

Moldova

People's Advocate Office

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.

Impact of 2020 rule of law reporting

Follow-up by State authorities

No initiative has been taken by state authorities to address issues reported in the 2020 ENNHRI rule of law report or to foster a rule of law culture at national level.

Follow-up initiatives by the Institution

The state of democracy, human rights and the rule of law in the Republic of Moldova were discussed at an international conference dedicated to 70th anniversary of the European Convention on Human Rights and 25 years since the Republic of Moldova joined the Council of Europe. The conference was organized on 8 December 2020 by the Office of the People's Advocate (OPA) and the Council of Europe (1).

The event brought together high representatives of the CoE as the Director of Human Rights, and of national institutions, as President of the Constitutional Court, Vice-President of the Parliament, Head of the National Delegation to PACE, chair of Parliament Committee for human rights and inter-ethnic relations, and many other high-level officials.

The panel discussions covered a wide range of topics such as the role of the Constitutional Court and the Parliament of the Republic of Moldova in ensuring respect for human rights and fundamental freedoms through the European Convention on Human Rights, the impact of European Court of Human Right judgments and decisions on the respect of human rights etc.

No other specific follow-up actions have been taken by the institution mainly on the grounds of the lack of human resources. In 2020, the OPA staff acted under very specific circumstances due to the state of emergency generated by the COVID-19 pandemic, which implied monitoring on a daily basis of decisions made by state authorities, in order to not admit abusive and disproportionate emergency measures restricting human rights and freedoms.

At the same time, in its activity the Office of the People's Advocate took into account the priorities established in the Strategic Development Program for 2018-2022, that had to be revised and adjusted to unexpected challenges.

References

- (1) <http://ombudsman.md/news/conferinta-internationala-70-de-ani-ai-cedo-25-de-ani-de-la-aderarea-republicii-moldova-la-consiliul-europei-implementarea-standardelor-coe-la-nivel-national/>

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

On 5 November 2020 the Government approved a draft law which provides for the establishment of a new position: the People's Advocate (Ombudsman) for entrepreneurs' rights (PAER). According to the bill, the new Ombudsman will be appointed by the Parliament and will serve in the Office of the People's Advocate, but autonomously from the People's Advocate (PA) and the People's Advocate for the rights of the child.

The amendments will have a significant impact on the structure and nature of the People's Advocate, as well as on the mandate of the NHRI. It results from the provisions of the draft Law that the PAER, like the PA for child's rights, has only functional autonomy but no other role of an administrative, institutional or financial nature, or even over the human resources of the subdivision he or she heads.

Pursuant to the bill, the People's Advocate for entrepreneurs' rights will be specialized in issues on the protection of entrepreneurs' rights and will ensure observance of the legitimate rights and interests of entrepreneurs by public authorities, organizations and enterprises, no matter the type

of property and legal form of organization, by non-profit organisations and by decision-makers of all levels.

The draft law intervenes beyond the mandate and duties of an NHRI, involves amending the structure of the institution, and its implementation requires additional financial resources, which is not provided by the draft Law.

The decision, impacting the OPA, was made without prior notice and consultation of the opinion of the institution, thus completely disregarding the principle of transparency and participation in the decision-making process (1).

The People's Advocate requested the Prime Minister to withdraw the bill and consult it with all the stakeholders concerned, especially relevant international organisations. The request was ignored and the draft was submitted to the Parliament.

Similar requests were addressed to the Parliament (2) urging Members of Parliament that the bill be suspended, until the presentation of the opinions of the relevant international organisations. Despite this, on 18 November, the bill was examined and approved by the Parliamentary Committee on legal affairs, appointments and immunities, and included in the agenda of plenary sessions. Currently, the bill is pending in the Parliament until the Venice Commission presents its Opinion on it.

In the opinion of the People's Advocate (3), the bill is not in line with international standards for the establishment, organisation and functioning of an NHRI. The mandate of an Ombudsman for entrepreneurs' right is different from that of an NHRI having the mandate on business and human rights, as the latter focuses on monitoring and protecting the population from abuses of the business environment, the unfavourable impact of its activity on human rights, the accountability of the representatives of the public or private business environment in order to not admit human rights violations. Thus, situations in which the PA and the PAER will be opponents in the examination of certain issues are not excluded, as the PA is examining requests from persons who consider that their fundamental rights and freedoms have been violated by economic agents. This position was supported also by the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (ODIHR).

In its Opinion on the draft Law introducing a "People's Advocate for entrepreneurs' rights", issued on 19 March 2021 (4), OSCE ODIHR mentioned that "this Draft Law, if implemented, may significantly change the structure and nature of the People's Advocate, introducing a wholly new and unrelated mandate pertaining to the defense of so-called "entrepreneurs' rights and legitimate interests. [...] Significant amendments to an NHRI's enabling law may also result in a

Special Review by the SCA. [...] The changes in the proposed amendments are significant as they substantially impact the mandate of the NHRI of Moldova and its ability to fulfil its mandate to the fullest extent”.

