

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Moldova



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# Moldova

## *People's Advocate Office*

### **Independence and effectiveness of the NHRI**

#### **International accreditation status and SCA recommendations**

The Office of the People's Advocate of Moldova was accredited with A-status in May 2018 (1).

In its report, the SCA noted that the People's Advocate is appointed by a simple majority vote of the elected members of Parliament. It acknowledged the NHRI had reported that in practice the selection and appointment process is transparent and participatory, and that civil society can participate by submitting the names of candidates and offering comments regarding candidates. However, the SCA encouraged the NHRI to continue to advocate for the passage of an amendment to the enabling that would include a provision stating that the People's Advocate shall be appointed by the Parliament with an absolute majority vote and based on a transparent and participatory selection process.

The SCA encouraged the NHRI to advocate for the inclusion of a requirement in its enabling law to ensure that its composition is broadly reflective of all segments of Moldovan society. Additionally, it encouraged the NHRI to continue to advocate for adequate funding to effectively carry out its mandate, including as an NPM.

Finally, the SCA welcomed that the NHRI had developed a framework to independently monitor the government's implementation of the National Human Rights Action Plan, in cooperation with other human rights bodies. It encouraged the NHRI to continue to monitor the implementation of the National Action Plan, as well as other recommendations of the NHRI.

#### ***References***

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20May%202018-Eng.pdf>

## Regulatory framework

The People's Advocate of Moldova continues to function on a constitutional basis. The Moldovan NHRI has the mandate to contribute to access to justice for individuals, including through complaints handling, strategic litigation before courts, providing legal assistance to individuals and awareness-raising.

## Enabling and safe space

Despite many challenges that the People's Advocate Office (PAO) experienced through 2021, the Office's staff performed their duties in accordance with the Law No 52/2014 on People's Advocate (Ombudsman).

The challenges mentioned include:

- Instability regarding the leadership of the People's Advocate Office. During 2021, the People's Advocate Office was led by interim of Child Ombudsman and in the fall a new ombudsman was appointed but soon resigned;
- Impact of the Covid-19 pandemic on the People's Advocate Office, such as lack of in-person meetings;
- Inadequate working conditions. The headquarters of the Office of the People's Advocate is in a damaged condition and represents a danger to the life and health of the PAO's staff and as well for its beneficiaries (people visiting the NHRI and submitting complaints);
- Insufficient human resources;
- Lack of financial independence of the People's Advocate Office - the People's Advocate Office budget is approved by Ministry of Finance and adopted by Parliament and this does not meet the standards established in Paris Principles;
- The NHRI's limited access to the Transnistrian region.

## NHRI's recommendations to national and regional authorities

The People's Advocate recommends relevant authorities to ensure adequate budget, premises and human resources for the NHRI in Moldova to effectively carry out its mandate.

## Human rights defenders and civil society space

### Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In 2021, the worrying situation of human rights defenders (HRDs) has been widely discussed in Moldova. The worsening environment for HRDs' activities in Moldova were exacerbated by the Covid-19 pandemic when human rights and fundamental freedoms were often unduly restricted. Public health measures and extensive government powers, further strengthened in the context of the government's response to the global pandemic have affected the rights of human rights defenders. For instance, in 2021, in response to the Covid-19 pandemic, the Government granted the Moldovan Commission for Emergency Situations a special mandate that had an impact on monitoring activity of Human Rights Defenders, for example monitoring special Covid institutions.

In the Transnistrian region, the People's Advocate observes that the situation regarding HRDs is particularly dire. It has to be noted that all laws and normative acts that are issued by the self-declared Transnistrian authority are not recognised by the Government of the Republic of Moldova. The rights and activities of human rights defenders in the Transnistrian region were the object of severe restrictions, due to various "rules" and "laws" approved under the pretext of ensuring information security which resulted in restrictions of the right of residents to access to and consult independent media sources and curtailing the right to criticize the Transnistrian authorities. In this context, the unhindered exercise of freedom of expression and information, a fundamental right and an important component of the work of HRDs, has been seriously threatened, for instance by measures restricting HRDs' activities.

The People's Advocate Office also followed with concern the *lex ferenda* by the unrecognised Transnistrian institution which have the purpose to prevent and hamper the activity of HRDs. In particular, the Tiraspol authorities continue to implement policies and mechanisms that seriously affect the exercise of the rights to freedom of assembly, opinion and expression (1). However, it is to be noted that due to the total blockage of information issued by Transnistrian unrecognized authorities, the People's Advocate Office and other public institutions do not have any access to official documents about the situation on human rights defenders in the Transnistrian region (2). All information that is available is provided by media and CSOs that are involved in the process of monitoring of the human rights situation in the Transnistrian region (3). For instance, a so-called law issued by the Transnistrian unrecognised authorities has been unofficially released online. This law imposes a criminal liability and imprisonment on those individuals and organisations who

submit motions to the Moldovan and international courts challenging actions, acts and decisions by Transnistrian unrecognised authorities (4).

