions.

The Public Opinion Barometer carried out by IMAS at the request of the Institute for Public Policies in November 2010 shows that the cumulated trustworthiness of non-governmental organizations is 30%. These organizations are on the 7<sup>th</sup> position being overrun by banks and the Government, but being ahead of the Police, the Parliament and the President. The trustworthiness is increasing as compared to May 2010 (26.5%), but decreasing as compared to November 2009 (33.5%). In fact, there is no stability as to public's support for the non-governmental sector – the highest degree of trust reaching 39% in May 2007, and the lowest being registered in November 2002 (20%).

## ***11.3 How far do women participate in political life and public office at all levels?***

Women are a rather vulnerable category in our country, even though there are more women than men (53% of the total number of adult population) and usually their activism should be more pronounced and more efficient. Even though formally women's rights in our country are not infringed (the right to education, the right to choose a profession, the right to choose a life partner etc.), in reality, women are not stimulated professionally or socially, and inherited traditions become a serious obstacle

<sup>456</sup> Survey on the Development of Non-Governmental Organizations in Moldova, [www.contact.org](http://www.contact.org)



in the way of women's ascending. Even though they perform the same works, 71.9 % of women receive salaries that are 309 lei lower than for men, which is a serious infringement of the principle of gender equality. Not even until now the Parliament did not manage to pass the law on gender equality. According to some studies, only 0.7% of the total number of women from Republic of Moldova are considered rich, 25.6 % - poor, 8.4 % - very poor, 54.6 % - are financially sufficient.

At present, there are two hundred and fifty women's NGOs and NGOs for women in Republic of Moldova. Their objective is to defend women's rights in accordance with international standards by including the gender principle in all the areas and sectors of activity, by excluding family violence and violence at the place of work, promoting the idea of solidarity of women, contributing to developing policies in social protection, values of an integrated family, the role of women in the community, economic, social and legal adjustment of women under conditions of transition to a democratic society, legal and economic training of women, to promoting a healthy lifestyle, etc. Another peculiarity of women's and pro-women NGOs are their concentrated location in the Central region and the urban area (99%), especially, municipality of Chisinau. Local NGOs are predominantly located in urban areas and less in rural areas.

The elections from November 2010 are indicative of the continuous discrimination of women in politics. Only 3 parties out of 20 enlisted in the election campaign stipulated representation shares for women on election lists and only the NLP complied with this provision from the bylaws. The LDPM and the SDP provided for representation shares for women on their lists, but are doing much worse in implementing this provision from the bylaws. Only 24.3% of LDPM candidates and 28.7% of SDP candidates are women. Liberal-democrats have only 2 women in the top 20 candidates on the list, and social-democrats - 3.

The other electoral competitors did not provide for women representation shares in their bylaws. However, the situation of Moldova Noastra Alliance is the best, with 36.9% women out of the total number of candidates. They are followed by the DPM (33%), LP (27%) and the CPRM (24.3%). As to the top 20 candidates, communists are ranked first having 8 women. MNA and DPM have only 4 women each. Very close to the representation minimum is the Conservator Party, which has 26% women of the total number of candidates.

### ***11.4 How equal is access for all social groups to public office, and how fairly are they represented within it?***

The most important social groups from Republic of Moldova are ethnic and social groups with low revenues (for example, pensioners or employees (trade unions), but also religious groups.

The Constitution ensures freedom of faith, but the law also includes restrictions which sometimes impeded the activities of some religious groups. The new law on religious cults, which

came into effect in 2007, theoretically simplifies registration procedures and facilitates access of religious groups to public functions to conduct religious activities.

Overall, the government really observed freedom of religion. For the period of time covered by this report, the government did not change its position towards observance of freedom of creed. The government registered a religious group (affiliated to a group that was previously registered) and continued to reject to register certain groups, which are trying to receive legal status. In Transnistria, the separatist region which is not under the control of the government, authorities have overall observed the rights of registered groups, but continued to refuse registration some minority religious groups and to persecute their members.

The Constitution ensures freedom of creed and the other laws and political measures generally contribute to free practicing of religion. The law on religious cults, which came into effect in 2007, theoretically simplifies registration procedures and facilitates access of religious groups to public places to conduct religious activities. But the law includes some restrictions that sometimes hindered the activities of religious groups.

It could be said that until now the rights of minorities from Republic of Moldova were guaranteed to the extent of a state with the economic potential of Republic of Moldova. It is true that frustrations of Russian-speaking citizens which they went through during the dissolution of the USSR have not yet been overcome. Another major issue facing the citizens of Republic of Moldova is the issue of national identity and the language of local population. It seems that the leaders of national minorities can contribute to settling or complicating these issues that have more of a political than scientific or legal dimension in Republic of Moldova.

It could be said that in Republic of Moldova the legal framework on human rights and national minorities is relatively comprehensive and satisfactory. That is why, the focus which was previously on providing and guaranteeing rights through laws, under current conditions should be changed and should target increasing the potential of authorities and the capacities of potential beneficiaries to exercise these rights.

Undoubtedly, Moldovan authorities sought a rational balance between affirmative action in favor of protecting the identity of people that are part of minorities and the rights and economic, cultural and social needs of all their members. Republic of Moldova should continue to ensure adequate participation of minorities to public life, decision making at national level, in accordance with democratic principles, ensuring at the same time normal functioning of democratic institutions. That is why, achieving these objectives requires making efforts and the commitment of all stakeholders. But this kind of issues should be dealt on a democratic basis, without any passions, myths and reductionists representations.<sup>457</sup>

The experience of 20 years of independence proved that adopting an adequate legal framework is not enough to harmonize interethnic relationships, it is also necessary to create a *normative consensus*, which would mitigate the effects of various perceptions of citizens belonging to various ethnic groups of the domestic and foreign political climate. This is logical since the *birth* of Republic of Moldova as a sov-

457 Denis Cenușă, Report on Consolidating Civil Society in Republic of Moldova", 2007

ereign and independent country was accompanied by a series of *traumas* caused by ethnic conflicts. Also, it should be taken into account that regardless of the political color of the government there could always be suspicions on one side or another related to promoted politics. This also refers to the legal framework.

It could be said that from this point of view in the past 10 years both the leaders of the majority ethnicity and the leaders of minority organizations have perceived their main mission as to promote exclusively the interests of ethnicities that they represent. This ethnic egoism cannot be eliminated for now by law. The leaders of the majority ethnicity usually motivate such a behavior by the need to eliminate some historic injustices (the policy of assimilation and Russification). On the other hand, the leaders of minorities pleaded for the rights of minorities by asking new rights, which they have subsequently obtained.

### ***11.5 What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

In order to remedy identified issues and encourage the evolution of the non-governmental sector, the Strategy for the Development of Civil Society for 2009-2011 was developed in December 2008. Even though this Strategy was adopted during the communist governance, characterized by certain tensions between the state and the civil society, its implementation fell on the shoulders of the European Integration Alliance, which incorporated a significant number of former representatives of the non-governmental sector. Despite of a reprovable inertia related to cooperation between the government and the civil society and an insufficient mobilization of social segments due to a rather patriarchal political culture, communication between various groups and the power has considerably improved.

Strategic priorities jointly adopted by the government and the civil society are the institutionalization of the consultancy, public policy monitoring and evaluation framework, setting up a legal and fiscal framework fostering sustainable development of the associative sector, civic spirit and volunteering. Among the notable successes of the civil society we could list, inter alia, the activities conducted by IDIS “Viitorul” in the area of decentralization, creating Rethink Moldova in order to attract funds to Republic of Moldova; ADEPT in relation to elections; the Association for External Policy in the area of policies for settling the Transnistrian conflict; the Institute for Public Policies on education, surveying public opinion and Transnistrian conflict. Setting up partnerships between the civil society and public authority organizations was a special focus, allowing them to effectively collaborate and to define responsibilities in such a way that the issues of the society are settled as efficiently as possible. Public authorities said they understand that it is important to involve civil society organizations into settling the issues of local communities, contributing to the development of existing cooperation mechanisms.

Despite the steps taken and establishing the National Council for Participation, there are still numerous problems that are to be solved. The most important is the lack of trust among government bodies and the associative sector. The Government continues to perceive non-governmental organizations as a relay through which the state can disseminate information to its convenience and tending to minimize the constructive effort of civil society, which is often viewed as interference in its own policies. At the same time, civil society often does not have the necessary resources and the adequate expertise to be an equal “player” with state institutions, taking into account the privileged access to information and power of the latter. However, the imperative need of a tighter connection between the state and the associative sector is dictated by Republic of Moldova getting closer to the European Union and the increased complexity posed by integration issues. In this context, we could mention the establishment of a Forum for civil society within the Eastern Partnership. Around 240 non-governmental organizations from EU member states and from six former Soviet countries (Moldova, Belarus, Ukraine, Georgia, Armenia and Azerbaijan), among which 30 NGOs from Moldova, participate in the works of this prestigious forum.

	Very good	Good	Satisfactory	Poor	Very poor
11.1		X			
11.2.			X		
11.3				X	
11.4		X			

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## 12. GOVERNMENT RESPONSIVENESS

*Ion Osoian*

### ***12.1 How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?***

Democracy implies that citizens can influence the formulation and adoption of decisions which affect their lives. Christopher Lord distinguishes three minimum requirements of a democratic system: (i) it should be *authorized* (i.e. citizens have the right to choose their leaders); (ii) government decisions should be *representative* (are based on the interests of citizens); (iii) leaders should be *accountable* (citizens have the necessary leverage to influence governmental policies).<sup>458</sup> Elections and referendums are the most appropriate opportunities to hold politicians accountable. However, governmental decisions that shape the economic and social environment of everyday life are not limited to electoral cycles. Taking into consideration the continuous decline of involvement of citizens into formal political life in western democracies, measured by decreased confidence in public institutions, diminished voting participation and membership in political parties, many governments are trying to promote active citizenship and public participation to decision making by developing new politics and establishing new institutions.

There is a general opinion that citizens from the former Soviet Union are very participatory, but the organizational means they can use to materialize their participation are underdeveloped.<sup>459</sup> Just like in other former Soviet countries, Moldova started with a situation when the state held absolute power and authority. The preoccupation for democracy, which inevitably leads to decentralizing responsibility and increasing the number of players of governance, raised issues on democratic decision making and public participation to governance. Similar to other Soviet countries, during the first years of independence, there was a strong participatory movement in Moldova following the calls for national emancipation. Subsequently, as the participation rates for elections and surveys show, participatory thinking continuously decreased. A plausible hypothesis is that this is due to the above-mentioned “organizational means”, i.e. legal and institutional framework.

<sup>458</sup> <http://www.e-democracy.md/files/elections/parliamentary2010/report-aac-elections-2010-ro.pdf>

<sup>459</sup> Frank Decker, Governance beyond the nation-state. Reflections on the democratic deficit of the European Union, *Journal of European Public Policy*, Vol. 9, No. 2, April 2002, p 260.

Conventionally, under the aspect of participatory adoption of governmental decisions, we can distinguish three stages in the history of R. Moldova. During the first stage, which lasted between 1991 and 2000, public consultations were limited to applying electoral democracy and partially, petitioning practices. The second stage started in 2000 together with passing the law on access to information, which translated into practice the constitutional provisions guaranteeing the right of a person to have access to any public interest information (Art. 34). Overall, public authorities have the erroneous perception, until recently confirmed by legislation, that consulting the public means only informing citizens about the outcome of the decision making process. But, in most cases regulated by the law, access to information should be provided at the initiative of the citizen, often after making the decision and usually without any consultations with the public. The third stage started in 2005, together with adopting the Concept on the Cooperation of the Parliament with the Civil Society, establishing the National Council for Participation (2008), authorizing live broadcasting on public channels with national coverage of sittings of the Parliament (stopped before the local general elections of 2007) and publishing transcripts of sittings and draft legislative acts on the website of the legislature. In 2005, the foundation of Parliament cooperation with civil society was laid down in the form of expert councils, *ad hoc* meetings, public hearings, including with standing parliamentary commissions, and annual conferences organized together with civil society organizations. The fourth stage started in 2010, together with setting up the mechanism of ensuring transparency on decision making in management. Until this stage, public consultations occurred unsystematically, when developing policy documents, often as a result of donors' persistence.<sup>460</sup>

As to the legal framework, until 2009, some provisions on public participation in the decision making process in some laws regulating the activity of some public authorities were included. Most often such provisions, being superficial otherwise, declared as public the meetings of some public or administrative authorities under certain conditions. Respectively, citizens are invited to be spectators at the final phase of the decision making process since these meetings represent only the end of the process of consulting stakeholders affected by making a decision.

The Law on the transparency of the decision making process came into effect only by parliament elections of April 2009. Among the strengths of this legislative act is the fact that it serves as a framework law for all public institutions managing and spending public funds. According to Law no. 72 of 04.05.2010, several important laws (on the Government, Regulations of the Parliament, on the budgetary system and budgetary process, on legislative acts, on normative acts of the Government and other central and local public administration authorities, on local public administration) were brought in conformity with the requirements of the public consultations process in the decision making process. The main weaknesses of the law are: (i) certain citizens can be refused the right to participate in consultations on passing some decisions that can affect them for the reason of no free seats left in the room where the session takes place; (ii) the

460 Reisinger, W., Miller, A. and Hesli V. (1995) Public Behavior and Political Change in Post-Soviet States, *Journal of Politics*, Vol. 57, No. 4 (Nov., 1995), pp. 941-970.



sanctions that can be applied in case of compromising the decision making process (impeding access to sessions, hiding or distorting information of public interest) are not clear, the law being limited to the well-known expression “according to the law.”

