

Moldova

People's Advocate Office

Independence and effectiveness of the NHRIs

International accreditation status and SCA recommendations

The Moldovan NHRI was reaccredited with A status in May 2018. The SCA encouraged the NHRI to continue advocating for amendments of its enabling law in order to include a transparent and participatory selection process and to require pluralism and diversity of the institution. Similarly, the SCA encouraged the NHRI to continue advocating for the provision of adequate funding to effectively carry out its mandate, including that as the NPM.

Human rights defenders and civil society space

An important step has recently been taken by Parliament in terms of establishing an enabling legal framework and conducive environment for civil society organisations.

After weeks of delay and harsh debates between Members of Parliament, on 11 June 2020, the bill on NGOs passed in final reading. The document was adopted after the Parliament's Legal Committee for appointments and immunities had considered almost 100 amendments on the draft submitted by civil society groups and lawmakers, as well as despite several attempts of the ruling party to impose limitations for NGOs' activity or even ban their participation in monitoring the election campaign and the elections.

The bill was drafted by a group of national experts, including representatives of civil society, in line with European and international standards on freedom of association. It has been pending in Parliament since the adoption in first reading in May 2018.

Meanwhile, the People's Advocate's initiative to adopt a law on Human Rights defenders proposed to the Ministry of Justice, was ignored by the authorities, despite to the fact they assured the UN Special Rapporteur Michel Forst such a law will be adopted in short time.

During the COVID-19 state of emergency, the PA proposed to the Commission for Emergency Situations to include in the composition of the Commission a notorious

representative of civil society operating in the human rights field to provide consultancy on human rights decision-making. The proposal was not accepted.

The PA took a stand and condemned the attacks on the Equality Council, as an NHRI, by political forces. In December 2019, the Equality Council issued a decision stating that the installation of a crucifix in a state institution (Ministry of Internal Affairs), as well as the speech of the minister at the inauguration event are facts that incite discrimination on the ground of religion or beliefs. The Council decided that the offender would make a public apology and that the religious symbolism in the lobby of the institution would be removed, which would ensure the protection / safeguarding of the neutrality of the public service and the principle of secularism. The Council has been harshly criticized for its decision, including by state officials. Some online posts have been clearly denigrating the work of the Council, spreading ethnic and religious intolerance. The PA considered the debates in the public space as attacks on the institution and recalled that the Equality Council, as an NHRI, has the mission to monitor compliance with and implementation of international standards at national level, in particular in the field of non-discrimination and equality.

The Ombudsman also addressed the President of the Parliament requesting examination as a matter of priority of the package of laws on hate crimes and bias, which was voted in 2016 in the first reading. A series of issues related to imperfection of the national legal framework and lack of an effective mechanism for sanctioning the offences of incitement to violence and hatred have been raised, such as: the lack of a clear and common definition of hate speech; the Criminal Code does not criminalize incitement to violence; list of discrimination criteria is not comprehensive (the grounds of color, national or ethnic origin, language, citizenship, sexual orientation and gender identity are missing); threats, public insults and public defamation are not defined under the Criminal Code; crime statistics are not disaggregated by bias motivation; criminal law, as well as civil and administrative laws do not provide for aggravating circumstances in cases of homo/transphobic motivation. The members of parliament disregarded the PA's recommendations.

A worrying trend is to be reported in particular as regards journalists and media actors as human rights defenders – in this respect, see the information provided below under media pluralism and freedom of expression.

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Checks and balances

In general, draft laws and regulations, accompanied by explanatory notes, are published at any stage of the decision-making process on government portals, where they are accessible for public consultation, and on parliament's website. However, these consultations are often of a formal nature, and the practice of not meeting deadlines and urgently adopting projects, without holding genuine public consultations, continues. The People's Advocate is most often not consulted by state authorities. The People's Advocate monitors draft policy documents and draft laws relevant to human rights published on government portals and presents opinions on them to the competent authority. The People's Advocate recommended the Ministry of Justice, as well as the other competent authorities that judicial system professionals and academic experts be consulted on the draft legislation.

In the evaluation report published on 24 July 2019, the Group of States against Corruption (GRECO) considered as insufficient efforts to improve the transparency of the legislative process in Parliament. The institution recommended publication in a timely manner of draft laws and supporting documents, which would allow for meaningful public consultation and parliamentary debate on draft normative acts.

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Functioning of justice systems

In 2019, the right to a fair trial was the most frequently violated as invoked in the claims received by the Office of the People's Advocate (207 claims). A problem identified concerns the poor quality of the qualified state guaranteed legal aid, manifested through not informing the beneficiaries of the legal aid about procedural rights and obligations. As a result, potential beneficiaries miss the time-limit for appeal, being unable to defend his/her violated right.