The Venice Commission, in the Opinion (5) adopted on the same draft Law, noted that “for most Ombudsman institutions – including the Moldovan PA – their real powers lie in the respect and authority they build based on their identity as genuine protectors of human rights and fundamental freedoms. It is therefore very probable that an Ombudsman institution having (also) a more general mandate of protecting entrepreneurs will find it very difficult to maintain its identity as a protector of human rights and fundamental freedoms. Therefore, introducing a PAER within the PA institution could very likely lead to a distorted perception of the institution and its primary and core missions”.

References

- (1) <http://ombudsman.md/news/guvernul-reorganizeaza-oficiul-avocatului-poporului-fara-informarea-si-consultarea-avocatului-poporului-ombudsmanul-califica-acest-act-drept-o-sfidare-flagranta-a-principiilor-transparentei-decizion/>
- (2) <http://ombudsman.md/news/avocatul-poporului-sustine-ideea-instituirii-functiei-de-ombudsman-pentru-drepturile-antreprenorilor-dar-nu-in-cadrul-oficiului-avocatului-poporului/>
- (3) <http://ombudsman.md/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>
- (4) <https://www.osce.org/files/f/documents/5/c/482083.pdf>
- (5) [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)017-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)017-e)

Enabling space

According to provisions of article 16 of Law no. 52/2014 on the People’s Advocate (Ombudsman), the People’s Advocate contributes to the improvement of legislation on human rights and freedoms.

Law on regulatory acts no. 100/2017 provides for the obligation of the state to submit the drafts normative acts for a consultation to the competent public authorities, to the interested institutions, as well as to representatives of the civil society, who prepare and present their advisory opinion on the drafts. Draft regulatory acts falling within the competence of the autonomous public authorities, among which is the Office of the People's Advocate, are subject to consultations with the competent authorities.

Nevertheless, the state often fails to comply with these provisions. The practice of not consulting the draft regulatory acts with the OPA, or not ensuring adequate timeframes for meaningful public consultation, the neglect of law-making principles (see the information provided under Check and balances/Decision making section), continues to exist. A recent example referred to the amendment of Law on the People's Advocate, impacting the mandate of the institution. The decision to amend the Law and to establish a new position of the Ombudsman for entrepreneurs' rights was made without prior notice and consultation of the opinion of the institution (see the information provided under Independence and effectiveness of the NHRI) (1).

In order to prevent the violation of fundamental human rights and freedoms, whether the People's Advocate considers that certain draft normative acts are able to infringe human rights and freedoms, he intervenes ex officio to the competent authorities with proposals and recommendations for the improvement of draft normative acts placed on the web portal for public consultation. Therefore, the advisory opinion with reference to 5 draft normative acts concerning human rights and freedoms were issued by the OPA ex officio (2). Given that the summary of objections and proposals is not always published, it is difficult to trace which of the proposals submitted during the consultation process were accepted. The People's Advocates consider it important that public authorities ensure a transparent process in this regard.

References

- (1) <http://ombudsman.md/en/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>
- (2) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

Although in the last three years the OAP's budget has constantly increased, in the context of the health crisis caused by the COVID-19 virus, it has been reduced during 2020 by about 15% (compared to the amount allocated at the beginning of the year). The reduction of the institution's budget occurred with the agreement of the Office of the People's Advocate under conditions of financial austerity, after the institution revised its priorities and activities planned at the beginning of the year (1). The financial means reimbursed by the OPA in the state budget were redirected in support of measures to combat the COVID-19 pandemic.

The amount of financial resources allocated to the institution to fulfil its mandate in 2021 is about 32.5% less compared to the resources available at the beginning of 2020.

At the same time, the Office was not distributed allocations for financing actions provided for in the National Human Rights Action Plan for the period 2018-2022 (with a deadline of 2018-2020), the most important national human rights policy document. Particularly, it is about the reconstruction of the institution's premises according to the minimum occupational safety and health requirements, including its adaptation to the needs of people with disabilities and the creation of child-friendly conditions.

In 2020 the budget reduction was made based on the revision of the expenditure compartments that did not essentially affect the fulfilment of the mandate (procurement of material goods and equipment, business trips abroad, switching to online activities, identifying external sources of funding or purchasing services at a lower price than initially estimated). However, the reduction of the budget for 2021, in particular the non-allocation of the resources required for the fulfilment of the mandate, could affect the financial independence of the institution. The amount of financial resources allocated for the OPA for 2021 (which is about 33% less) have been agreed by the OPA following negotiations with the Ministry of Finance as the budget was initially even lower. Even so, the agreed budget is lower than that required by the institution to fulfil its mandate.

The bill amending the Law no 52/2014 on the People's Advocate (Ombudsman) aimed to consolidate the independence of the institution, including financial, according to the Paris Principles and to bring in line the norms with the international recommendations, has not been adopted yet. In October 2018, the Office of the People's Advocate submitted proposals to improve the Law no. 52/2014, taking into account all the recommendations submitted to the state on this subject, as well as the best practices in the field. There was no reaction from the Ministry of Justice.