The somewhat repetitive list of the goals of the law on the transparency of the decision making process defines two major goals: to inform on the decision making process and direct participation of citizens and other stakeholders in this process. After the investiture of the European Integration Alliance government in September 2009, considerable progress was made in both these areas. Live online broadcasting of the meetings of the government, disclosing and posting many governmental acts on the website, access of journalists to meetings to which until September 2009 they had only occasional and selective access or no access at all (Standing Bureau of the Parliament, sittings of some parliament commissions, meetings with the participation of law enforcement bodies, etc.) happened for the first time.<sup>461</sup> Some ministries and central administrative authorities set up special phone lines to be informed in real time by citizens about the issues of the latter, internal regulations and official website compartments on decision making transparency were developed and approved.

**Art. 4 Law Nr. 239 on the transparency of the decision making process from 13.11.2008, Official Gazette no. 215-217 of 05.12.2008:**

The goals of this law are:

- a) to ensure multilateral information on the decision making process within public authorities;
- b) to ensure direct participation of citizens, associations established according to the law and other stakeholders to decision making;
- c) to increase the efficiency of decision making within public authorities;
- d) to increase the accountability of public authorities towards citizens and society;
- e) to foster active participation of citizens, associations established according to the law, other stakeholders to decision making;
- f) to ensure transparency of the activity of public authorities.

The outcome of an extended exercise of monitoring the use by public authorities and institutions of some forms and methods of citizen consultation and participation shows that there are still a lot of public and administrative authorities, especially, at local level, that apply no form of involvement of the public in decision making (consultative meetings, public debates and meetings). There are difficulties in organizing participatory decision making, which are due to lack of resources for adequate information and lack of experience in this area. Also, the number of suggestions, proposals, recommendations made is extremely low, including because of the passivity of citizens.<sup>462</sup> Even though the reports on some public institution budget execution<sup>463</sup> include expenditures on press activities, there is nobody responsible for communication and press in the staff of these institutions. Sometimes, these activities are fulfilled by employees specialized in other areas.

Both 2009 election campaigns, the constitutional referendum and early parliamentary elections in 2010, and the political crisis have jeopardized the ability of the Parliament to publish draft laws and transcripts of plenary sessions on the website for public consultation. Similar to the Parliament, the Government has to deal with older issues such as partial publications of draft decisions and laws, without explanatory analytical notes and without giving stakeholders the opportunity to see what are the responses of all institutions consulted during the decision making

461 Interview no. 1

462 “Acces-info”, Access to Information and Transparency of the Decision Making Process: Attitudes, Perceptions, Trends, Monitoring Report, 2010.

463 Ibidem

process. An essential tool of indirect democracy – the institution of parliamentary control – is used insufficiently, taking into consideration the regrettable decision of the parliamentary opposition not to participate to plenary sittings. Under such conditions, during government reporting, most questions are asked by the members of the majority coalition. However, it should be mentioned that one of the causes is the lack of established traditions of parliamentary scrutiny over the executive. It is recommendable to consolidate this institution, which in addition to ensuring balance between legislative and executive powers, plays an important role in informing citizens on public justification of budgetary expenditures.

It is understandable that organizing the involvement of citizens in decision making is simpler and more natural at administrative levels that are closest to citizens. Presumably, citizens would also be more interested in “small group democracy” where local public authorities would consult them on public services that affect them directly, and less on consulting exercises specific for large-scale democracy. Similar to Parliament sittings, the meetings of local councils are public. In addition to that, at local levels, there are other opportunities to consult the public on such occasions as general assemblies in villages. However, usually, the content of the normative act is decided by specialized commissions of local councils, which, usually, do not invite citizens to participate at their meetings.

## ***12.2 How accessible are elected representatives to their constituents?***

The accessibility of elected representatives is determined by the proportional representation (PR) system applied for parliamentary and local elections in R. Moldova. Opting for such an electoral system is unusual for a former Soviet country, which, except Estonia and Latvia, chose parliamentary elections in uninominal circumscriptions. The majority electoral system was preferred in Soviet Union since it is based on personalized links and connections specific for the Soviet system. Even though these realities were valid for R. Moldova as well, only a proportional representation system provides to the citizens from the separated region on the left bank of Nistru at least one possible option to participate in elections.<sup>464</sup> The PR system with one national circumscription was consolidated in the Election Code of 1997 and was applied for all subsequent parliamentary elections. Respectively, there is no personalized direct relationship between elected members of Parliament from party lists and the voters of a territorial circumscription. As a result of early parliamentary elections of July 29, 2009 and November 28, 2010, 75 and respectively 71 out of 101 elected deputies are listed as residing in Chisinau municipality.<sup>465</sup> Large Parliamentary parties partially compensate this disproportionate representation by appointing

464 See, for example, “Explanatory Note on the Execution of Ministry of Youth and Sports Budget for 2009”: [www.mts.gov.md](http://www.mts.gov.md), accessed: 20.10.2010.

465 Protsyk, Oleh, Osoian, Ion, Moldova: Party Institutionalization in Public Finance-Scarce Environment, in Steven D. Roper and Janis Ikstens (eds), ‘The Effect of State Finance on Post-Communist Party Development’, London: Ashgate Publishers (2008).

deputies responsible for certain territorial circumscriptions on the basis of place of birth or their previous professional occupation.

There are no official statistical data, but according to the Regulations of the Parliament, during parliamentary sittings (in spring (February – July) and autumn (September – December), a member of Parliament should allocate 20% of his/her working time to interacting with voters.

Each Monday is reserved for working with voters (day of appointments, field visits). Lawmakers can receive and talk to citizens in local public authorities' facilities, which should ensure permanent facilities for appointments, or in the building of the Parliament. However, these legal provisions are not formulated as obligations of members of Parliament to organize appointments and meetings with voters, but are mostly recommendations and rights.

It would seem that locally elected representatives, local counselors and mayors, are generally more accessible for citizens than members of Parliament, taking into account their physical proximity, but also detailed knowledge of the daily issues of the local community. However, monitoring the attitude of public authorities and institutions towards the requests on transparency of decision making conducted in 2010 shows that central authorities were more receptive than local authorities.<sup>466</sup>

Due to the PR system also applying for local elections, the residents of some localities included in a *primaria* (mayoralty or town hall) that consists of several villages might not be represented in the local council. For this kind of situations, according to the Law on local public administration, the inhabitants of such a village elect a village delegate as a result of the general assembly of the village who shall represent them in dealing with the *primaria* and the local council. The local delegate reviews as stipulated by legislation, the petitions received, takes actions to solve them, accepts appointments with citizens and managers of legal entities. Under the conditions of the Law on locally elected representatives, local councils and mayors make appointments for citizens in the premises of local public administration authority headquarters. The secretary of the local council is responsible for ensuring adequate conditions for these appointments.

### ***12.3 How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?***

Both decentralized and disconcerted public services fall under the incidence of Law on the transparency of the decision making process from 13.11.2008. However, citizens' con-

<sup>466</sup> <http://www.e-democracy.md/elections/parliamentary/> (accessed: 10.11.2010)

sultations are more frequent in case of decentralized public services, especially, for obtaining support, including financial support, for the inhabitants of a local community for the purpose of extending or establishing new public services, often being generated by external donors' funding (the Moldovan Social Investment Fund being a relevant example to this end). Disconcerted public services, serving as territorial extension of ministries and other central administration authorities, are very rarely involved on consultations with the public, probably leaving this task to central administrative authority to which they are subordinated.<sup>467</sup> It is natural, however, that public consultations on accessibility and quality of public services take place at the administrative level which is closest to citizens. First of all, local public authorities are better enabled to know the daily needs of citizens. Second, it is reasonable to believe that citizens would be more active in relation to public services provided at local level, which daily affect their wellbeing than in relation to public services provided by central public authorities, which are characterized by a higher degree of abstraction such as formulating public policies. However, often local public authorities do not have sufficient leverage to influence the quality of public service provision, having more of a representative role.

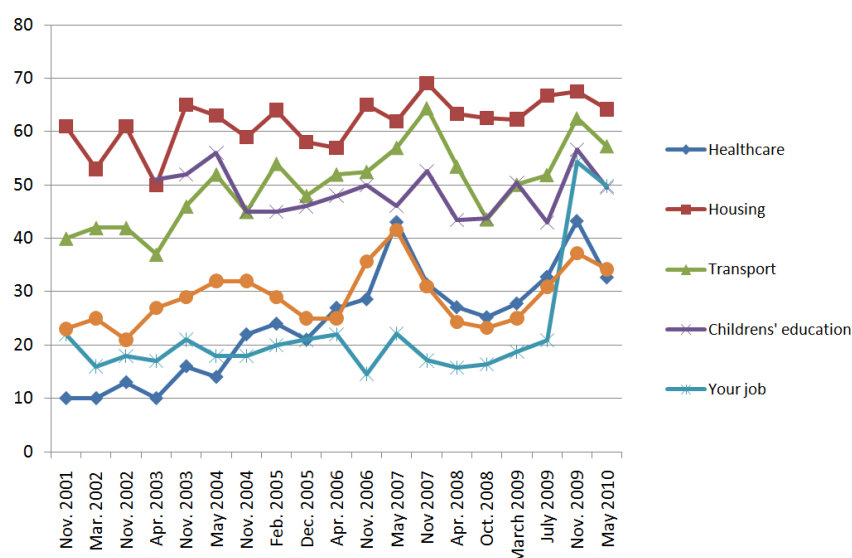
Unlike the private sector, it is very difficult to compute a consumer satisfaction indicator for public services. The services provided by public companies are aiming at increasing economic efficiency, which would allow maximizing profits in a competitive environment. However, many public services are still provided under a natural monopoly environment. For example, in a small rural locality there could be only one public school and alternatives are available only upon covering the distance to schools from neighboring localities. Also, the price for public services is not determined by the market, but rather by social pressures. Many public services are provided free of charge (for example, school education, public parks, street lighting, libraries, culture houses, etc.), others are subsidized from the public budget (water and sewage, public passenger transportation, waste management etc.). The tools available to citizens to penalize poor quality of one or more public services and utilities are elections. And the tools that politicians and researchers can use to appreciate the quality of governance and potential areas of intervention are surveys.

The level of satisfaction of citizens with the quality of some public services measured by the Public Opinion Barometer in 2001-2010 (see Chart 27) registers a slow increase. However, it should be mentioned that for certain services the degree of satisfaction rarely exceeds 50%, which means that citizens are rather dissatisfied than satisfied with the quality of these services (taking into consideration the totals of answers "Not satisfied at all/Not really satisfied").

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467 "Acces-info", Access to Information and Transparency of the Decision Making Process: Attitudes, Perceptions, Trends, Monitoring Report, 2010.

**Chart 27 “The dynamics of answers to the questions “How satisfied are you with ...  
 (“Rather satisfied / Very satisfied)”**



Source: Public Opinion Barometer, IPP, 2001-2010

The most significant leaps of the level of satisfaction of respondents were registered in May 2007, prior to local elections and in November 2009, two months after the European Integration Alliance came to power. It should be noted that even if access of citizens to some public services and utilities (roads, transportation, education, medical assistance, etc.) is more limited in rural localities due to geographic deprivation (see Table 29), according to POB, *primarias* are public authorities credited with the highest level of trust.

**Table 29 “Accessibility of some public services according to geographic deprivation properties”**

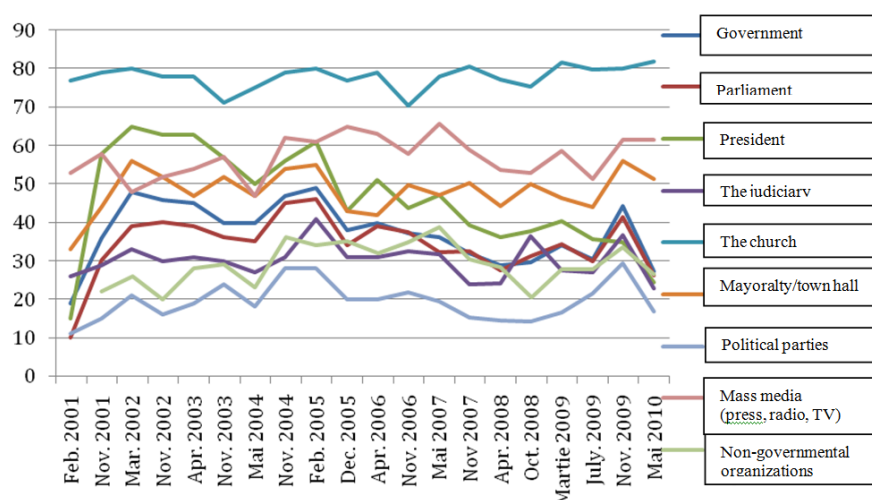
Indicator	Average distance (including urban area), km	Number of rural localities where distance is > 10 km
Distance to kindergarten, km	1,05	18
Distance to primary school, km	0,67	4
Distance to secondary school, km	2,41	94
Distance to high school, km	7,95	445
Distance to the pharmacy, km	4,7	239
Distance to health center, km	5,37	278
Distance to family doctors' office, km	17,8	1020
Distance to hospital (inpatient care), km	19,7	1160

Source: calculations of the author according to the Small Areas Deprivation Index , 2008, Ministry of Economy

## 12.4 How much confidence do people have in the ability of government to solve the main problems confronting society, and in their own ability to influence it?

There are several indicators that give us details on citizens' trust in the ability of the government to solve the most important issues of society. A general indicator is voters turnout. Even though it decreased constantly from 79.3% for parliamentary elections of 1994 to 57.55% for parliamentary elections of April 2009, the elections of July 29, 2009 registered a small increase (58.77%) followed by a significant increase (63.35%) for early parliamentary elections of November 28, 2010.<sup>468</sup> A more specific indicator is the degree of trust of citizens in certain public authorities as compared to their trust in NGOs, the Church, mass media and political parties (Chart 28).