Other issues identified relate to inactions of lawyers contracted by the National Council for State Guaranteed Legal Aid to provide legal aid services at the requests of beneficiaries to take any legal action, no-show of lawyers at court hearings or the low level of professional training of lawyers. Following the submission of recommendations to the National Council for State Guaranteed Legal Aid, the People's Advocate was informed that the competent institution plans to develop new standards in the development of institutional capacities, as well the implementation of provisions of the Statute of the profession of lawyer.

Delay in examining the cases by the courts in the process of reorganizing the courts; failure to record the audio of court hearings are other violations identified. In this regard, the People's Advocate addressed the Superior Council of Magistracy (SCM) with the appropriate recommendations to ensure the realization of the right to a fair trial. Following these, the SCM submitted to courts a circular on the importance and obligation of compliance by court employees, as well as monitoring compliance with the provisions of the Regulation on digital audio recording of court hearings.

The PA identified situations in which the constitutive elements of the disciplinary misconduct of judges were met and notified the Disciplinary Board of the SCM, which rejected the notification. In the motivation of the rejection decision only the omissions of the clerk who resigned and left the judiciary were invoked, and the facts elucidated could not be put under the responsibility of the judge. The PA filed an appeal against the rejection decision that is under examination.

Delaying the enforcement of court decisions and their enforcement remain a problem. Failure to inform the participants of the enforcement procedure by the bailiffs about the measures taken and the procedural documents drawn up leads to the omission of the time-limit in which the participant can voluntarily pay the adjudicated amount, and as a result he/she has to pay additional enforcement expenses.

Imperfection of the legal framework, non-compliance with national legal provisions, but also with international commitments made in the field of human rights, the low level of professionalism in the judiciary, as well as the lack of public policies to strengthen the justice system lead to a failure to properly exercise the right to a fair trial.

The People's Advocate recommended continuing the efforts to reform the justice system, in order to ensure its accessibility, independence, efficiency, transparency and integrity. Since the expiration of the Justice Sector Reform Strategy in 2016, so far, the government failed to approve a new policy document.

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Media pluralism

In the last five years, the People's Advocate has consistently addressed, including in annual reports, issues related to freedom of expression and freedom of the press. This is because during this period (2015-2019) there was a decline in freedom of expression in the Republic of Moldova. The People's Advocate pointed out several issues related to freedom of the press, such as the imperfect legislative framework, monopolization and excessive concentration of the media, particularly in the broadcasting sector; control of media institutions by economic and political groups; the existence of cartel arrangements on the advertising market and the limited access of some media institutions to it; barriers to access to information; attacks and intimidation on journalists.

In recent years, media representatives have been the target of attacks and pressure from politicians or public figures. This was also stated by the UN Special Rapporteur on the situation of human rights defenders Michel Forst who, in his statement on the visit to the Republic of Moldova in 2018, referred to cases of intimidation, threats against media representatives, including on allegations of defamation and criminal charges, especially for investigative journalists. He expressed concern that „journalists are victims of defamation campaigns” and „face restrictions in accessing information”. Michel Forst called on the authorities to ensure that the media and NGOs have effective and prompt access to public information, including information on court hearings, particularly for socially and politically sensitive cases.

The People's Advocate (PA) has monitored the state of affairs in which the media operates and has intervened in several situations where journalists have been the target of attacks and intimidation.

The PA has considered threatening messages against journalists as particularly dangerous and unacceptable. Besides intimidating political opponents and journalists for criticism, such attacks incite to violence against individuals or groups of people, propagate certain stereotypes and generate hatred and division among people.

In a particular case, the People's Advocate requested from the Prosecutor General to examine the threatening statements of Ilan Shor, mayor of Orhei city, made against journalists and to take attitude appropriate to the gravity. Though an order for refusal to initiate criminal proceedings was issued on the ground that „the acts committed are not provided by the criminal law as a criminal offence“. The Prosecutor's Office rejected the PA's repeated request to investigate the persecution and intimidation of journalists, invoking that the allegations of the PA do not fall within the juridical-criminal construction of the respective article of the Criminal Code.

In addition, the People's Advocate took a stand and condemned the attacks on the press. In 2020 alone, the People's Advocate made public at least 5 statements on the freedom of the press. The latest dates back to May 5 and was made in connection with the unprecedented attacks on the press by the prime minister.

During the state of emergency caused by the COVID-19 pandemic, the People's Advocate addressed several demarches with the request to remove the obstacles for journalists' access to information of public interest.