References

- (1) <http://ombudsman.md/news/oficiul-avocatului-poporului-va-reduce-cheltuielile-prevazute-pentru-anul-2020-cu-aproximativ-un-milion-de-lei-si-este-dispus-sa-le-restituie-in-bugetul-de-stat-pentru-ca-aceste-mijloace-f/>

Human rights defenders and civil society space

In 2020, the democratic space in the Republic of Moldova was impacted by attacks on civil society, accused of undermining the interests of the state. A member of the ruling party launched on 21 October 2020 a book severely attacking the Constitution of the Republic of Moldova, the Moldovan legal framework, the rule of law, the fundamental rights and freedoms of Moldovan citizens, criticizing the European model of the state modernization. The politician published a book entitled “Moldovan Civil Society: Sponsors. NGO-crazy. Cultural wars.” (1), in which he discredits, on the basis of falsehoods and defamatory accusations, the civil society as a whole, especially the human rights organizations and those working on justice reform, fighting corruption, freedom of the press, pro-European reforms, social and medical reforms. In this case, as usually, the party did not oppose its member, and the chair of the ruling party, then president of the country, even suggested that he supported the author. The Ombudsmen, the NGOs, as well as the international partners were those who have reacted and harshly criticised these attacks.

The harassment and intimidation of the most important and representative NGOs has had a negative impact on the activity of the associative sector, which has an important role in promoting democratic change, through their activity in various areas which are not covered by the state and through their capacity to transform society.

A similar trend persists as well as with respect to independent journalists and media outlets - in this respect, see the information provided below under media pluralism.

In June 2020 the Parliament voted a new law on non-commercial organisations (2), considering most of the amendments submitted by civil society groups and lawmakers. The provisions of the Law are in line with the European standards on freedom of association and their adoption is meant to facilitate the free exercise of this right in the Republic of Moldova. The new law simplifies the registration procedure for CSOs, eliminates registration fees, removes restrictions for certain categories of people to be a member or part of the governing bodies of CSOs, and

introduces a flexible system of internal organisation, including the possibility for founders to individually design their structure and governing bodies. However, the law prohibits NCOs to provide financial support and free services to political parties, including during election campaigns. This provision is problematic in that a number of media outlets are registered as NCOs and rely on paid political advertising during election campaigns.

Each time civil society organisations were smeared or endangered, the OPA was vocal to defend them. In a statement (3), the People's Advocate firmly condemned any attempts to denigrate and intimidate the representatives of the associative sector in the Republic of Moldova. The PA emphasized that civil society representatives too are human rights defenders, who have a positive, important and legitimate role to contribute to the realisation of human rights, at local, national, regional and international level, including by engaging in dialogue with the authorities and supporting their efforts to implement the obligations and commitments of states in this regard.

The People's Advocate stressed its continued commitment to advocate for the promotion and protection of democratic civic space and human rights defenders, building a national system for the protection of human rights defenders and creating a favourable, accessible and inclusive environment in which all their rights are respected.

The People's Advocate reiterated his proposal to adopt a law on human rights defenders, as recommended by the UN Rapporteur on human rights defenders Michel Forst, following his visit in June 2018 to the Republic of Moldova.

References

- (1) <https://agora.md/stiri/78673/Tirdea-sia-lansat-o-carte-in-care-acuza-zeci-de-onguri-de-actiuni-contra-statului-reactiile-unor-organizatii-vizate-astfel-de-atacuri-sunt-specifice-regimurilor-corupte>
- <https://crjm.org/en/alerta-publica-opriti-atacurile-impotriva-societatii-civile-din-republica-moldova-2/>
- (2) <https://cis-legislation.com/document.fwx?rgn=126748>
- (3) <http://ombudsman.md/news/avocatul-poporului-condamna-ferm-atacurile-la-adresa-societatii-civile-din-republicamoldova-si-reafirma-rolul-acesteia-deosebit-de-important-intr-un-stat-democratic-si-de-drept/>

- Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf (1) <http://ombudsman.md/en/news/mihail-cotorobai-adoptarea-proiectului-de-lege-cu-privire-la-instituirea-functiei-de-avocat-al-poporului-pentru-drepturile-antreprenorilor-constituie-o-amenintare-la-adresa-independentei-si-function/>

Checks and balances

In 2020, there were several incidents exposing the shrinking democratic space in Moldova, in terms of: limited access to information; attacks and intimidation on the independent media and the associative sector; non-transparent and non-participatory decision-making process; the adoption in Parliament of a set of legislative acts without complying with the legislative procedure and without the approval of all parliamentary committees and groups; intensification of hate speech cases; presidential election process with many irregularities (e.g. use of administrative resources, involving religious cults in the election campaign, use of undeclared financial and in-kind resources, violation of the restrictions imposed by the National Extraordinary Public Health Commission (1)), although it has been recognized being in line with international standards in electoral law.

Decision-making

There are serious issues in ensuring transparency and participatory decision making. This includes non-publication or late publication of plans, draft policies and bills for consultation and lack of possibility to widely exchange views on proposals advanced by authorities. Moreover, some legislation of crucial importance to the general public (see below) was adopted in the Parliament completely disregarding internal procedures, the principles of transparency, good governance, and restricting the possibility of opposition to get involved in the legislative process. Examples of legislation include: the Law on the transfer of the Security and Intelligence Service to the Parliament's subordination, amendments to the Law on the administrative-territorial organization of the Republic of Moldova, amendments to the Law on the special legal status of Gagauzia, amendments to the Law on the functioning of spoken languages on the territory of the Republic of Moldova, the fiscal and budget policy, the Law on the state budget and on the social insurance budget for the year 2021 (2).