**Chart 28** *"The evolution of answers to the question "How much do you trust...?" (totals of answers I trust it a lot and I somewhat trust it)"*



Source: Public Opinion Barometer, IPP, 2001-2010

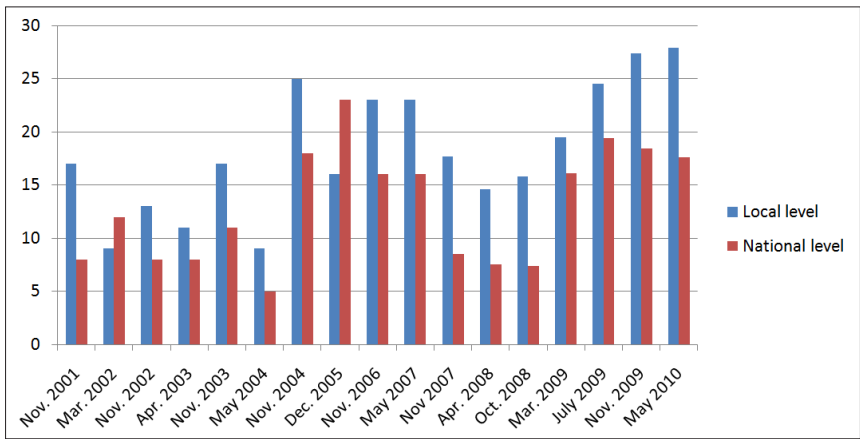
According to the results of the survey, the church enjoys the highest level of trust from citizens, followed by mass-media. These are the only ones in the surveys that for certain periods exceed the rate of 50 percent of respondents' trust. It could be said that these results are determined by the accessibility of local public authorities, even if they have limited competences which maybe cannot always influence decisively the quality of public services and utilities. These results are also confirmed by the trends registered in Chart 29, which indicate an increase of confidence of citizens that they could influence the important decisions at local community level. It is one of the signals given by citizens for the need to amplify the degree of decentralization of public services. The decrease of the level of confidence into other public authorities in May 2010, including the decline of confidence in the presidential institution, could have been determined by the constitutional crisis produced as a result

468 Interview no. 2.



of the failure of president elections in the Parliament in December 2009. It is a signal for the political parties to find a solution which would impede the launch of a new crisis of this kind.

**Chart 29 “The dynamics of answers to the question “To what extent do you think people like you can influence the important decisions made?” (totals of answers to a big extent and to a great extent)”**



Source: Public Opinion Barometer, IPP, 2001-2010

Finally, another specific indicator is the perception of citizens if the general evolution of R. Moldova is better or wrong. Even though in most surveys the number of those that think the evolution is wrong exceeds the number of those that think that the evolution is correct, the survey carried out by IMAS-Chisinau in August 2010 shows an increase of the number of those that think that the evolution is adequate as compared to April 2010.

## 12.5 Conclusions

### Summary: progress in the past year

	Very good	Good	Satisfactory	Poor	Very poor
12.1.		X			
12.2.		X			
12.3.			X		
12.4			X		

12.1. The legislation on transparency of decision making is applied progressively, including transposed in department acts. Significant progress was registered in terms of informing citizens on public affairs state, and public authorities became more transparent. However, the legal framework also allows arbitrary opportunities to call closed meetings and sanctions for compromising the decision making process are not explicit, which creates premises for maintaining silence over passing some delicate decisions.

12.2. In general, the legal framework makes national and locally elected representatives accessible, and during the past year, they became more accessible for citizens and mass media. Another factor with significant influence on the accessibility of elected representatives is the election system. This makes more difficult setting a personalized relationship between lawmakers and the inhabitants of a territorial-administrative unit, but also between citizens and local counselors, in some *primarias* that consist of several rural localities.

12.3. Overall, consultations with citizens on the quality of some public services are a practice applied horizontally at local level. Accessibility of some primary public services is rather reduced at the level of many rural communities.

12.4. In general, the confidence of citizens in the capacity of public authorities to deal with their issues is rather small. However, the confidence of citizens that they can influence important decisions taken at local community level is increasing, which is a clear signal in favor of the need to increase the decentralization of public services.

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6. <http://www.e-democracy.md/elections/parliamentary/20092/members-parliament/> (accessed: 15.08.2010)

## 13. DECENTRALIZATION

*Ion Osoian*

### ***13.1 How independent are the sub-central tiers of government from the centre, and how far do they have the powers and resources to carry out their responsibilities?***

In terms of normative acts, local public authorities are autonomous and separated institutionally from central public administration. Art. 109 of Constitution confirms the principles of local autonomy, decentralization of public services, eligibility of local public authorities and consulting citizens on special interest local issues. However, the degree of autonomy from central administration is determined by the legal framework, administrative culture and the level of economic development of the country.

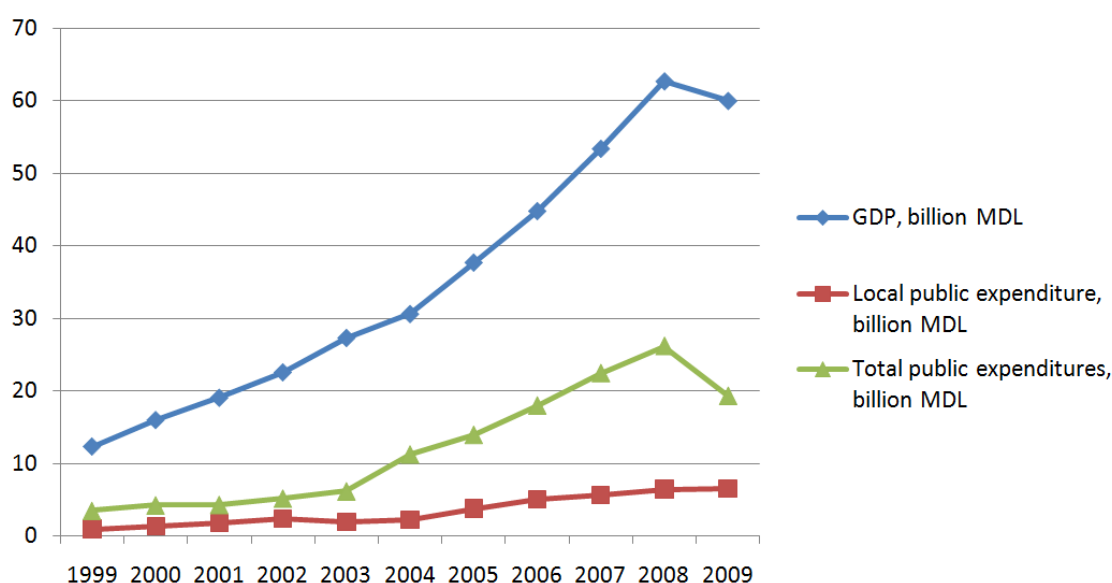
According to experts, lower levels governance is still determined by competition between the ideas of the Soviet times where any authority was part of the mechanism of state administration and the excessively idealistic vision adopted by the adepts of consolidating local autonomy, and the tendency to separate from the Soviet past.<sup>469</sup> During early independence, the constitutional principle of local autonomy was interpreted as a legal possibility to encourage perpetuation of a fragmented administrative-territorial organization system, where any small rural locality of 500-1000 inhabitants could have its own village hall. Thus, the degree of local autonomy is the prisoner of administrative-territorial organization with about 13 per cent of village halls having less than 1000 inhabitants, and the absolute majority – under 5000 inhabitants.<sup>470</sup> The attempts to set up larger municipalities with the benefit of scale economies in providing public services were often classified as infringements of the principle of local autonomy. Such a system diminishes the independence of lower levels of public administration. Being small, primarias have limited own resources and become dependent on subsidies from the national public budget.

One of the measurable indicators of the level of decentralization is the share of expenditures of local budgets in the Gross Domestic Product (GDP) and in total public ex-

469 <http://www.e-democracy.md/en/elections/parliamentary/> accessed: 16.06.2010  
470 Interview no. 3.

penditures. The higher the share of local public expenditures in the GDP and in local public expenditures, the more responsibilities and competences are entrusted to sub-national levels of administration and, respectively, the more decentralized is the power in the state. In Republic of Moldova, the share of LPA expenditures in GDP varied between 7 and 11 percent between 1999 and 2009. According to Chart 30, even though GDP and public expenditures in general have increased significantly in the past decade, the share of local public expenditures did not increase a lot.

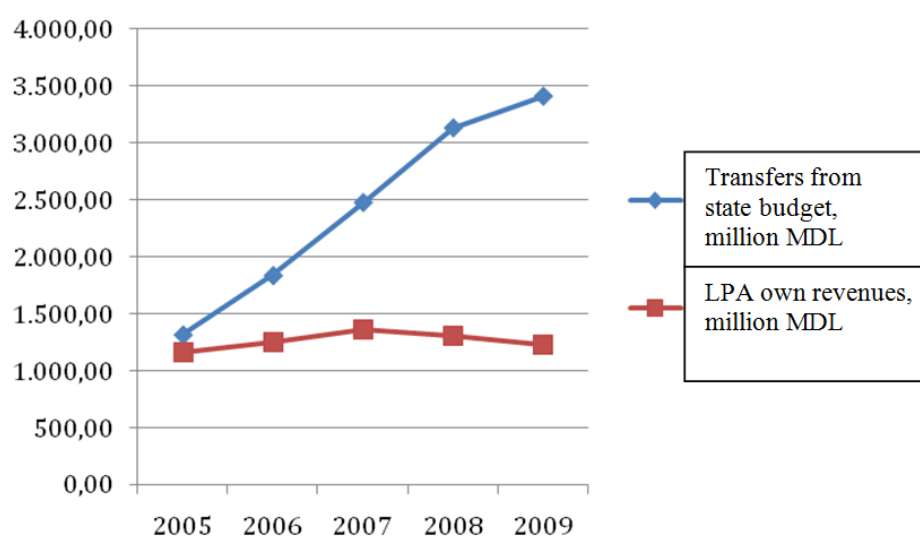
**Chart 30 “The share of local public expenditures in GDP and in total public expenditures (1999-2009)”**



*Source: author's computations on the basis of data from the National Bureau of Statistics*

Moreover, the situation shown in Chart 29 is not comparable with other countries taking into consideration the fact that in many cases (collecting taxes, education, military service, organizing elections, etc.), local executive authorities act as representatives of central authorities and as intermediaries for the disbursement of public funds from central level to final beneficiaries. As you can see from Chart 30, during 2005-2009 the share of transfers from state budget to local budgets increased, while local revenues remained at the same level, sometimes registering a slight decrease. Under such conditions when LPAs do not have adequate tools to consolidate their financial and fiscal decentralization, administrative-territorial units became more dependent on budgetary decisions taken at higher levels of administration.

**Chart 31 “Revenues of administrative-territorial units over 2005-2009”\***



\* Without municipality of Chisinau and Transnistria

Source: author's computations on the basis of data from Ministry of Finance

Almost all legislative acts regulating the functions and finances of local public authorities need to be modified in order to consolidate local autonomy and create conditions for carrying out decentralization. According to the Activity Program of the Government of Republic of Moldova „European Integration: Freedom, Democracy, Wellbeing” for 2009-2013, decentralization of power and ensuring local autonomy is one of the five strategic priorities. On May 20, 2010, the Special Parliament Commission for modifying and amending the legal framework on decentralization and consolidation of local autonomy was established, which tries to translate into reality the process of legislation review. It is necessary that new modifications come into effect until local elections of summer 2010 in order to be applied for the next mandate of locally elected representatives covering the period 2011-2015.

### ***13.2. How far are these levels of government subject to free and fair electoral authorisation, and to the criteria of openness, accountability and responsiveness in their operation?***

The eligibility of local public authorities and consulting citizens on special local interest issues are the fundamental principles formulated in Article 109 of the Constitution. Electoral procedures are detailed in the Electoral Code passed in 1997. Locally elected representatives (mayors, village (community), town, municipal, raion counselors, and members of the Public Assembly of Gagauzia) are elected by universal, equal, direct, secret and freely expressed vote for a mandate of four years. Citizens of Republic of Moldova with the right to vote who turned, including

the day of elections, the age of 18 years are entitled to be elected counselors of local councils. Citizens of Republic of Moldova with the right to vote who turned, including the day of elections, the age of 25 years are entitled to be elected mayors. The candidate for the position of mayor is considered elected if he/she received more than a half of valid votes of the total number of voters who participated in elections, provided that at least 1/4 of the total number of voters included in electoral lists participated to elections. If none of the candidates do not receive half of the total number of valid votes, a second tour of elections shall be organized within two weeks with two candidates who received the highest number of votes. Parties and social-political movements can appoint candidates for the position of mayor and counselor, but independent candidates are also entitled to participate in elections, provided that a certain number of signatures are collected in the locality.

*Table 30 „Number of counselors to the number of population in a *primaria*” (Art. 11, Law on local public administration no. 436 dated 28.12.2006)*

Number of inhabitants in an administrative-territorial unit	Number of counselors
up to 1500	9
between 1501 and 2500	11
between 2501 and 5000	13
between 5001 and 7000	15
between 7001 and 10000	17
between 10001 and 20000	23
between 20001 and 50000	27
between 50001 and 100000	33
between 100001 and 200000	35
over 200000	43

Elections to local councils are carried out on the basis of the proportionate representation system and counselor mandates are allocated to parties or independent candidates according to the D'Hondt formula. The proportionate representation system allows for municipalities that include more than a village under the jurisdiction of a *primaria* not to be represented in the local council, which is also true for raion councils, where many counselors come from resident towns of raion administration. Also, it is allowed to organize local referendums for the purpose of consulting citizens on some local interest issues, including revoking mayors. However, during 2003-2007, there were cases when some mayors were revoked arbitrarily by central authorities based on some alleged illegalities, without consulting the public and followed by appointment of a representative of political power other than that of the dismissed mayor to be the acting mayor.