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Corruption

Although the Law no 122/2018 on whistleblowers entered into force in November 2018, it is not yet functional, because the implementation mechanisms are missing and the existing legislative framework is not adjusted. So far, no person has officially obtained the status of whistleblower.

For a better understanding of the objectives and role of whistleblowers, as well as of the impact of its functioning, the People's Advocate as the authority responsible for whistleblowers' protection, carries out information campaigns within the Project "Curbing corruption by building sustainable integrity in the Republic of Moldova". In 2019 the elaboration of the training course "Whistleblowers" for civil servants, health workers and other categories of employees began.

Since the beginning of the COVID-19 outbreak, an increasing number of health workers have revealed information of public interest, in which they talked about the problems in the healthcare system, which must be solved, in order to fully ensure people's right to health and life. In the approach addressed to the Minister of Health, Labour and Social Protection,

the Ombudsman expressed his concern about the information that has appeared in the public space such as the employees of the medical system, who have made disclosures about the quality and quantity of protective equipment, are subject to pressure from employers.

The People's Advocate stated that the authors of the disclosures have the status of whistleblowers and must benefit from all the guarantees of protection offered by law. The PA recalled that any act of intimidation, retaliation, persecution of whistleblowers entails administrative sanctions or, as the case may be, trigger criminal liability. The Ombudsman requested the immediate cessation of any form of retaliation against medical workers, the operative and efficient investigation of the disclosures regarding the quality of the medical devices and the taking of measures to provide the healthcare personnel with the necessary protective equipment.

On 5 May 2020, the People's Advocate in collaboration with the national anti-corruption body launched a video spot to inform and encourage the population to denounce illegal practices in the health system.

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

Since the declaration by Parliament, on 17 March 2020, of a state of emergency in response to COVID-19 pandemic, for a period of 60 days, the People's Advocates have continued to

closely monitor the observance of human rights by state authorities, as provided for by the founding legislation.

The People's Advocate addressed several initiatives and recommendations to the Commission for Emergency Situations on some decisions of the Commission, actions/inactions of state institutions that he considered to seriously infringe the fundamental human rights and freedoms.

The People's Advocate presented Amicus Curiae to the Constitutional Court on the amendments made by the Parliament to Law no. 212/2004 on the state of emergency, siege and war in the context of establishing the state of national emergency due to COVID-19 pandemic. The People's Advocate has expressed reservations about the general wording that leaves room for interpretation and could lead to abuses by the competent authorities, which could undermine fundamental human rights and freedoms, the rule of law and democracy in the Republic of Moldova.

The Ombudsman also issued a set of recommendations to the Commission for Emergency Situations and national authorities in which he addressed a wide range of issues:

- restricting the right of access to justice;
- insufficient protection measures for prison staff and detainees;
- shortage of personal protection equipment for health workers;
- ensuring the right of persons and the media to have access to information during the pandemic;
- combating discrimination and hate speech against people infected with COVID-19;
- protection of whistleblowers with regard to the public disclosures of healthcare workers;
- personal data protection;
- reducing the minimum amount of the fine applied to individuals and establishing alternative penalties to the fine, respecting the principle of individualization and proportionality of sanctions, taking into account the vulnerable situation of the penalised individuals;
- problems faced by people living on the left bank of the Dniester;
- the socio-economic problems faced by the population living in localities under lockdown;
- respect for the right to health of other categories of patients than those infected with COVID-19;
- observance of the child's right to education etc.

Employees of the Office of the People's Advocate launched the campaign on social networks with the hashtag #IAmNotAVirusIAmHuman, aimed at combating discrimination and hate speech against persons suspected of being infected with COVID, infected with Coronavirus or cured of this infectious disease.

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Most important challenges due to COVID-19 for the NHRI's functioning

A challenge faced by the Office of the People's Advocate during the state of emergency established due to COVID-19 virus consisted mainly in poor cooperation with the Commission for Emergency Situations and state authorities, distortion of messages of the People's Advocate, criticism from high state representatives to which the institution has been subject for addressing issues sensitive from the human rights perspective.

Following the notifications received from citizens about the problems they face during the state of emergency, the alleged abuses by some public and private institutions, the People's Advocate and the People's Advocate for Child's Rights addressed a request to the Prime Minister, as the Chair of the Commission for Emergency Situations, in which they proposed the establishment of a mechanism for cooperation and exchange of information between the Office of the People's Advocate and the Commission, in order to ensure respect for human rights and freedoms in the state. In a context where international law in a state of emergency allows the restriction of certain fundamental human rights and freedoms, it is important to avoid derogations from these acceptable limits set by international standards and not to allow unjustified, disproportionate and discriminatory restrictions on human rights. The Commission did not accept the proposal.

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