The People's Advocate expressed concern about the way in which the Parliament voted on 3 December 2020 some important bills with a crucial impact on human rights and freedoms, ignoring the internal procedural rules, the principles of transparency, good governance and with the restriction of the opposition to get involved in the legislative process.

In the reaction made public (3), the People's Advocate described as inadmissible the neglect of democratic norms and law-making principles in adopting laws of a wide public interest, without the participation of the parliamentary opposition. The PA recalled the rules established by the Venice Commission regarding the collaboration of the parliamentary majority with the opposition parties, which involve strengthening a framework of guarantees regarding the interaction between the majority and the opposition. In the absence of such guarantees for the opposition, constitutional democracy can turn into an authoritarian regime. In order to avoid such degeneration, in addition to the rules of the Constitution and legislation, the principles of pluralism, cooperation and effective decision-making that are essential for a constitutional democracy should be respected.

Access to information

Access to information of public interest is limited. Requests to access information are often denied by public authorities and other information providers, invoking the protection of personal data or state secrecy, providing irrelevant information or treating requests for information as claims, which involves a different procedure and deadlines.

The national legislation regarding access to information is flawed, information providers apply the law selectively, and courts interpret and apply it inconsistently.

Furthermore, access to information was considerably reduced by a decision of the Commission for Exceptional Situations (5) issued for the state of emergency period, tripling the term for presentation by public institutions of information of public interest (from 15 to 45 working days).

The Supreme Court of Justice issued a controversial decision (6), stating that the Law on access to information became inapplicable with the entry into force of the Administrative Code, in April 2019. Therefore, all requests for information will be considered as petitions under the new Administrative Code, bringing the deadline for examination to 30 days (which can be extended up to 90 days), instead of 15 days.

Trust in public authorities/other actors

Data of the opinion poll (7) conducted by the Association of Sociologists and Demographers of Moldova showed a decline in citizens' trust in state and social institutions. This is due to the events of the last five years - bank fraud, corruption, poverty, inefficient governance, which have had a negative influence on the quality of democracy in the Republic of Moldova. According to the results of the survey, most of the respondents trust the Moldovan police (45%), the government (42%), local public authorities (39%), religious organizations (34%) and the media (31%). At the opposite pole is the president institution (22%), non-governmental organizations (19%), the Parliament (12%), political parties (9%). According to data of another opinion poll (8), published in the Report on state of democracy in the Republic of Moldova, only 6.6% of citizens believe that the elections in the Republic of Moldova were free and fair, and the country is led by the will of the people - one of the lowest levels in the last 15 years. At the same time, 43.1% of citizens consider that the state of democracy is poor.

Regarding the role of different society actors in promoting democracy in the Republic of Moldova, citizens place first civil society (38%) and the media (41.7% - public media, 33.6% - private media). On the contrary, courts (44.5% of the interviewed) and the General Prosecutor's Office are considered to have a negative role in promoting democracy.

References

- (1) https://promolex.md/wp-content/uploads/2020/11/RAPORT-nr.-7_MO-Promo-LEX_APr_2020_RomEng.pdf
- <https://promolex.md/19118-misiunea-de-observare-promo-lex-constata-un-numar-ingrijorator-de-incidente/?lang=en7>
- (2) <http://www.parlament.md/SesiuniParlamentare/%c5%9eedin%c5%a3eplenare/tabid/128/SittingId/4007/language/ro-RO/Default.aspx>
- <https://tv8.md/2020/12/03/video-sedinta-parlamentului-din-3-decembrie-lista-proiectelor-aprobate-de-deputatii-psrm-sor/>
- (3) <http://ombudsman.md/en/news/avocatul-poporului-nerespectarea-principiilor-democratiei-parlamentare-reprezentative-poate-conduce-la-degradarea-statului-de-drept-si-la-autoritarism/>
- (4) https://freedomhouse.org/sites/default/files/2020-11/Privacy_and_Freedom_of_Expression_ROM.pdf

- (5) https://gov.md/sites/default/files/dispozitia_cse_nr.1.pdf
- (6) http://media-azi.md/sites/default/files/search_col_civil.pdf
- (7) <http://www.infotag.md/populis-ru/290502/>
- (8) <http://viitorul.org/files/library/Raport%20starea%20democratiei%20web.pdf>

Functioning of the justice system

In 2020, no progress has been made to strengthen the independence and efficiency of the judiciary, or countering threats to the rule of law.

Access to justice is frequently limited for persons living in poverty and those with disabilities, gender-based violence survivors and older persons, a survey (1) carried out within the project "[Strengthening efficiency and access to justice in Moldova](#)", with the support of the UNDP Moldova, has revealed. The main difficulties are the long distances to the courts, long time for case review, and infrastructure in the court houses. Besides, great suspicions have remained regarding the correctness and objectivity of the investigation of cases of resonance involving former or current officials or politicians.

The level of trust of the citizens in justice is very low (11%), according to an opinion poll (2). The courts (44.5% of the interviewed) and the General Prosecutor's Office are considered to have a negative role in promoting democracy.

The issues invoked in the claims addressed to the PA remain similar as those of the previous years: delay in the examination of cases by the courts; disagreement with court decisions or judgments; poor quality of state-guaranteed legal aid; violation of the deadlines to inform the parties of court decisions; misinforming the parties on the actions taken in the criminal investigation procedure; exceeding the reasonable term of the procedure for ensuring the translation of the court act or sentence in the case of foreigners held in custody.