In general, the legal framework allows for conducting free and fair local elections. However, the evaluations of international missions of observers on local general elections of 2007 point out some regrettable deficiencies. In particular, they point out on the fact that even though elections were well managed by election authorities, there were limitations to the right of being elected and access of opposition candidates to mass media. Some representatives of the opposition were intimidated by the governing party, which lead to their withdrawal.<sup>471</sup> Local missions of observers for elections of 2007 appreciated the elections as non-compliant with international criteria for free and fair elections.<sup>472</sup> In 2010, the Electoral Code was comprehensively revised, including with the purpose of consolidating organizational tools for conducting free and fair elections. However, the modifications made relate to a greater extent to parliamentary elections. The application of provi-

471 The first number is often mentioned as the ceiling for authorizing establishment of a local public authority which would have the necessary resources to maintain a minimum level of public services. 5000 inhabitants is often the number indicated as optimal for the efficient operation of the administration of a municipality (see: Paweł Swianiewicz, *Territorial Fragmentation as a Problem, Consolidation as a Solution?*, in Paweł Swianiewicz (ed.), *Territorial Consolidation Reforms in Europe*, OSII/LGI, Budapest, 2010).

472 OSCE/ODIHR, *Republic of Moldova, Local Elections*, 3 & 17 June 2007, OSCE/ODIHR Election Observation Mission Final Report, Warsaw, September 2007.



sions on improving the quality of electoral lists and applying the State Register of Voters were again postponed until the general local elections of 2011. The extent to which the issues mentioned by local and international election observation missions were settled will be appreciated during the general local elections of 2011, even though, most often, registered infringements do not relate to the quality of legislative texts or the management of the electoral process, but to the political culture of some electoral candidates.

Surveys show that *primarias* are more opened towards citizens than other public authorities since they have been credited with the highest degree of confidence among all public authorities (see paragraph 12.4). Citizens can indirectly influence the management of local matters through local counselors who are more accessible, especially, in small *primarias*, consisting of one locality. However, a study on monitoring accessibility of local public authorities and opportunities for citizens to participate in local decision making shows that local public administrations were less receptive to requests of access to information, including on internal procedures for ensuring transparency of decision making.<sup>473</sup>

### ***13.3 How extensive is the co-operation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?***

The scope of cooperation at local community level is rather insignificant taking into consideration that local administrations have limited leverages to be able to fully exercise their functions of developing and implementing local development policies. Also, cooperation aiming at ensuring high quality public services proves to be difficult since the realities of the existing public administration system give local public authorities a more of a representative role and less the role of a real public service provider.

According to the Law on LPA, local public authorities can “decide as stipulated by the law, to associate with other local public administration authorities, including cross-border cooperation, in order to conduct some public works and services and protect the interests of local public administration as well as to cooperate with business units and public associations from the country and abroad in order to implement some actions or conduct works of common interest”. However, inter-community cooperation, which is often pointed out as one of possible solutions, even if it is intermediary, for the issue of territorial fragmentation of municipalities, is rarely seen in Republic of Moldova. The only exceptions occurred due to funding conditions for cross-border cooperation project financially supported by the EU, which determined local administrations to associate in

473 Press Communiqué, Civil Coalition for Free and Fair Elections, 4 June 2007, <http://www.e-democracy.md/files/elections/local2007/coalition-2007-pr-4-june-2007-ro.pdf> (accessed on 14.08.2010).

order to be able to submit some funding proposals, as well as, more recently, the conditions for funding projects under the National Regional Development Fund.

Also, there are very few examples of public-private initiatives. This is partially explained by the legal framework. Law no. 179 of 10.07.2008 on public-private partnership, which sought to attract private investments to implement public interest projects, remained non-functional since approval. The conditions for the participants of these partnerships discouraged public-private partnerships and determined considering the opportunity of modifying the legal framework, which was not yet implemented.<sup>474</sup>

After a long period of dividing efforts through numerous associations of local public authorities, in March 2010, at the initiative of several existing associations and with the support of the Network of Local Authority Associations from South-Eastern Europe, the Congress of Local Authorities of Moldova (CLAM) was established. The association of local authorities in a single national association provides the opportunity of a non-hierarchical, structured and permanent dialogue with the Government and the Parliament to protect the interests of LPAs, but also in order to consult local and regional authorities in relation to implementing reforms on decentralizing power and ensuring local autonomy.

The cooperation of local public authorities with non-governmental organizations happens more often. This is explained by the fact that without sufficient leverage and resources to influence local economic development, local administrations were forced to seek resources on the outside. Having limited budget resources and respectively, limited ability to receive a bank credit, local public authorities re-oriented themselves toward the donor community. But in many cases, local administrations are not eligible for funded projects, which stimulated cooperation between LPA and civil society.<sup>475</sup>

## 13.4 Conclusions

### Summary: progress in the past year

	Very good	Good	Satisfactory	Poor	Very poor
13.1.		X			
13.2.			X		
13.3.				X	

13.1. Under the conditions of centralizing state power, local public authorities were rather dependent on the decisions made at higher levels of public administration. However, in the past

<sup>474</sup> "Acces-info", Access to Information and Transparency of the Decision Making Process: Attitudes, Perceptions, Trends, Monitoring Report, 2010.

<sup>475</sup> Interview no. 4

year, efforts have been made so that together with the next mandate of locally elected representatives it would be possible to really decentralize and consolidate local autonomy.

13.2 The last local elections were qualified by observer missions as free and partially fair. The past year offered the opportunity of some interventions at the level of electoral legislation, which would eliminate the deficiencies emphasized during the past elections.

13.3 Existing realities, especially the legal framework and the implementation mechanism did not produce sufficient stimuli for an efficient cooperation both between local communities and the public and private environment at local level.

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3. OSCE/ODIHR, Republic of Moldova, Local Elections, 3 & 17 June 2007, OSCE/ODIHR Election Observation Mission Final Report, Warsaw, September 2007.
4. Press Communiqué, Civil Coalition for Free and Fair Elections, 4 June 2007, <http://www.e-democracy.md/files/elections/local2007/coalition-2007-pr-4-june-2007-ro.pdf> (accessed on 14.08.2010).
5. “Acces-info”, Access to Information and Transparency of the Decision Making Process: Attitudes, Perceptions, Trends, Monitoring Report, 2010.



## PART IV

# DEMOCRACY BEYOND THE STATE

## 14. INTERNATIONAL DIMENSIONS OF DEMOCRACY.

*Leonid Litra and Veaceslav Berbeca*

### ***Introduction***<sup>476</sup>

Why do we need this chapter?

This chapter seeks to show the interaction of Republic of Moldova with the international actors important for the development of RM and especially, their influence on the politico-economic path of Moldova. In addition to an evaluation of external policies, observance of treaties and relationships with other countries and international organizations, this chapter also offers a long-term vision for the interaction with other international actors and contributes to mobilizing opinion leaders and the civil society on a consensus on developing relationships with foreign players.

How can the international scope of democracy be evaluated?

To evaluate the international scope of democracy in Moldova's context it is necessary to take into account several aspects:

- a) Dependency on funds from donors and countries.
- b) Government contribution to designing policies within international organizations/agencies.
- c) The level of democracy and transparency in the decision making process
- d) Public opinion

Which were/are the general trends of development of the international scope of democracy?

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<sup>476</sup> Interview no. 5.

Since independence, Republic of Moldova slowly advanced, with small exceptions, towards a democracy, which is still considered to be weak.<sup>477</sup> The main trends specific for this period are still connected to Republic of Moldova reorienting towards European Union and its wish to adhere to the EU. At the same time, there is a detachment from the CIS, which is already perceived in Moldova as an organization that was created with the purpose of ensuring a civilized divorce of the USSR and a geopolitical fiction that makes no sense.<sup>478</sup> On the other hand, EU standards became reference models for developing policies, both external and domestic, which for now are mostly mimed then implemented, even if, as compared to other countries from the CIS, Moldova could serve as an example of democracy.<sup>479</sup> Despite some temporary regress related to observance of human rights, Moldova is a party to most important conventions, even though their implementation is deficient.

### ***14.1 How free is the governance of the country from subordination to external agencies, economic, cultural or political?***

The course of external policy of Republic of Moldova is still earmarked by the identity policy which polarizes some directions and creates misunderstandings.<sup>480</sup> Even if European integration is supported by an average of 65-67% of population, there is a paradox which is also registered by surveys and refers specifically to the fact that in addition to the quasi-support for EU integration, about 50% of population thinks that the strategic partner of Moldova should be Russia, while only 36% are in favor of the EU.<sup>481</sup> Despite a consensus on European integration as a priority direction approved in 2005 by the legislature of 2005-2009, in Chisinau, opinions are divided about this direction. The priority of external policy remains European integration, but in 2001-2003 there were discussions at the level of political discourse about adherence to the Russia–Belarus Union.<sup>482</sup> In 2010, these ideas re-occurred on the agenda, when some political actors, such as Valeriu Pasat, promoted the idea of redirecting the external policy of Moldova towards East and focusing it on the Customs Union of Russia-Belarus–Kazakhstan,<sup>483</sup> a project that wants to be a focus of interest for former Soviet countries as an alternative to the European Union.<sup>484</sup>

Together with boosting dialog between RM and EU, Moldovan policies are increasingly influenced by Moldova's commitments taken voluntarily under the Partnership and Cooperation Agreement of the EU-RM Action Plan, which ended in 2008, but continues to be applied until

477 The author thanks all the officials of the central administration of Republic of Moldova and the staff of international institutions who accepted to be interviewed, but preferred to remain anonymous.

478 The Economist Intelligence Unit's Index of Democracy 2008, <http://graphics.eiu.com/PDF/Democracy%20Index%202008.pdf>

479 Serebrian, Oleg: 05/10/2009, The Summit of a Phantom Organization – CIS as a geopolitical fiction, , Europa Libera, <http://politicom.moldova.org/news/summitul-unei-organizatii-fantom-csi-ca-ficiune-geopolitic-203843-rom.html>

480 Rojansky, Matthew/Allin, Lyndon: 31/08/2010, Why Moldova Matters? Carnegie Endowment for International Peace, <http://carnegieendowment.org/publications/index.cfm?fa=view&id=41467>

481 Mungiu-Pippidi, Alina (2007): "Disputed Identity as Inescapable Pluralism. Moldova's Ambiguous Transition", Romanian Journal of Political Science 02/2007: 85-102.

482 Public Opinion Barometer, May 2010, Institute for Public Policies, <http://ipp.md/libview.php?l=ro&idc=156&id=552&parent=0>

483 Bozena Radwanska-Zayac, Christopher L. Brown, Daniel S. Papp, RUSSIA AND THE OTHER FORMER SOVIET REPUBLICS IN TRANSITION, Southern Center for International Studies, 2006, [http://www.southerncenter.org/ru\\_jul06\\_lesson2.pdf](http://www.southerncenter.org/ru_jul06_lesson2.pdf)

484 Pasat wants to be both in the EU and the Customs Union Russia-Belarus, <http://www.timpul.md/articol/pasat-vrea-i-in-ue-i-in-uniunea-vamala-rusia-belarus-16147.html>

Moldova shall have another framework document and a new reform agenda.<sup>485</sup> Currently, RM negotiates with the EU the Association Agreement and discusses about liberalizing the visa regime; these documents provide for important and difficult reforms to be conducted by Moldova, but also impose conditionality on its policies. EU is imposing itself through these agreements not only from the point of view of building the political conduct of Moldovan authorities, but also from the point of view of building an operational conduct.<sup>486</sup> At the same time, the main message of the EU in Moldova during the past years was reforming in nature, i.e. the progress of Moldova-EU cooperation depends on domestic reforms, especially in the important sectors such as human rights, reforming justice, building institutional capacities, reforming the social insurance system, and also, transition to a market economy, which were confirmed both by the progress report of the European Commission,<sup>487</sup> and reports of civil society organizations,<sup>488</sup> which closely monitored reform implementation.

At the same time, there are areas where things have stagnated more than they have moved forwards. Internally, the main issues underlying slow evolution or even involution are related mostly to justice, ensuring a favorable investment climate, corruption and conflicts, and political clientelism<sup>489</sup> that were extensively analyzed in previous chapters. The Transnistrian conflict remains one of the most serious issues facing Moldova. Despite the existing format of negotiations 5+2, they did not officially meet since February 2006.<sup>490</sup> The occurrence of this conflict is due mostly to the Russian support to the Transnistrian regime, but also to maintaining Russian Federation weaponry on the territory of Moldova without the agreement of Moldovan authorities. The Russian Federation weakens Moldova's position and its efforts to advance in the process of reintegration by providing financial support to Tiraspol in the form of humanitarian aid (only in 2010 Russia promised 200 mil. USD), supplying natural gas without asking for payment and by providing subsidies to various social groups from the left bank of Nistru.<sup>491</sup> At this moment, the focus is on the Trust Building Measures, which represents a mechanism of approximation between parties through approaching social issues and which aims not only at building trust and a tradition of cooperation between parties, but also at de-politicizing social issues faced by the inhabitants of both banks of Nistru.

At the same time, the vulnerability of Republic of Moldova is caused by its dependence on certain output markets which dictate the pace of economic vitality, with special reference to the Russian output market. For the first time when the dependence of Moldova on Russia became obvious was the Russian financial collapse of 1998, which led to the same crisis in Republic of Mol-

485 Tugui, Eduard: 2010, The misleading eastern alternative: Republic of Moldova and the Russia – Kazakhstan – Belarus customs union, Moldova's Foreign Policy Statewatch, Issue 1, Institute for Development and Social Initiatives, [http://viitorul.org/public/3106/en/Policy\\_Statewatch12\\_en.pdf](http://viitorul.org/public/3106/en/Policy_Statewatch12_en.pdf)

486 Leonid, Litra: 2010, Some reflections on the timing of Moldova's negotiations of the EU Association Agreement, Moldova's Foreign Policy Statewatch, Issue 1, Institute for Development and Social Initiatives, [http://viitorul.org/public/2706/en/Policy\\_Statewatch+.pdf](http://viitorul.org/public/2706/en/Policy_Statewatch+.pdf)

487 Litra, Leonid: 2010, The EU's conditionality in the case of Moldova: 2000-2009 – Failure or Success? Study Programme on European Security, Institut für Europäische Politik.