The People's Advocate has intervened whenever similar attacks and restrictions were reported, addressing recommendations to urge the state authorities to ensure the unhindered exercise of human rights and freedoms in the administrative-territorial localities on the left bank of the Dniester and in the municipality of Bender (Transnistria), so as to ensure that human rights and freedoms be observed over the whole territory of the Republic of Moldova. The People's Advocate also mobilised mediating representatives and observers to apply diplomatic, legal or other measures in accordance with the international legal and policy framework to prompt the authorities to remedy the identified violations.

### **References**

- (1) [https://www.state.gov/wp-content/uploads/2022/03/313615\\_MOLDOVA-2021-HUMAN-RIGHTS-REPORT.pdf](https://www.state.gov/wp-content/uploads/2022/03/313615_MOLDOVA-2021-HUMAN-RIGHTS-REPORT.pdf)  
<https://moldova.europalibera.org/a/la-tiraspol-drepturile-omului-sunt-la-discre%C8%9Bia-autorit%C4%83%C8%9Bilor-nerecunoscute/31717065.html>
- (2) <http://ombudsman.md/news/avocatul-poporului-condamna-initiativa-tiraspolului-de-a-pedepsi-penal-persoanele-din-regiunea-transnistreana-care-vor-sesiza-incalcarea-drepturilor-omului/>
- (3) <https://www.jurnal.md/ro/news/bdeeb2755c5f8ba5/chisinaul-condamna-initiativa-tiraspolului-de-a-pedepsi-penal-persoanele-care-vor-reclama-abuzuri-in-instantele-nationale.html> ; <https://www.moldpres.md/news/2022/02/23/22001350>
- (4) <https://www.scribd.com/document/577823824/legea-ce-pedepse%C8%99te-cu-inchisoarea-oamenii-din-regiune-ce-se-vor-adresa-in-istan%C8%9Bele-legale>

### **Threats and attacks, including strategic litigation against public participation (SLAPPs)**

The report on the human rights situation in the Republic of Moldova issued in the context of the 3rd round of the UN Universal Periodic Review in 2021 (1) stated that harassment and intimidation by politicians of the most important and representative civil-society organisations (CSOs) had a negative impact on the activities of civil society sector, which plays an important role in promoting democratic change.

In his public statements, the People's Advocate drew attention of politicians to the fact that civil society actors are human rights defenders, who play a positive, important and legitimate role to contribute to the respect, protection and promotion of human rights at

local, national, regional and international level. The People's Advocate also stressed the importance of dialogue between civil society actors and state authorities, as a tool to support state authorities in implementing the state's obligations and commitments in this regard.

## **References**

- (1) The report was prepared by the People's Advocate Office of the Republic of Moldova: <http://ombudsman.md/wp-content/uploads/2021/07/UPR-2021-v5-1.signed.pdf>

## **NHRI's role in promoting and protecting civil society space and human rights defenders**

During 2021, the People's Advocate Office drafted a proposal articulating the concept for a law on human rights defenders and proposed it for examination and debate to representatives of civil society, professional groups, trade unions, the media and other interested stakeholders. An English version of this document will soon be made available.

(1)

The draft concept refers to the need to create HRD regulations that converge with the commitments assumed by the Republic of Moldova when supporting all joint resolutions and declarations on human rights defenders at the UN General Assembly and the Human Rights Council.

The public consultation with main stakeholders and civil society on the concept on a legal regulation of HRDs' protection is ongoing. Afterwards, the People's Advocate Office aims to draft a model law with the support of civil society. Once the concept on a legal regulation of HRDs' protection receives a wide consensus, the People's Advocate Office will continue discussions with the government on the process of its adoption and implementation.

The Ombudsman argues that, although the national framework already includes laws regulating aspects of the work of certain categories of persons that fall within the concept of human rights defenders, the laws in question do not explicitly refer to the notion of human rights defender, nor do they contain provisions on the protection of the concerned persons as defenders of human rights. In general, the notion of human rights defenders is not recognised in national law.

Adopting a dedicated law or supplementing the existing legal framework with specific regulations on human rights defenders would be a recognition of the fact that this category of people is entitled to benefit from special protection mechanisms. Recognizing

and ensuring the effective protection of human rights defenders by law will contribute to the promotion of democracy, good governance, sustainable development and the rule of law.

In the context of the work done on promoting the concept for a law on HRDs, work on the Child Support Campaign - Human Rights Defenders has also intensified. This campaign was conducted by Child Rights Information, a civil society organisation, with support from the People's Advocate for Rights of the Child (2). The phenomenon of children-human rights defenders is becoming more and more known and is the object of support within society. The voice of these children must be better heard and they must also benefit from enhanced protection and security safeguards. The People's Advocate for Child's Rights has proposed to include specific references to this in the above mentioned concept for a law on HRDs, by means of a chapter which could detail provisions on children-human rights defenders and indicate the Children's Ombudsman as a mechanism for the protection of children - human rights defenders.