The lack of information regarding the progress and outcomes of the criminal investigation for detainees, victims of torture were due not only to the negligence of those responsible for

managing the criminal investigation, but also due to poor quality of state-guaranteed legal aid services, low level of responsibility and lack of positive attitude of the defender towards the victim in the criminal case.

The high volume of claims against courts, and the complexity of cases are among the reasons for non-compliance with the deadlines for examining the cases by the courts, in particular those relating to the application of conditional release and/or the application of the compensatory mechanism for detention in inhumane conditions.

Considering the alarmingly high number of claims regarding the poor quality of state-guaranteed legal aid services, the People's Advocate requested the National Legal Aid Council to present information on the mechanism for monitoring the process of granting and assessing the legal services provided, as well as the impediments that negatively affect their quality. In response to the lack of a reasonable argument brought forward by the National Council, the People's Advocate recommended the initiation of a procedure evaluating the methodology for monitoring the respective services, in order to ensure quality services.

The PA submitted to the Ministry of Internal Affairs the proposal to amend some provisions of Law no. 200/2010 regarding the regime of aliens in the Republic of Moldova, which currently infringe the right to a fair trial and the procedural guarantees provided in art. 1 of Protocol No. 7 of the ECHR. The PA noted that the contested provisions do not provide the foreigner with minimum guarantees against arbitrariness (3).

The Constitutional Court took into account the PA's Opinion (4), and on 13 November 2020 declared unconstitutional some provisions on the expulsion and removal of persons declared undesirable for reasons of national security, but also of the Administrative Code and the Criminal Procedure Code. The Constitutional Court issued an Address to the Parliament to remedy the deficiencies found (5).

On 26 November 2020, the Parliament voted on the draft law approving the Strategy for Ensuring Independence and Integrity in the Justice Sector and the Action Plan for 2021-2024 (6). The strategy aims to improve the justice sector, by creating the premises for an independent, impartial, accountable and efficient justice sector, and to increase the access to justice and quality of the justice act. The adoption of a strategy that sets out the priorities for the coming years for the development and strengthening of the justice sector was a positive and absolutely necessary step, which was welcomed by the development partners.

In his reports, the Ombudsman reiterated his recommendations for further efforts to reform the justice system, in line with recommendations of international human rights bodies.

References

- (1) https://www.md.undp.org/content/oldova/en/home/presscenter/pressreleases/2020/pnud-_i-suedia-susin-imbuntirea-eficienei-i-accesului-la-justiie.html
- (2) <http://www.infotag.md/populis-ru/290502/>
- (3) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf
- (4) <http://ombudsman.md/news/propunerile-avocatului-poporului-sustinite-de-curtea-constitutionala/>
- <http://ombudsman.md/wp-content/uploads/2020/11/04-1-12-din-29.10.2020-Curtea-Constitu%C8%9Bional%C4%83-Opinie-asupra-sesiz%C4%83rii-nr.-54a-din-10.04.2020-p-d-regimul-str%C4%83inilor-%C3%AEn-RM-1-1.pdf>
- (5) <https://www.constcourt.md/libview.php?l=ro&idc=7&id=2005&t=/Media/Noutati/Curtea-a-examinat-constitutionalitatea-unor-prevederi-ale-Legii-privind-regimul-strainilor>

Media pluralism and freedom of expression

In 2020, against the backdrop of the Global pandemic, there was a deterioration in the situation regarding freedom of expression. The decline began in 2013, with the Republic of Moldova falling in the World Press Freedom Index from 55th rank in 2013 to 91st position in 2020 (1).

In the first half of 2020, several restrictions of freedom of expression were registered, such as the intimidation of people who publicly expressed their views on the epidemiological situation, on hospitals situation, and criticised the authorities' management of the health crisis. Patients who made public disclosures about the precarious conditions in hospitals were criticised, and medical staff persecuted and threatened with dismissal (see the information provided under Corruption section). The then Prime Minister criticised a patient for complaining about treatment conditions (2).

There are instances of harassment, intimidation, charges faced by independent media outlets and journalists, and threats of legal action from public figures and politicians (3). Ownership

concentration, high level of polarisation and politisation, and the lack of media independence and of quality journalism are major challenges for Moldova's media. With few exceptions, mass-media outlets are monopolised by certain political groups which use them for fighting political opponents, manipulation and disinformation (4). This was particularly striking during the pandemic crisis, and presidential election campaign.

The legislative framework that regulates the written and online press, particularly the economic-financial field, has not been adjusted to ensure an adequate work environment, due to an unfair competition represented by the press affiliated to political groups. These groups resort to pressure, including through state institutions, to silence the press which they consider undesirable because of the critical discourse against them.

There is a lack of independence and the politisation of the Audiovisual Council as an independent regulatory body. Full transparency regarding ownership of the media and the advertising market is not ensured and the provisions regarding the limitation of the number of owned media institutions are not observed. There are no data on the application of sanctions in such cases. The Audiovisual Council does not insist on compliance with the obligation of audiovisual media service providers to make public the data on funding sources. The institution is still criticised by media experts for not serving the public interest and lack of attitude in obvious cases of politicization of some radio and television institutions.