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489 Monitoring of the Republic of Moldova – European Union Action Plan, Association for Participatory Democracy, <http://www.e-democracy.md/en/rm-ue/>

490 Speech by Ambassador of the EU to Moldova Dirk Schubel at the Konrad Adenauer Forum for European Politics, Chisinau, 16/11/2010.

491 Litra, Leonid: 2010, A new opportunity for settling or extending the status-quo-?, in Report on Preventing Crisis, April-October 2010, Institute for Development and Social Initiatives "Viitorul", <http://www.viitorul.org/public/3058/ro/EWR%203.pdf>



dova. At that time, Moldovan exports to Russia represented around 85% of total exports,<sup>492</sup> and in 2009, this figure is little over 20% of exports.<sup>493</sup> The cold shower of the crisis of 1998 brought diversification of exports on the agenda of the government. Besides the financial crisis generated due to management inability/ lack of prudence, Moldova was also involved in artificially generated crises. The Russian Federation resorted on several occasions to economic sanctions by banning the imports of wine from Moldova, but also agro-food products, under the pretext of non-compliance with phyto-sanitary norms, but which actually had political reasons. Both in 2006 and in 2010, these economic sanctions were generated by the political life in Chisinau and its pro-European orientation, which does not comply with the vision of Russia for this region. The economic black mail for “adequate” political conduct is a practice often used by Russia.<sup>494</sup> Just in the past 5 years, Russia exercised the same treatment in various sectors for Georgia, Poland, Lithuania, Belarus, Ukraine, the USA, etc.

From an economic point of view, Republic of Moldova remains mainly dependent on foreign countries and agencies, being seriously affected by the financial crisis and the inability to manage well public funds. Moldova permanently benefits from grants and credits from external donors. Since independence and until now, Moldova managed to attract the support and sympathy of donors,<sup>495</sup> even though there were periods of isolation on behalf of donors for counter-reforms implemented, especially during the periods of 1994-1998 and 2001-2005. Currently, Chisinau returned on the donors’ agenda that pumped into Moldova through the Compact Program \$ 262 mil.,<sup>496</sup> through IMF - \$ 574 mil.,<sup>497</sup> through EU macro-financial assistance - € 90 mil., and through the Donor Conference “Rethink Moldova” - \$ 2.6 billion,<sup>498</sup> which includes a part of the money mentioned above. This money was provided for overcoming the effects of global crisis, but also for reforms in sectors that require urgent financial inflows. At the same time, donors coordinate their activity in Republic of Moldova rather efficiently with the support of the United Nations.<sup>499</sup> Until now, donors participated most actively in funding health, macro-financial stability, democracy and human rights, border management and others, according to the table below. Even though in 2009, Eastern donors said that they also intend to provide loans (Russia - 500 million \$ as technical assistance and China – 1 billion \$), these intentions disappeared together with EIA coming to power. In the past, Russia donated other means than financial by selling gas at a price lower than the market price, but this happened as long as the Moldovan government proved its loyalty towards Moscow. We should also mention that Moldova wanted to contract the Chinese credit, which, among others, had a very simple conditionality to promote Chinese business. But this was not possible because of the

492 Popescu, Olga, Russia provides to Transnistria Humanitarian Aid of 200 million dollars from the budget of the separatist region, Hotnews, 3/03/2010, <http://www.hotnews.ro/stiri-international-6984450-rusia-acorda-transnistriei-ajutoare-umanitare-200-mil-dolari-pest-jumatate-din-bugetul-regiunii-separatiste.htm?cfnl=&newsalert>

493 Financial Crisis of 1998 in Russia, <http://www.world-crisis.net/financial-crisis/russian-crisis.html>

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495 Ciurea, Cornel: 2010, Wine Crisis: A New Dispute between Russia and Moldova without Clear Perspectives for Settling, in Report on Preventing Crisis, April – October 2010, Institute for Development and Social Initiatives “Viitorul”, <http://www.viitorul.org/public/3058/ro/EWR%203.pdf>

496 Moldova Democracy and Governance Assessment, USAID, 2005

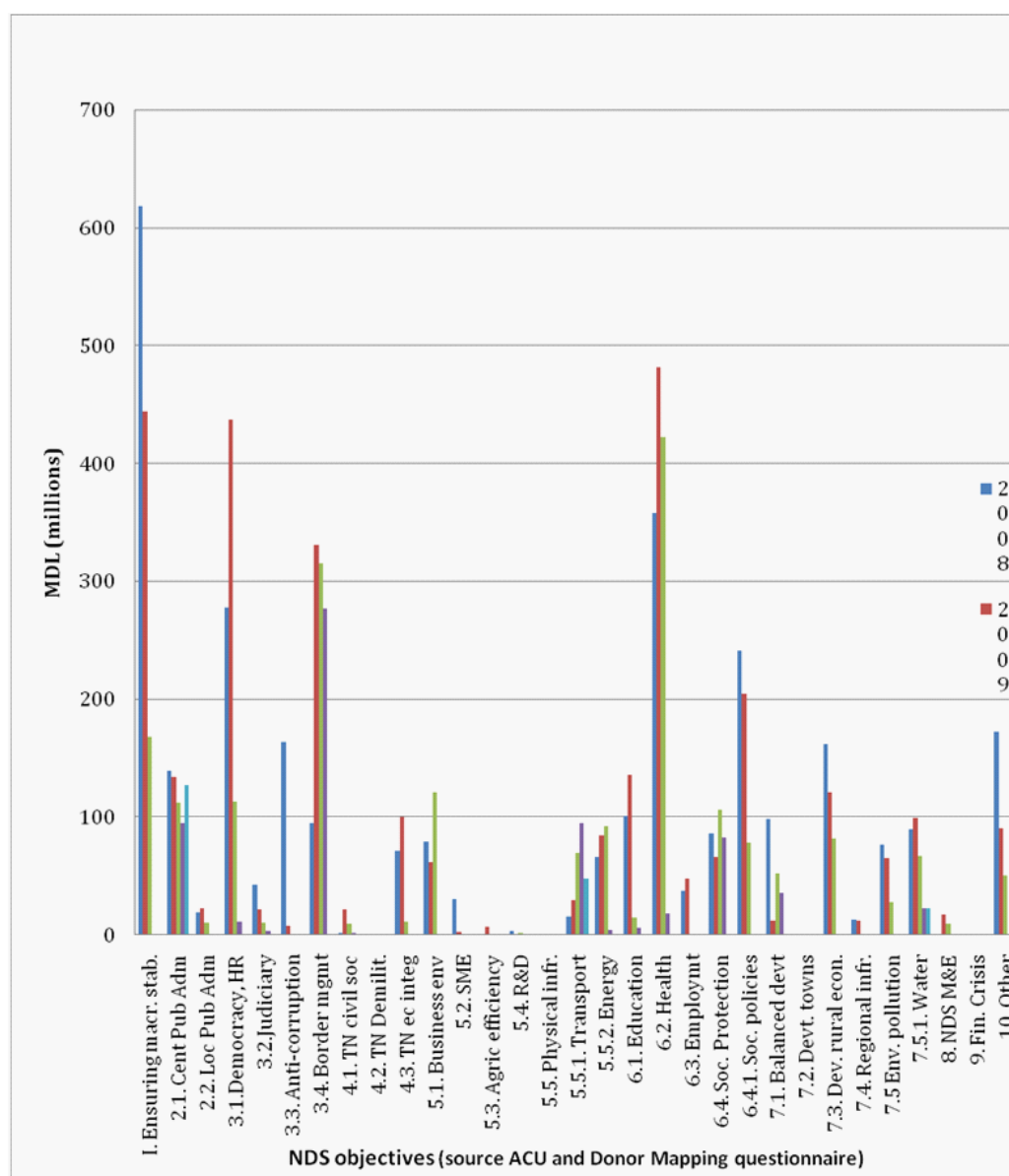
497 Remarks at the Moldova Compact Outreach Event, <http://www.mcc.gov/staging/pages/press/speech/speech-012110-moldova-outreach>

498 IMF Executive Board Approves US\$574 million ECF/EFF Arrangements for Moldova, <http://www.imf.org/external/np/sec/pr/2010/pr1021.htm>

499 Ghinea, Cristian/ Chirila, Victor: (2010), EU-Moldova Negotiations, What is to be discussed, what could be achieved? CRPE and APE.

requirements of IMF, which stipulate that credits to the government and investments guaranteed by the government cannot exceed a certain percentage of GDP.

**Chart 32 „Donor Assistance according to NDS Priorities”<sup>500</sup>**



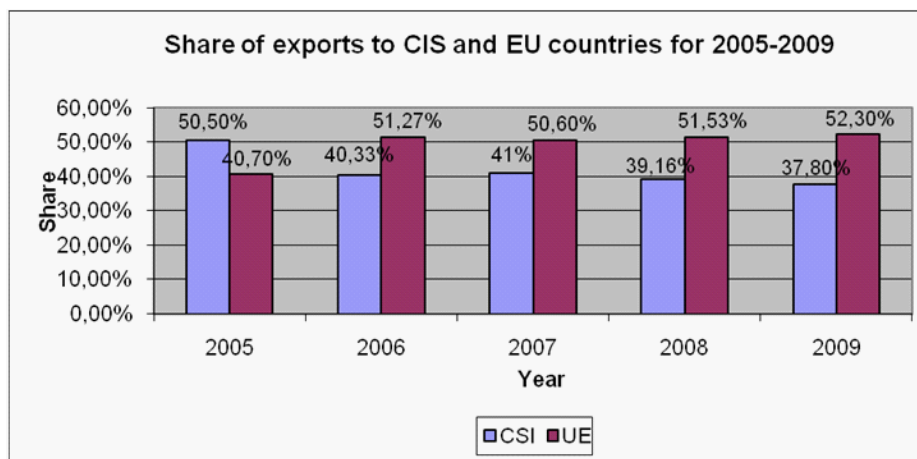
As to exports, the situation has changed. While in 2005 the share of exports to CIS countries exceeded the share of exports to EU, in 2009 exports to CIS countries decreased to 37.8% of total amount, and exports to EU increased to 52,3%.<sup>501</sup> This change was mainly generated by agreements between RM and EU, which evolved from GSP (Generalized System of Preferences) in 2006 to GSP+ and then to ATP (Autonomous Trade Preferences). ATP allowed export of more

500 Donors Coordination, United Nations Moldova, <http://www.un.md/donors/meetings/>

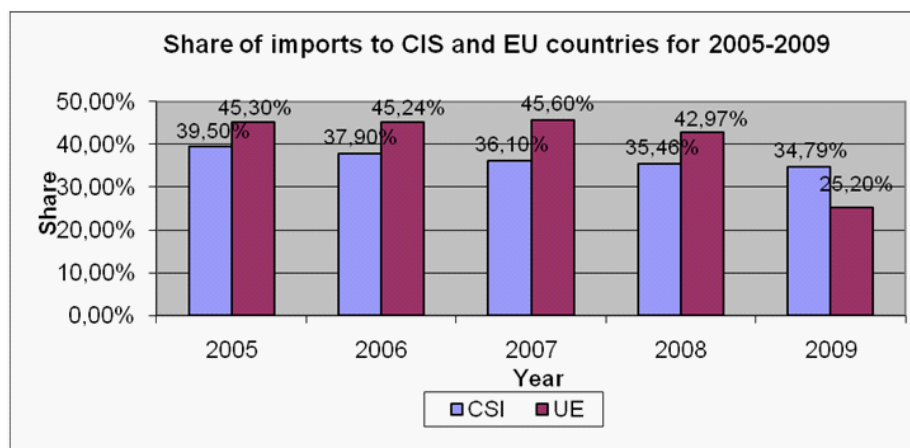
501 ODA by NDS objectives, <http://www.un.md/donors/meetings/>

products with no duties to the EU, a facility also available to Transnistrian companies, which following March 3, 2006, when a new customs regime was applied, were able to export to the EU using the ATP, provided that they have been registered at the State Registration Chamber of RM. Currently, more than 500 enterprises did register,<sup>502</sup> which cover more than a half of total Moldovan exports to the EU.

*Chart 33 „Share of Exports to CIS and EU countries for 2005-2009”*



*Chart 34 „Share of Imports to CIS and EU Countries for 2005-2009”*



At the same time, together with the immigration of around 700 000 people to EU countries and Russia, remittances became a significant part of the GDP. But in the past few years the share of remittances in GDP is decreasing, for example, in 2007, remittances represented 36.2%<sup>503</sup> of GDP and in 2009 = about 31%.<sup>504</sup> After the world crisis, in addition to remittances, foreign direct investments have decreased – in 2008 they accounted for 11% of GDP and in 2009, once the effects of the crisis became

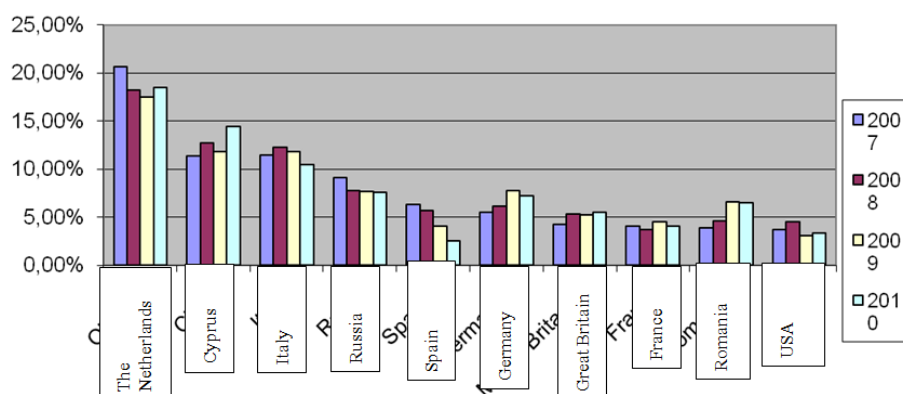
502 Calmic, Octavian, Opportunities of the sectors oriented to export of the Republic of Moldova

503 Activity Report of the State Registration Chamber in 2009, State Registration Chamber, <http://www.cis.gov.md/content/774>

504 World Bank: Until the end of this year, remittances to Moldova will represent 36.2% of GDP, <http://www.interlic.md/2007-12-02/3242-3242.html>

palpable, they accounted for under 2%.<sup>505</sup> The countries that are in the top list of investors of Moldova are the Netherlands, France, Cyprus, Italy, Russia, Romania, Germany, Spain, Great Britain, etc., and the main areas of investments are financial activities (22.7%), wholesale and retail trade (20.5%), processing industry (18.8%), real estate transactions (13.5%), and transport and communications (13%).<sup>506</sup>

**Chart 34 „The Structure of Foreign Direct Investments by Country of Origin as % of Total”**



At the same time, Moldova continues to maintain a considerable external debt, which in April 2010 was almost 1 billion USD.<sup>507</sup> As a result of receiving funds from the donor conference on March 24, 2010, it is estimated that foreign debt shall represent 35% of GDP and per capita debts would be around 300 USD. If Transnistrian debts are added, then the per capita debt would be around 1000 USD.<sup>508</sup>

The cultural domain is not lacking political color, which stems either from ethnical structure, or from historic inheritance. The same process is registered in mass media, which is divided not only on political criteria, but also on linguistic (geopolitical) criterion. Despite a quasi-presence of the Russian press in RM, it is starting to be diluted by the appearance of new media investments, which diversify the choice of the public, but at the same time, are directed toward media institutions that represent the specific interests of some groups of influence; this process is called “berlusconialization” of the media.<sup>509</sup>

At the same, the almost inexistent democratic tradition and the underdeveloped political culture determine the public to have a delayed reaction or none at all on many policies promoted by the government to the detriment of citizens, which to a great extent is not penalized by voters. An eloquent example to this end is the reluctance of many governments to liberalize the airline market and not allowing access of low cost companies.<sup>510</sup>

Finally, it should be mentioned that in the nearest future Republic of Moldova shall not get rid

505 In January-February 2009, the amount of remittances to Moldova decreased by 30.3% as compared to the similar period of time in 2008, <http://www.interlic.md/2009-04-20/in-ianuariefbruarie-2009-volumul-remitentzelor-in-moldova-a-scazut-cu-303-fatza-de-perioada-similar-9794.html>

506 Prohnitchi, Valeriu et al.: 2010, The Impact of Foreign Direct Investments on Republic of Moldova, Expert-Grup.

507 National Bureau of Statistics, [www.statistica.md](http://www.statistica.md)

508 Moldova has an external debt of 937.2 mil. USD, Jurnal Trust Media, <http://www.jurnal.md/ro/news/moldova-are-o-datorie-externa-de-937-2-miln-dolari-sua-184519/>

509 author's computations from various sources

510 Ciurea, Cornel (2010): Broadcasting Mass Media in Republic of Moldova between crisis and rebirth, in Report on Preventing Crises, January-March 2010, Institute for Development and Social Initiatives “Viitorul”

of Russia's influences and shall remain dependant on it for several reasons, especially, the because of energy.<sup>511</sup> Due to these economic implications, Russia will remain an attraction for political parties because of its ability to influence political processes, especially, elections, by mobilizing ethnic votes and organizing media campaigns. At the same time, adherence to the EU remains the number one priority of external policy and guides the process of governance, even though the attachment of Moldovan political class and society to EU values is partial. More important is the fact that in some areas there is a slow transition from aspirations and pleadings to concrete reforms that would bring Moldova closer to the EU.

At the same time, the dependence, especially, economic dependence, on external foreign bodies, the EU, but also countries like USA and Sweden, represent a challenge specific for transition periods, but on the other hand, the support of these countries for Republic of Moldova means commitment, external cooperation ad solidarity. Moreover, in the near future, considerable changes shall not occur, taking into consideration that Official Development Assistance (ODA) is used mainly for macro-financial stability and current expenditures, which the amount of ODA for the real sector of economy varies around 8% of total ODA.<sup>512</sup> Under such conditions, external loans are used to cover the interest of previous loans and current expenditures, and the general economic capacity remains the same.

### **Moldova as exporter of democracy**

This expression could cause bewilderment or even irritation. How can a small and fragile country on the path of internal transformations serve as exporter of democracy? The answer is simple – because democracy is not the end station, but a process of institutional and behavioral adjustments to norms that citizens of a country consider to be acceptable and appropriate, and small countries can supply interesting resources of change to other countries. Small countries can also discover with surprise that the solutions that they have identified during or after a crisis can be socially learned by other societies who want to learn from others and have the patience to determine the differences and advantages of a new lesson.

It is true that Republic of Moldova remains a net consumer of security even after 20 years of independence. During all these years, Moldova rather contributed to weakening regional security than strengthen it due to Transnistrian conflict, even though this conflict is generated and maintained to a great extent by the Russian Federation, the weakness of the state of Republic of Moldova, but also Ukraine's unwillingness to cooperate closer on this issue.

So far, Republic of Moldova did not intend to contribute in a systematic manner to promoting democracy, even though it regularly participated to helping other countries facing various problems: floods (Check Republic, Romania), earthquakes (Haiti), fires (Greece), providing as little as it had and getting involved in the process of international assistance. As to exporting democracy, RM assistance was asserted on many occasions, but mostly through consultations supplied by civil society, and not state

511 Vlad Filat chaired the sitting of the Government Commission for European Integration, Vocea Basarabiei, 18/03/2010, [http://www.vocea-basarabiei.net/index.php/stiri/politica/7614-vlad-filat-a-prezidat-edina-comisiei-guvernamentale-pentru-integrare-european-](http://www.vocea-basarabiei.net/index.php/stiri/politica/7614-vlad-filat-a-prezidat-edina-comisiei-guvernamentale-pentru-integrare-european)

512 For details see Mihailescu Virgiliu, Energy Security of Republic of Moldova in the Context of Adhering to the Energy Community, Soros-Moldova Foundation, Bons Offices, April 2010, <http://www.soros.md/files/publications/documents/studiu%20Securitatea%20energetica%20a%20RM.pdf>

agencies, which usually showed exaggerated prudence or negativism fed by the eternal lack of budgetary resources to promote a certain model of democracy built in RM. Unfortunately, these expressions of solidarity were few and with an insignificant impact. For the same reasons mentioned above, the central authorities of RM do not finance non-government organization from inside or outside Moldova, and does not have its own funded programs to finance democratization activities like in Slovakia, which created SlovakAid contributing funding to some projects which also aim at democracy. Most certainly, the civil society of Republic of Moldova could provide several lessons of democracy to countries with issues related to the functioning of responsible governance or where civil society just started building their logistical and motivational resources to act in the interest of the public good. Being falsely modest, we pretend that this could be done by other countries which are more stable and more democratic, but this point of view is deficient in many ways.

This seems difficult since Moldova's image is strongly affected by poverty, which is extrapolated to other areas. The way Republic of Moldova participates to promoting democracy and peace is its official alignment to the statements of European Union such as the EU Statement on the Situation in South Osetia, to which Moldova adhered.<sup>513</sup> Also, statistical data show that Moldova signs almost all CFSP statements of the EU, which can be seen in the response to an inquiry submitted to the General Directorate of EU responsible for informing the general public, which proved that out of 16 CFSP statements as of January – February 2007, Moldova aligned to all of them.<sup>514</sup> The same thing happens with other international institutions such as the United Nations or the Council of Europe.

In a broader context, Republic of Moldova participates to peace keeping operations which also contribute to the development of democracy, even though the number of Moldovan participants to these operations is very small due to the reluctance of the communist government, but also to limited capacities. Despite the fact that Moldova's capacities are very limited and its contributions are extremely modest, its participation proves attachment to democratic values and developing a culture of peace. As part of the United Nations, Moldova participated to several peace keeping operations, the latest being to Liberia (UNMIL), Cote d'Ivoire (MINUCI) and Sudan (UNMIS),<sup>515</sup> but also to more complicated regions such as Afghanistan, where currently, Republic of Moldova contributed 5 helicopters as part of the Mission of Assistance of the United Nations in Afghanistan.<sup>516</sup>

For now, Moldova is involved in designing policies only on separate topics which are directly connected to Moldova. The most eloquent example is OSCE, which is the official mediator in the Transnistrian conflict and has to listen to Chisinau authorities, even though OSCE is influenced by several member countries which are, even partially, involved in the Transnistrian conflict.

In the end, Republic of Moldova proved to be unable for the moment to contribute to democ-

513 Lozovanu, Valentin: 2010, External Assistance and Economic Development of Republic of Moldova, External Policies Bulletin No. 11, IDIS "Viitorul"

514 Panorama, Bimonthly Bulletin of Analysis, Comments and Interviews on External Policy Issues of Republic of Moldova, No. 5 (49), 7-28 August 2008, APE

515 Popescu, Nicu: 2007, Moldova Aligning to the External Policy of the EU, <http://npopescu.yam.md/2007/02/28/alinierea-moldovei-la-politica-externa-a-ue/>

516 Republic of Moldova and the United Nations, Participation to Peace Keeping Missions of the United Nations, Ministry of External Affairs and European Integration of Republic of Moldova, <http://www.mfa.gov.md/politica-externa/RM-si-ONU/>



ratizing the region in a specific way, even though out of all CIS countries, Republic of Moldova was the only one since independence until now than ensured a democratic and constitutional transfer of power, without dictatorships, revolutions and “successor’ projects. Thus, even though RM was the one to start democratization on Soviet ground, its society remains void of democratic traditions and practices and tools that would allow supporting democratization of this region. To this end, initiating a discussion on establishing an Agency for Development is necessary and should take place as soon as possible. This step was taken by several Central European countries to get rid of a negative image and to help countries that are poorer and more disorganized.

## ***14.2 How far are government relations with international organisations based on principles of partnership and transparency?***

In general, Republic of Moldova has a stable relationship with external donors and international institutions. The EU represents both a donor and a sui generis international institution with which relations have evolved rapidly in the past years. The main principle of these relationships is reciprocity and respecting EU values: democracy, human rights and market economy. During all these years, EU was a development partner that paid special attention to its relationship with Moldova and that broadened its cooperation with RM following September 25, 2009, when the new government lead by the European Integration Alliance came to power. Fundamentally, the dialogue with the EU is transparent, even though there are processes barely known by the general public such as negotiating the Association Agreement between RM and EU, the details of which are barely disclosed under the pretext of a confidentiality policy aiming at maintaining the process of negotiations without any influences. But RM did not always have a coherent position towards the EU. The example of introducing visas by the communist government (2001-2009) for Romanians after the events of April 7, 2009 contrary to agreements in force is a very eloquent example of non-observance of commitments made to the European community.<sup>517</sup> As to bilateral cooperation, the largest donors (during 2008-2012) are the USA through USAID, Sweden through SIDA and Great Britain through DFID.<sup>518</sup>

Unlike the relationship with the EU which, despite some difficulties, remained constant, the relationship with IMF was severed several times because the costs of reforms proposed by IMF were too high - thus, from 2001 until 2006, the communist governance freezes the relationship with IMF and a series of reforms.<sup>519</sup> In general, the relationship with IMF is transparent, but the process of negotiating loans is not very well known, which generates a lot of speculations. The last loan in the amount of 574 mil USD generated several discussions between the opposition and the government, when the opposition

517 Scheffer, Jaap de Hoop, Speech by NATO Secretary General at the University of Chisinau, Republic of Moldova, <http://www.nato.int/docu/speech/2008/s081030a.html>

518 Cristian Diaconescu, Imposing visas was a reckless step for Republic of Moldova, [http://www.realitatea.net/cristian-diaconescu--introducerea-vizelor-este-o-actiune-nesabuita-a-republicii-moldova-\\_492551.html](http://www.realitatea.net/cristian-diaconescu--introducerea-vizelor-este-o-actiune-nesabuita-a-republicii-moldova-_492551.html)

519 For detailed information about all donors of Moldova and the value of aid provided, see ODA by NDS objectives, <http://www.un.md/donors/meetings/>

party accused Filat Government of accepting dismissal of teachers and making several more concessions to the detriment of the country to receive this loan.<sup>520</sup> In the same context, the relationship with the World Bank was very similar to that with IMF. Both the EU and IMF, but also the World Bank, are involved in designing government policies based on the „stick and carrot” principle. Even though it is not visible and at all explicit, but these international institutions, together with the European Bank for Reconstruction and Development also exercise pressures to influence the political reform agenda.<sup>521</sup>

Relationships with political organizations other than EU are less dynamic. NATO is poorly present in RM and still continues to be perceived by the public in a way of thinking specific for the cold war. These perceptions are especially strong within Russian speaking groups of population, but also the electorate of parties that are opposed to approximation to NATO such as the CPRM. Despite this fact, there is a NATO Information and Documentation Center that implements information programs on the activity and role of NATO, but at the same time, is poorly financed and present due to “prudence of authorities in relation to NATO”. As part of the Partnership for Peace to which Moldova is a party, NATO cooperates especially through the Individual Partnership Action Plan (IPAP)<sup>522</sup> which is essentially public, even though there are confidential documents. On the other hand, the relationship with OSCE is closer, but rather unproductive on certain segments for reasons that cannot be imputed to the Government of Moldova and OSCE. A more prominent secrecy was recorded in the relationship OSCE-Moldova on developing policies related to the Transnistrian conflict, despite this fact, OSCE proved to be very active and productive in certain important segments for Moldova such as assistance for integrating minorities from Moldova, consultations on constitutional and electoral changes, monitoring elections, interventions for managing various crisis especially on the Transnistrian conflict such as the intervention during the school crisis in Transnistria, and others related to freedom of mass media and observing human rights in Moldova. Finally, relationships with CIS are more symbolic than efficient, but there are every few projects to which all member states participate. Fundamentally, relationships between CIS member countries are based on bilateral agreements.