An attempt to establish censorship was made. The former president of the Audiovisual Council forced presenters/moderators/editors, during the state of emergency, to refrain from voicing their personal opinion or any opinion related to the COVID-19 pandemic, apart from the only "reliable, truthful, impartial and balanced sources" being the competent public authorities from the country and from abroad (5).

However, the disposition was cancelled following harsh criticism coming from the media NGOs (6).

Another serious obstacle for journalists is the high fees for accessing information. The Law on access to information enables information providers to charge for providing information, which shall not exceed the costs incurred to make copies, translation or distribution of information. In reality, journalists claim that sometimes they have to pay excessive amounts for the public information necessary to perform their activity (7).

The People's Advocate requested the Commission for Exceptional Situations (8) to exclude the provisions by which the term for providing the answers to the requests for information of public interest during the state of emergency was tripled. The Ombudsman recalled that, in accordance

with the constitutional provisions, the right of the person to have access to any information of public interest cannot be restricted. In its judgment interpreting the provisions of the Constitution, the Constitutional Court emphasises that the right to information is a precondition for the exercise of other rights, namely political, economic and social rights; the right to privacy, the right to take part in public affairs, the right to a fair trial, etc.

The PA stressed that journalists, media institutions, especially public ones, have a key role and responsibility for providing timely, accurate and reliable information, but also for preventing panic and encouraging people's cooperation. Any restrictions on access to official information must be exceptional and proportionate for the purpose of protecting public health.

The recommendation of the People's Advocate was not taken into account. In their reply (9), the authorities stated that the extension of the time-limits for lodging requests does not in itself constitute a restriction on the right of access to information of public interest, but is a proportionate measure, determined by the circumstances of the state of emergency, which in fact ensures effective exercise of this right.

The PA took a stand and condemned the attacks on the media institutions (10), considering them as attacks on democracy. The Ombudsman noted that the attempts to suppress critical voices, especially by high state officials, and intimidating messages instigate to violence against journalists, generate hatred and division among people.

The Ombudsman called on the authorities to observe international standards on protection and safety of journalists, and to stop denigrating the press.

In the Opinion to the Parliamentary Committee (11), the People's Advocate reiterated his call for Members of Parliament to examine and adopt the draft amendment to the package of laws containing the recommendations of media NGOs, in order to improve the situation in the media sector and create an adequate work environment for journalists. The amendments provide inter alia for shortening of deadlines for providing information of public interest to applicants, providing facilities for processing personal data for media institutions, amending provisions on state secrecy, introducing the public register of media etc.

A bill amending the Criminal Code and the Code of Administrative Offences aimed at criminalising hate crimes and bias-motivated crimes, which was voted in 2016 in the first reading, is still pending in Parliament.

References

- (1) <https://rsf.org/en/moldova>
- (2) <https://newsmaker.md/ro/video-live-urile-glamuroase-nu-au-sens-premierul-raspunde-unei-paciente-care-a-povestit-cum-este-tratata-intr-un-spital-din-capitala/>
- (3) <https://newsmaker.md/ro/cu-ce-s-a-incheiat-publicarea-unui-articol-nm-despre-infractiunile-in-interiorul-sistemului-politiei/>
- <https://www.zdg.md/stiri/stiri-sociale/o-jurnalista-a-fost-amendata-dupa-ce-a-scris-pe-facebook-despre-neregulile-semnalate-pe-timp-de-pandemie-de-catre-angajatii-unei-fabrici/>
- <http://www.api.md/news/view/ro-ong-urile-de-media-condamna-actiunile-abuzive-ale-fortelor-de-ordine-indreptate-impotriva-jurnalistilor-2422>
- (4) <https://freedomhouse.org/country/moldova/freedom-world/2021>
- (5) <http://www.audiovizual.md/files/Dispozitie%20CA.semnat.pdf>
- <https://www.eap-csf.md/en/ro-apel-public-privind-dispozitia-emisa-de-presedintele-consiliului-audiovizualului/>
- (6) <https://www.eap-csf.md/en/the-audiovisual-council-has-invalidated-its-decision-in-order-to-calm-the-spirits-i-cancel-the-disposition/>
- (6) <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=5137>
- (7) <https://www.zdg.md/blog/editoriale/cat-ii-costa-pe-jurnalisti-in-timp-si-bani-accesul-la-informatie/>
- (8) <http://ombudsman.md/en/news/avocatul-poporului-libertatea-de-exprimare-inclusiv-fluxul-liber-si-la-timp-de-informatii-este-un-factor-esential-pentru-capacitatea-mass-mediei-de-a-raporta-problemele-legate-de-pandemie/>
- (9) <http://ombudsman.md/wp-content/uploads/2020/05/Cancelaria-de-Stat-nr.-31-16-3445-din-21.04.20-r%C4%83spuns-la-nr.-12-4-23-din-16.04.20-OAP-nr.-1147-din-23.04.2020.pdf>
- (10) <http://ombudsman.md/en/news/avocatul-poporului-atacurile-impotriva-mass-media-sunt-atacuri-impotriva-democratiei/>
- (11) <http://ombudsman.md/wp-content/uploads/2020/06/12-5-8-din-04.05.2020-Parlamentul-R.M.pdf>

Corruption

In the Republic of Moldova, the emergency period generated by the COVID-19 pandemic was a test as regards the applicability of the Law on whistleblowers no. 122 of 12.07.2018. The health crisis has demonstrated the degree of understanding of the concept of whistleblower in society, the willingness of the authorities, of the management of public institutions to implement and comply with the law provisions, and of people to make use of the mechanisms provided by law.

Although there were strong grounds for several disclosures of public interest information about actions that could harm the public interest, in particular public health and safety, they were delayed, and when they were granted, the employees were subjected to unprecedented intimidation and pressure from employers. Medical staff was generally reluctant to disclose information on the lack of protective equipment, disinfectants, tests, necessary medical equipment, unsafe working conditions and others. Heads of medical institutions have threatened and intimidated health professionals who dared to speak openly about irregularities in the health system. The persons in question were threatened with criminal proceedings and dismissal for disclosing "secrets" at work (1).

The Ministry of Health, Labour and Social Protection strongly denied the lack of adequate equipment and facilities, accusing health care professionals of getting infected by the virus because they did not know how to use protective equipment correctly or of being contaminated in other places than at work. Public opinion was assured that medical institutions have everything they needed and that doctors are sufficiently protected.

In May-June 2020, the Office of the People's Advocate and the National Anticorruption Center, in cooperation with UNDP Moldova, launched three video spots (2) and a number of informative materials as part of an information campaign to support whistleblowers especially among health professionals. At the same time, a new module was launched on www.ombudsman.md portal (3), through which whistleblowers may submit an online application for getting protection from the Office of the People's Advocate.

An online training course for the integrity of whistleblowers, available in Romanian and Russian languages, was launched on the OPA web page (4). The platform offers guidance to employees on how to disclose illegal practices and the peculiarities of whistleblowing in private and public sectors, what illegalities may be disclosed, as well as the protection guarantees for those warning about corruption and irregularities in the institutions in which they work.

At the same time, the course offers guidance to employers from public and private institutions, informing about the duties and competences of institutions involved in the enforcement of whistleblowing mechanism. The module is accessible for persons with visual impairments.

In 2020, the PA examined 2 requests for whistleblowers protection received from civil servants who were subject to retaliatory measures following disclosures of illegal practices. In both cases, the People's Advocate found violations of the rights and freedoms of whistleblowers. The PA addressed to each employer and decision-makers some recommendations on measures to be taken for the immediate reinstatement of whistleblowers: immediate cessation of any acts of retaliation, pressure, discrimination manifested by threats of dismissal, in one case dismissal from public service, which are related to or result from the whistleblowing. At the same time, in both cases, the Ombudsman recommended the cancellation of the sanctioning orders of whistleblowers and a compensation for pecuniary and non-pecuniary damage suffered as a result of revenge, as appropriate.

In one case, the People's Advocate intervened in the trial and managed to provide protection to the whistleblower. On 26 June 2020, the court issued a decision annulling the disciplinary sanctioning of the civil servant by dismissal with the obligation of the employer to issue the administrative act regarding the restoration of the injured person in the position held prior to dismissal. The Chisinau Court of Appeal upheld the court's decision. In this case, the People's Advocate will take procedural actions to bring to justice the person responsible for applying retaliatory measures.

In the second case, the People's Advocate also shared his findings with the court. The court is to issue a decision in this regard (5).

References

- (1) <https://en.odfoundation.eu/a/32071,odfs-submission-to-the-european-commission-in-view-of-the-upcoming-eu-moldova-human-rights-dialogue/>
- https://unimedia.info/ro/news/35655d2ba23bc803/video-angajatul-unei-statii-de-urgenta-care-a-prezentat-echipamentul-de-protectie-din-dotare-vine-cu-noi-detalii-ni-s-au-adus-masti-dar-mama-a-fost-telefonata-sa-ma-convinga-sa-sterg-video-ul-altfel-risc-dosar-penal.html?utm_source=rss&utm_medium=rss&utm_campaign=rss
- (2) <https://www.facebook.com/PNUDMoldova/videos/233002551374254/>
- (3) <http://ombudsman.md/avertizari-de-integritate/>

- (4) <http://ombudsman.md/news/oficiului-avocatului-poporului-lanseaza-modulul-de-studiere-on-line-e-learning-prin-cursul-avertizorii-de-integritate/>
- <http://ombudsman.md/courses/>
- (5) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Following the declaration of a state of emergency on the entire territory of the Republic of Moldova, on 17 March 2020, a series of measures were adopted that affected the **justice system**. The special legal measures put in place concerned the legal deadlines (prescription, revocation, appeal, settlement of claims), which were interrupted until the end of the state of emergency. The examination of both civil and criminal and contravention cases was suspended, and the examination of cases that could not be postponed was conducted by teleconference. The examination of the appeals against the provisions of the Commission for Exceptional Situations (CES) was put within the jurisdiction of the Chisinau Court of Appeal, the term of appeal being set 24 hours, without the possibility of rescheduling and with no right to appeal (1).

The People's Advocate had several concerns and he submitted a series of recommendations to the CES for the revision or exclusion of certain restrictions from CSE's decision no. 4 of 24 March 2020, which infringed the guarantees of a fair trial. The PA recalled that according to provisions of the Constitution, the right to free access to justice cannot be restricted.