### ***14.3 How far does the government support UN human rights treaties and respect international law?***

The issue of protecting human rights became a topic for discussion immediately after the initiation of social, economic, political transformations in the former USSR. Even prior to declaring independence in August 1991, Moldova adhered to the Universal Declaration of Human Rights by Parliament Decision of 28.07.90. It was an important decision since on the date of adhering to this document Moldova was still part of the USSR. This document represents one of the most important actions which determined the start of social and political transformations in Moldova.

520 Chirila, Victor: 2009, The Relationships of Republic of Moldova with the USA (1998 – 2008): A Partnership Neglected by Chisinau, <http://www.ape.md/libview.php?l=ro&idc=152&id=566>

521 Dodon, Igor: 2010, IMF Recipe for Republic of Moldova and its Real Consequences, <http://dodon.md/2010/05/reteta-fmi-pentru-republica-moldova-si-consecintele-ei-reale/>

522 Moldova Democracy and Governance Assessment, USAID, 2005

Subsequently, after becoming independent, Republic of Moldova adhered to several international conventions and treaties on human rights. This means openness towards international standards on human rights.

In the 1990s, Republic of Moldova made a considerable effort to adhere to UN, Council of Europe, OSCE and EU regulations on human rights. These organizations use various mechanisms to monitor the way human rights are observed in Republic of Moldova.

**Table 31 „List of the most important treaties ratified by Republic of Moldova as part of UN”**

Name of treaty	Date of approval	In effect in R. Moldova
The Universal Declaration of Human Rights	10.12.1948 in New York	28.07.1990
International Pact on Economic, Social and Cultural Rights	16.12.1966 in New York	26.04.1993
International Pact on Civil and Political Rights	16.12.1966 in New York	26.04.1993
International Convention on the Rights of the Child	20.11.1989 in New York	25.02.1993
International Convention on the Elimination of all Forms of Racial Discrimination	21.12.1965 in New York	25.02.1993
Convention on the Elimination of all Forms of Discrimination against Women	18.12.1979 in New York	31.07.1994
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	10.12.1984 in New York	28.12.1995

Source: [www.mfa.gov.md/img/docs/ListaTratateMultilaterale.pdf](http://www.mfa.gov.md/img/docs/ListaTratateMultilaterale.pdf)

**Table 32 „List of the most important treaties ratified by Republic of Moldova as part of Council of Europe”**

Name of treaty	Date of approval	In effect in R. Moldova
Convention for the Protection of Fundamental Human Rights and Freedoms	04.11.1950 in Roma	12.09.1997
First Additional Protocol to the Convention for the Protection of Fundamental Human Rights and Freedoms	20.03.1952 in Paris	12.09.1997
Second and Third Additional Protocols to the Convention for the Protection of Fundamental Human Rights and Freedoms	06.05.1963 in Strasbourg	12.09.1997
Additional Protocol No. 4 to the Convention for the Protection of Fundamental Human Rights and Freedoms, recognizing other rights and freedoms than those included in the Convention and the First Additional Protocol to the Convention	16.09.1963 in Strasbourg	12.09.1997
Additional Protocol No. 5 to the Convention for the Protection of Fundamental Human Rights and Freedoms, amending articles 22 and 40 of the Convention	20.01.1966 in Strasbourg	12.09.1997
Additional Protocol No. 6 to the Convention for the Protection of Fundamental Human Rights and Freedoms concerning the abolition of the death penalty in all circumstances	28.04.1983 in Strasbourg	01.10.1997
Additional Protocol No. 7 to the Convention for the Protection of Fundamental Human Rights and Freedoms	22.11.1984 in Strasbourg	01.12.1997
Additional Protocol No. 8 to the Convention for the Protection of Fundamental Human Rights and Freedoms	19.03.1985 in Vienne	12.09.1997
Additional Protocol No. 11 to the Convention for the Protection of Fundamental Human Rights and Freedoms	11.05.1994 in Strasbourg	01.11.1998
Framework Convention for the Protection of National Minorities	01.02.1995 in Strasbourg	01.02.1998
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	26.11.1987 in Strasbourg	01.02.1998
First Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	04.11.1993 in Strasbourg	01.03.2002
Second Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	04.11.1993 in Strasbourg	01.03.2002
Protocol No. 13 to the European Convention for the Protection of Fundamental Human Rights and Freedoms concerning the abolition of the death penalty in all circumstances	03.05.2002 in Vilnius	01.02.2007

Source: [www.mfa.gov.md/img/docs/ListaTratateMultilaterale.pdf](http://www.mfa.gov.md/img/docs/ListaTratateMultilaterale.pdf)

However, it should be mentioned that from a normative point of view, the legislation of Republic of Moldova was constantly aligned to UN standards, but in reality, several deviations from commitments taken were recorded.

### 14.3.1. Human Rights

#### Human Rights Implementation Treaties and Mechanisms

Republic of Moldova ratified the most important treaties on observing human rights. This implies that Republic of Moldova took several commitments on protecting human rights. That is why if human rights are breached, there are specialized tools of the UN or Council of Europe to review individual complaints. Thus, Moldova makes periodical reports on the implementation of the International Pact on Civil and Political Rights. Also, the Council of Europe is able to evaluate the status of human rights observance in Republic of Moldova through specialized committees. During July 27-31, 2009, after the events on April 7 in Republic of Moldova, there was an evaluation visit on human rights of the European Committee for Preventing Torture and Inhuman or Degrading Punishment or Treatment. The UN Committee against Torture adopted during its sitting of November 19, 2009 several conclusions and recommendations on observing human rights in *Republic of Moldova*. Also, *citizens of Republic of Moldova can approach ECHR if national courts breach their rights. Conclusions and recommendations of special committees as well as EHRC rulings represent important measures to improve the national legislative framework in the area of human rights and to eliminate violations of human rights.*

The decision of the Government of Republic of Moldova of 01.03.2006 on establishing the *National Commission for Developing Initial and Periodical Reports on the Implementation of International Conventions to which Republic of Moldova is a party* is viewed as an important tool for the implementation of international treaties to which Republic of Moldova is a party and observance of commitments. This Commission should develop and watch over implementation of recommendations of specialized bodies of the UN or Council of Europe. For example, this Commission developed an Action Plan for the period of 2010-2013 for the implementation of recommendations of the UN Committee developed as a result of submitting the Periodical report on the implementation of the International Pact on Civil and Political Rights.

But there are several issues here. Republic of Moldova continues to be monitored by the Council of Europe. PACE resolutions on RM honoring commitments and obligations towards the CoE seek to encourage Moldovan authorities to finalize the reforms that were started – a condition necessary to finalize the procedure of monitoring and launching the post-monitoring dialogue in the predictable future.<sup>523</sup>

Republic of Moldova adhered to the *International Convention for the Elimination of all*

523 NATO and Moldova intensify cooperation, 19/05/2006, <http://www.nato.int/docu/update/2006/05-may/e0519a.htm>

*Forms of Racial Discrimination (CERD)*, but did not make a declaration on the basis of article 14 of CERD, which would allow reviewing individual complaints by the Committee for the Elimination of Racial Discrimination. Moldovan authorities pointed out that there is no immediate plan to sign or ratify this tool based on Article 14 of CERD.<sup>524</sup>

Another document that was not ratified by Republic of Moldova is Protocol No. 12 of the *European Convention for Human Rights*. This protocol provides the review by the Court of individual complaints on any kind of discrimination at national level.

The European Commission against Racism and Intolerance (ECRI) recommend to Moldovan authorities to *ratify the International Convention on protection of rights of all migrant workers and their family members* and the *European Charter of Regional or Minority Languages*.

Republic of Moldova continues to be monitored by the institutions of Council of Europe in various areas. Thus, the Consultative Committee on the Framework Convention for Protecting National Minorities evaluated the legislative framework on protecting national minorities which is in compliance with European and international standards, but said that according to the statements of national minorities, there are considerable issues related to their implementation – in particular, at local level – in such areas as education, supporting cultural development of national minorities and co-participation.<sup>525</sup>

During April 25-28, 2009, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, visited Moldova to investigate the issue of inhumane and degrading treatment of detainees of the post-electoral protests from April. Most of interviewed people said that they were beaten – some of them cruelly – by police officers.<sup>526</sup>

The European Commission for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made a visit to Moldova on July 27 – 31, 2009 in Moldova. In their report to the Government of Republic of Moldova, the CPT delegation stated a particularly large number of credible and consistent accusations of ill treatments by the police in the context of post-electoral events in April 2009.<sup>527</sup>

European Commission for Human Rights is the most important tool of the Council of Europe for ensuring the implementation of commitments taken by member states on observing human rights and fundamental freedoms stipulated in the European Convention on Fundamental Human Rights and Freedoms. Thus, during the period of 1998 -2008, the European Court for Human Rights issues a total of 168 rulings related to Republic of Moldova.<sup>528</sup> The number of convictions at ECHR could be higher if all cases would have been reported to this institution and

524 Council of Europe, [www.mfa.gov.md/consiliul-europei/](http://www.mfa.gov.md/consiliul-europei/)

525 The third report on Moldova of the European Commission against racism and intolerance, adopted on December 14, 2007

526 Opinion II about Republic of Moldova, the Consultative Committee on the Framework Convention for the Protection of National Minorities, adopted on December 9, 2004, Strasbourg

527 The report of Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, as a result of the visit to Moldova during April 25-28, 2009

528 Report to the Government of Republic of Moldova on the visit to Republic of Moldova of the European Committee for Preventing Torture and Inhuman or Degrading Treatment or Punishment on July 27 – 31, 2009, Strasbourg, 14 December 2009

if all procedural norms of submittal were reviewed by the court. The large number of cases lost by Republic of Moldova in front of the European Court for Human Rights shows a serious systemic issue of the police and the judiciary. A very serious case is related to the court sittings that were held at police precincts in April 2009. The sittings lasted 5—10 minutes, no lawyers, no observance of other procedural norms, without taking act of the tortures to which young men were subjected, issuing rulings of administrative arrest on a conveyor.<sup>529</sup>

In 1993, the OSCE Mission to Moldova was established. The main activities of the mission are to settle the Transnistrian conflict, fight trafficking in human beings, weapon control and disarming, freedom of press and human rights, and democratization. Since 1994, OSCE mediated the issue of 7 schools from the Transnistrian region which use the Latin alphabet to teach Romanian; also, they support the process of democratic transformations by monitoring elections in Republic of Moldova.<sup>530</sup>

A significant feature of monitoring treaties on observing human rights are the reports developed by countries and presenting them in front of specialized monitoring committees. Moldova presented 2 reports on the International Pact on Civil and Political Rights of 1966. The Committee reviewed the second periodical report presented by Republic of Moldova during sittings 2559 and 2560 of October 13 and 14, 2009, and adopted several conclusive observations during sitting 2582 from October 29, 2009.<sup>531</sup>

Republic of Moldova developed and presented several reports: *International Pact on Civil and Political Rights* (twice), *Convention on the Elimination of all Forms of Discrimination against Women* (3 times), *Convention against Torture and other Cruel, Inhuman or Degrading Punishment or Treatment* (twice), *International Convention for the Elimination of all Forms of Racial Discrimination* (7 times).

The Center for Human Rights from Republic of Moldova and non-governmental organizations monitor the matter of implementing all human rights in Republic of Moldova. NGOs develop a „Shadow Report” which is an alternative form of reporting to that presented by the Government. Unfortunately, even though it is recommended for the Government to consult civil society in developing reports, in reality, the working groups set up by the Executive do not consult ONGs and do not take into account their opinions.

### 14.3.2. International Law

#### 14.3.2.1 Treaties

Republic of Moldova ratified an impressive number of international treaties. In a way, it

529 An analysis by articles of the rulings of the European Court for Human Rights issued on Moldovan Cases in 2009, 01/02/2010, <http://www.lhr.md/2/92.html>

530 Why judge Dorin Popovici should be dismissed, 17/03/2010, [www.zdg.md/investigatii/de-ce-trebuie-demis-judecatorul-dorin-popovici](http://www.zdg.md/investigatii/de-ce-trebuie-demis-judecatorul-dorin-popovici)

531 Human Rights and Democratization, [www.osce.org/moldova/13428.html](http://www.osce.org/moldova/13428.html)



is a reaction of decision makers as a result of gaining independence. The reasoning was that international recognition of Republic of Moldova is possible, first of all, by participation to various international treaties. Obviously, adherence to a series of international organizations goes without saying. But, a large number of treaties that are not of major importance for Moldova or impede our country to adhere to other international agreements were ratified.

Republic of Moldova signed an impressive number of international agreements of doubtful relevance as part of CIS. There is a series of factors that explain this situation. First, most CIS agreements were not fully ratified by all member states. Participation to these treaties is selective and depends on the interest of each country for the respective agreements. Second, at CIS level, there are no institutions authorized to supervise the implementation of adopted norms. And finally, relationships between countries members of CIS are regulated by bilateral agreements, which explains the inefficiency of agreements within the Commonwealth of Independent States.

Because of the issues explained above, Republic of Moldova should denounce certain irrelevant treaties. For example, in December 2009, the Parliament adopted a law denouncing the Agreement on the status of the Economic Court of the Commonwealth of Independent States signed in Moscow on July 6, 1992.

Republic of Moldova ratified several conventions on matters of major importance for international relations in the latest period. We could mention as an example the *United Nations Convention against Transnational Organized Crime* in 2000. Another important document is the *Council of Europe Convention on Preventing Terrorism* in 2005 or the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* in 1997.

#### **14.3.2.2 Mechanisms and procedures, monitoring implementation of legislation**

Undergoing a process of adjusting legislation and passing a part of the *acquis*, Moldova passed a lot of laws, but they are not respected and are not applied in practice. At this moment, there is monitoring conducted by bodies stipulated when the latter were established (in case of some conventions) and a Center for Harmonization of Legislation within the Ministry of Justice, which deals especially with aligning Moldovan legislation to the *acquis communautaire*. The most important areas such as human rights, freedom of press, anti-corruption policies, social matters, etc. remain to be monitored by non-governmental organizations. The National Council for Participation, a body consisting of 30 organizations of the civil society, which reviews draft laws proposed by the government related to important/strategic documents such as the National Development Strategy, try to bring an added value to this process and express their position on current processes related to national level policies.