On 29 April 2020 the People's Advocate addressed to the Ministry of Justice the proposal to amend the Contravention Code, in which he pleaded for the revision of the provisions of art. 76/1 of the Contravention Code. He proposed reducing the minimum amount of fines applied to individuals and establishing alternative sanctions in cases of non-compliance with restrictions imposed during the state of emergency. The Ministry of Justice rejected this initiative (2). Similar proposals and recommendations were addressed to the parliamentary committees (3).

Nevertheless, the Constitutional Court took into account the PA's opinion presented in amicus curiae brief and declared the minimum amount of the fine imposed on individuals for non-compliance with epidemic measures unconstitutional (4).

The Court noted that not only the fixed penalty set by the legislator, but also the relatively small difference between the minimum and maximum limit of the sanction are likely to affect, depending on the harmful act and the multitude of factual ways of committing it, the right to a fair trial, by restricting the jurisdiction of the court to exercise full jurisdictional control over the individualisation and appropriateness of the sanction. The Constitutional Court held that the legislator cannot regulate a sanction in such a way as to deprive the court of the possibility of individualising it effectively and reasonably.

Ensuring confidentiality of discussions between **detainees** and their defenders during online court hearing is also an issue, as detainees are accompanied by prison staff, while their defenders are physically present in the courtroom. Poor internet connection makes the understanding of the process difficult. Judges in charge usually refuse the request of detainees to physically attend the court hearings, on the grounds of compliance with COVID-19 prevention measures.

In the first months of the epidemiological crisis, there were deviations from standards in the field of **freedom of expression**, such as acts of intimidation of journalists following their criticism of the authorities' inadequate response to the health crisis, as well as barriers to access information of public interest. Pressures on journalists occurred while, in the context of the health crisis, the operation of a free and independent press and the free flow of information were essential.

In 2020, there was a dramatic worsening of the situation in which most media outlets operated, generated by the poor management of the pandemic crisis by the authorities, in general, and of the media field, in particular (5).

References

- (1) https://cancelaria.gov.md/sites/default/files/dispozitia_4_din_24.03.2020.pdf
- (2) <http://ombudsman.md/news/ministerul-justitiei-a-respins-propunerea-avocatului-poporului-de-reducere-a-marimii-minime-a-amenzilor-aplicate-persoanelor-fizice-si-stabilirea-de-sanctiuni-alternative-cum-ar-fi-munca-neremunerata/>
- (3) <http://ombudsman.md/wp-content/uploads/2020/05/04-2-8-din-29.04.2020-Comisia-protoc%C8%9Bie-social%C4%83-s%C4%83n%C4%83tate-%C8%99i-familie.pdf>
- <http://ombudsman.md/wp-content/uploads/2020/05/04-2-9-din-29.04.2020-Comisia-drepturile-omului-%C8%99i-rela%C8%9Bii-intere>
- (4) https://www.constcourt.md/public/ccdoc/hotariri/h_18_2020_61a_2020_rou.pdf
- (5) <https://www.mediaforum.md/upload/resolution-fmm-2020pdf-5fca34ecb8d93.pdf>
- <https://www.zdg.md/stiri/stiri-sociale/pe-timp-de-pandemie-libertatea-presei-degradeaza-2/>
- (6) Report on the observance of human rights and freedoms in the Republic of Moldova in 2020: http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

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

The state of emergency declared in response to the COVID-19 pandemic has affected, to a certain extent, the implementation of torture prevention activities planned for 2020.

Right before the state of emergency has been declared, the representatives of the OPA and members of the Council for the Prevention of Torture, guided by the "do no harm" principle, made the decision to temporarily suspend the visits to places of detention, in order to protect employees and the persons detained. This decision was also dictated by the insufficiency of protection equipment of members of NPM. Between 12 March and 1 June 2020, there were no preventive visits to places of detention.

The activity of **monitoring the situation in places of deprivation of liberty** took place remotely, through direct contact with the heads of custody institutions, phone calls, examination of applications, the situation reflected in the media, but also the decisions of relevant authorities, etc.

On a daily basis, the Office of the People's Advocates was informed about the situation in the places of detention. Likewise, the OPA submitted approaches to the National Commission for Exceptional Situations and other competent institutions requesting to take the necessary measures to prevent the spread of the pandemic in places of detention, in order to ensure protection of employees and persons in public custody.

At the same time, no actions were registered to obstruct the access of the OPA employees or the members of the Council for the Prevention of Torture, as National Preventive Mechanism, in the monitored institutions.

Although less than in previous years, the OPA carried out 22 preventive visits to places of deprivation of liberty. Another 11 visits were made by members of the Council for the Prevention of Torture. Following the visits made in 2020, 28 visit reports with recommendations and 2 thematic reports (1) on the COVID-19 situation in detention were prepared and submitted to the authorities.

References

- (1) http://ombudsman.md/wp-content/uploads/2020/08/en-rezumat_situa%C8%9Bia-covid19_pe-site.pdf
- http://ombudsman.md/wp-content/uploads/2020/12/Raport_Retinere_2020_OAP_FSM_FINAL-proiect_pe-site.pdf