Out of the entire process of legislation development, from initiating the development of a legislative act, developing the draft bill, rationale, coordinating the draft and expert opinion, pass-

ing, promulgation and coming into effect, the only phase that is lacking is monitoring implementation.<sup>532</sup> Currently, there is a project which stipulates that laws shall be implemented by a subdivision of the Ministry of Justice, but for the moment, the lack of such a mechanism generates a huge issue for capitalizing institutional capacities of implementing laws, which represents one of the most serious issues facing Moldova in the process of aligning to the EU, which was recorded in the progress reports presented by the European Commission.<sup>533</sup>

### 14.3.3. Membership fees in International Organizations

Republic of Moldova honors its membership fees to international organizations, sometimes with delays. Membership fees are paid to UN, UNESCO, Council of Europe, OSCE, WTO, OMC, International Bank for Reconstruction and Development, World Health Organizations etc.

According the list of international and regional organizations to which Republic of Moldova has to pay membership fees from the state budget of 2010, the total amount of fees is estimated at 46.700.000 lei. From which 5 321 620 lei are paid to CIS, which represents around 11.39%.

**Table 33 “The list of international and regional organizations to which Republic of Moldova was to pay membership fees and debts from the state budget of 2010”**

Name of organization		Proposals for transfer in 2010		
		Name of currency	Amount in currency	Amount in lei
<b>Parliamentary Organizations</b>				
1.	CIS Inter-parliamentary Assembly	RUB	3967800	1646637
2.	Parliamentary Assembly of Black Sea Economic Cooperation (PABSEC)	EURO	35466	622074
3.	Inter-parliament Union	CHF	21600	259200
4.	Parliamentary Assembly of OSCE	EURO	1428	25047
5.	Parliamentary Assembly of Francophonie	EURO	2876	50445
<b>SUBTOTAL 1</b>				<b>2603403</b>
<b>International Organizations</b>				
6.	Council of Europe	EURO	323591	5675791
7.	International Bank for Reconstruction and Development (IBRD)	MDL	2500000	2500000
8.	European Bank for Reconstruction and Development (EBRD)	USD		
9.	Black Sea Development and Trade bank (BSDTB)	DST	178412	3464757
10.	Black Sea Economic Cooperation (BSEC)	EURO	56171	985244
11.	Multilateral Investment Guarantee Agency (MIGA)	USD		
12.	UN (including voluntary contributions)	USD	85000	1065050
13.	United Nations Development Program (UNDP)	USD	10892	136479
14.	UNESCO	U/E	148874U+3235E	1922133
15.	Organization for Security and Cooperation in Europe (OSCE)	EURO	229120	4018756
16.	OSCE Joint Consultative Group	EURO	2531	44388
17.	International Labor Organization *	CHF	140341	1684092
18.	World Trade Organization	CHF	31983	383796
19.	World Health Organization *	USD	196735	2465090
20.	World Tourism Organization	EURO	24662	432571
21.	UN for Food and Agriculture (FAO)*	U/E	112143U+2088E	1441785
22.	International Organization of Vine and Wine	EURO	28000	491120

532 CCPR/C/MDA/2, International Pact on Civil and Political Rights, Committee for Human Rights, Session 97, October 12-30, 2009, Studying reports presented by party countries according to article 40 of the Pact, Conclusive Observations of the Committee for Human Rights, Moldova

533 Efrim, Oleg, Information Note to the draft Government Decision on Monitoring the Process of Implementing Legislation.

23.	World Animal Health Office	EURO	17250	302565
24.	International Sugar Organization	GBP	4136	84457
25.	Conference regarding the regime of navigation on the Danube (Danube Commission)	EURO	142070	2491908
26.	International Tribunal for Law of the Sea	EURO	790	13857
27.	International Seabed Authority ***	USD	2240	28067
28.	International Organization for Standardization (ISO)	CHF	11092	133104
29.	European Committee for Standardization (CEN)	EURO	11000	192940
30.	Meter Convention	EURO	5376	94295
31.	International Civil Defense Organization *	CHF	21000	252000
32.	International Organization of Francophonie*	EURO	33620	589695
33.	INTOSAI	EURO	410	7191
34.	EUROSAI	EURO	468	8209
35.	International Civil Aviation Organization * (ICAO)	C/U	34322C+20178U	659546
36.	International Atomic Energy Agency *	U/E	2321U+45710E	830836
37.	Organization for the Prohibition of Chemical Weapons *	EURO	18919	331839
38.	Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)	EURO	557	9770
39.	United Institute for Nuclear Research (Dubna)	USD	50000	626500
40.	INTERPOL	EURO	14585	255821
41.	Central-European Initiative (CEI)	EURO	3960	69458
42.	TRACECA	EURO	60000	1052400
43.	GUAM**	USD		
44.	International Maritime Organization (IMO)	GBP	11587	236607
45.	International Organization for Migration	CHF	433	5196
46.	International Organization of Legal Metrology	EURO	1230	21574
47.	Universal Postal Union	CHF	41996	503952
48.	International Fund for Agricultural Development (IFAD)	USD	7000	87710
49.	Latin Union *	EURO	28144	493646
50.	United Nations Industrial Development Organization (UNIDO)*	EURO	88531	1552834
51.	European Broadcasting Union	CHF	75000	900000
52.	Anti-corruption Initiative of the Stability Pact for South Eastern Europe (RAI)	EURO	24000	420960
53.	Center for Security Cooperation RACVIAC**	EURO		
54.	South-eastern Europe Health Network**	EURO		
55.	Disasters Preparedness and Prevention Initiative for South-Eastern Europe (IPPD)	EURO	25000	438500
56.	Regional Cooperation Council (RCC)	EURO	40000	701600
57.	Central-European Free Trade Agreement from 2006 (CEFTA)	EURO	17875	313528
<b>SUBTOTAL 2</b>				<b>40421615</b>
<b>CIS Organizations</b>				
58.	CIS Executive Committee (the sole CIS budget)	RUB	2535300	1052150
59.	CIS Statistical Committee (the sole CIS budget)	RUB	579400	240451
60.	CIS Crime Fighting Bureau (the sole CIS budget)	RUB	484600	201109
61.	CIS Anti-terrorism Center (the sole CIS budget)	RUB	520100	215842
62.	Council of heads of state, heads of government, ministers of external affairs, CIS Economic Council (the sole CIS budget)	RUB	267700	111096
63.	Coordinating Council of the General Prosecutors of CIS (the sole CIS budget)	RUB	58400	24236
64.	Representative office of Inter-state Broadcasting Company "MIR" in Republic of Moldova	MDL	1830100	1830100
<b>SUBTOTAL 3</b>				<b>3674983</b>
<b>TOTAL</b>				<b>46700000</b>

*Source: Annex to Government Decision no.101 dated February 17, 2010*

## ***14.4 How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and***

## ***how free from arbitrary discrimination is its immigration policy?***

Moldova adhered to the most important documents regulating policies on refugees and asylum seekers. At present, RM implements the provisions of Geneva Convention of 1951 and the New York Protocol which provide for observance of human rights and fundamental freedoms, ensuring the right to free movement on the territory of Moldova, non-discrimination on ethnic, racial, religious, linguistic, gender, political affiliation, social origin or other grounds, ensuring minimum living standards, facilitating social integration and naturalization of migrants and refugees, etc. At present, the domain of asylum is regulated by 10 domestic laws and documents and 8 international tools to which RM is a party. Moreover, the new law no. 270 of 18.12.2008 on asylum in RM and other regulatory acts are passed in compliance with international principles and standards, which stipulate inclusively a center of accommodation for asylum seekers. These accommodation facilities have already been built and commissioned through European projects financed by PHARE and TACIS. At the same time, 6 national level projects are currently under implementation, especially with the support of European funds, which target refugee integration, migration strategies, identification of false documents, etc.; these projects are connected to such institutions as UNHCR, IOM, Forntex, EUBAM, etc.

At this moment, there are several aspects that are criticized by experts: the manner foreigners (migrants) are registered – which is a cumbersome procedure, with the residence permit being issued by the Ministry of Interior, Work Permit issued by the Agency for Employment and alien resident card issued by the Ministry of Information Development.

## ***14.5. How consistent is the government in its support for human rights and democracy abroad?***

Republic of Moldova is a small country, undergoing economic and political transition, with a limited economic, political and military potential. That is why, its contribution to supporting human rights and democracy outside its borders is insignificant. Moldova is more of a consumer of democracy and less of an exporter due to weak state institutions and the Transnistrian conflict.

One of Moldova's opportunities to support human rights and democracy in the world is alignment to EU or CoE or UN Declarations.

OSCE is practically the only body where Moldova is involved in designing policies.

Another important instrument available to Moldova for the purpose of supporting human rights and democracy in the world is the participation of Moldovan military staff to peace keeping operations.

Until 2003, only individual officers, and not a military contingent, participated to international missions from Moldova to OSCE missions and the NATO SFOR peace keeping mission to

Bosnia and Herzegovina.<sup>534</sup>

As a member of the United Nations, Republic of Moldova participated to some UN operations in 2003 sending Moldovan military staff to unsecure areas. At present, military staff from Republic of Moldova participates at UN Peace Keeping Operations in Liberia (UNMIL), Côte d'Ivoire (MINUCI), Sudan (UNMIS) and Georgia (ONUG). Every year, in turns, approximately 8-10 Moldovan military staff is delegated to fulfill their service as part of these missions.<sup>535</sup> The dislocation of 43 military officers to Iraq in 2003 was the first time when a military contingent went abroad for a peace keeping mission.

Also, another measure is the Individual Partnership Program between Republic of Moldova and NATO which lead to undertaking a series of actions for the participation of Moldovan military staff to UN peace keeping operations. In the last years, several explosives engineer of the National Army participated to the international humanitarian operation to Iraq.<sup>536</sup>

#### ***14.6. What measures, if any, are being taken to remedy publicly identified problems in this field, and what degree of political priority and public support do they have?***

With small exceptions, the external politics of Republic of Moldova fluctuated between the west and the east, which was determined mainly by the distinct options of its citizens. The governments of Republic of Moldova avoided voicing their opinion on the perspective of jointing NATO due to the negative attitude of an important part of our society. Usually, left side and center-left parties opt for maintaining the status of neutrality of Republic of Moldova seeking not to lose the support of ethnic minorities.

Adherence to EU is supported by the citizens of Republic of Moldova,<sup>537</sup> even though a great part of population is for enhancing relationships with the CIS, which explains the ununivocal attitude of politicians towards this organization. Society supports adhering to the EU, but militates for maintaining neutrality towards NATO.

As to the participation of Moldovan society to settling international conflicts, it was insignificant. Practically, there were no intensive debates on sending the military contingent to Iraq in 2003. At the beginning of 2010, during an election year, some opposition parties tried to blame the Government for wanting to send military officers abroad for peace keeping. The decision to detach military contingent abroad is made by the Parliament of Republic of Moldova.

534 Implementation of the European Neighborhood Policy in 2009, Progress Report Republic of Moldova, European Commission, [http://ec.europa.eu/world/enp/pdf/progress2010/sec10\\_523\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2010/sec10_523_en.pdf)

535 Veaceslav Bugai, Dislocation of Military Troops outside the Country and Parliamentary Control." in: Sportel Erik/Faltas Sami (eds). Reforming the Security Sector in Republic of Moldova. Harmonie Papers, CESS, Groningen 2009, p. 87

536 Participation of Republic of Moldova to UN peace keeping operations <http://www.mfa.gov.md/onu-md/participarea-rm-operatiunile-onu/>

537 Partnership for Peace (PpP), <http://www.mfa.gov.md/nato-md/parteneriatul-pentru-pace/>

Despite its deficiencies, the civil society of Moldova tried to take a stand towards the processes that take place in Moldova and to participate in the development of politics in various areas either through the International Council for Participation or through public-private partnerships or through other forums. The outcome of this involvement is visible in the positive changes that take place in Republic of Moldova, especially, as compared to other states members of the Commonwealth of Independent States.

	Very good	Good	Satisfactory	Poor	Very poor
14.1				X	
14.2		X			
14.3				X	
14.4			X		
14.5				X	
14.6		X			

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## Progress/Regress Summary

	Very good	Good	Satisfactory	Poor	Very poor
1.1		X			
1.2		X			
1.3			X		
1.4			X		
2.1				X	
2.2				X	
2.3			X		
2.4			X		
2.5			X		
2.6			X		
3.1					X
3.2			X		
3.3			X		
3.4			X		
3.5				X	
4.1			X		
4.2				X	
4.3				X	
4.4				X	
4.5		X			
4.6			X		
5.1			X		
5.2				X	
5.3			X		
5.4			X		
5.5				X	
5.6				X	
5.7			X		
6.1			X		
6.2			X		
6.3		X			
6.4		X			
6.5				X	
6.6					X
6.7		X			
6.8			X		
7.1				X	
7.2				X	
7.3			X		
7.4				X	
7.5				X	
7.6			X		
7.7			X		
7.8			X		
8.1			X		
8.2				X	
8.3		X			
8.4					X
8.5				X	
9.1				X	
9.2			X		
9.3				X	
9.4					X
9.5				X	
10.1			X		
10.2			X		
10.3				X	
10.4		X			
10.5				X	
11.1		X			
11.2			X		
11.3				X	
11.4		X			
12.1		X			
12.2		X			
12.3			X		
12.4			X		
13.1		X			
13.2			X		
13.3				X	
14.1				X	
14.2		X			
14.3				X	
14.4			X		
14.5				X	
14.6		X			



## NOTE

The Institute for Development and Social Initiatives (IDIS) “Viitorul” is a research, education and outreach organization which activates in the field of economic analysis, governance, law, political sciences, strategic and organizational science. IDIS is also a common platform that brings together young intellectuals who are concerned with the models of transition towards the free market and the open society in the Republic of Moldova

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