### **References**

- (1) <http://ombudsman.md/wp-content/uploads/2021/12/CONCEPT-ADO-FINAL-2.pdf>
- (2) <https://drepturilecopiilului.md/index.php/ro/component/k2/item/310-un-mediu-sigur-pentru-copiii-aparatori-ai-drepturilor-omului-in-republica-moldova-platforma-copiilor-a-lansat-o-campanie-de-sensibilizare-a-parintilor-profesorilor-politistilor-functionari>

## **Checks and balances**

### **NHRIs as part of the system of checks and balances**

In the exercise of its mandate, the People's Advocates expressed its opinion on 19 draft normative acts, out of which 4 were elaborated ex officio, and 5 concerned draft normative acts elaborated by the People's Assembly of the Administrative Territorial Unit (ATU) Gagauzia. Most requests for opinions on draft normative acts came from the State Chancellery, as well as from ministries - Ministry of Health, Ministry of Labour and Social Protection, Ministry of Education and Research, Ministry of Justice, but also the National Anticorruption Centre.

The People's Advocates submitted above proposals for the improvement of the legislation in force, addressed both to the Government and to the legislative forum. The proposals addressed legal issues in the field of the right to social protection, the rights of persons with disabilities, the right to education, the right to private and family life, the protection of personal data, and observance of child rights, among others. Out of the 19 proposals

formulated in 2021, only 5 were accepted by the authorities in full, while 5 were accepted partially, 2 were rejected and 7 are in the process of being examined by the responding authority.

Exercising its right to file a motion to the Constitutional Court, in 2021 the People's Advocate presented 3 notifications to the Constitutional Court. These concerned the transport compensation for people with disabilities, existing rules conditioning the granting of citizenship to a child born on the territory of Moldova, and the recalculation of pensions previously established for soldiers and persons in the command corps and in the troops of the internal affairs bodies.

The People's Advocate also presented 4 *amicus curiae* opinions to the Constitutional Court in the context of ongoing proceedings bearing relevance for human rights protection, of which two at the request of the Court, and two others on his own initiative.

Also, during 2021, representatives of the People's Advocate's Office were requested to participate in several working groups created for the elaboration of public policies and draft normative acts, in order to provide advice and expertise on compliance with human rights and freedoms. The active presence of the institution's representatives was ensured in 6 such working groups, including in the groups tasked of the elaboration of the Action Plan 2021-2024 regarding the implementation of the Strategy for the consolidation of interethnic relations in the Republic of Moldova for 2017-2027; the Strategy for the protection of children's rights for 2021-2030; the Child Protection Program for 2021-2025 and the National Program for Child Development and Welfare 2021-2026.

## Functioning of the justice system

The right to a fair trial is enshrined in the Constitution of the Republic of Moldova in Articles 20, 21 and 26. These articles regulate free access to justice, the presumption of innocence and the right to defence.

Data from the *Study Perceptions of Human Rights in the Republic of Moldova 2021* (1) conducted by the People's Advocate Office show that confidence in ensuring the right to a fair trial for different groups of the population remains quite low.

The findings of the study indicate that the population considers that:

- The most important rights currently in need of better protection are the right to health, the right to education and the right to social protection;
- The rights which suffer widespread violations are the right to health, right to social protection and right to a fair trial;

- Women's rights and children's rights are perceived as the rights that are granted better protection;
- 60% of respondents believe that corruption affects or may affect the observance of human rights;
- The pandemic situation has contributed to further limitations in the enjoyment of certain rights, especially the right to health and education, but also the right to free movement, assembly etc.

The People's Advocate observes that the issues that mostly affect the enjoyment of the right to a fair trial in Moldova are:

- Length of proceedings in criminal cases;
- Delays in the examination of cases by the courts;
- Costs for judicial expertise (for vulnerable groups) - according to the law No. 68/2016 on judicial expertise and the status of the judicial expert, costs of a large a number of judicial expertise provided at the request of the courts are covered by beneficiaries, who often are people from vulnerable groups.
- Low quality of legal assistance guaranteed by the state legal aid system;
- Non-execution and / or late execution of court judgments;
- Lack of accessibility of information concerning access to proceedings.

### **References**

- (1) The project "Fighting corruption by strengthening integrity in the Republic of Moldova", implemented with the support of UNDP and Norwegian Ministry of Foreign Affairs: <http://ombudsman.md/wp-content/uploads/2021/08/Final-STUDIU-traducere-1.pdf>

### **Media freedom, pluralism and safety of journalists**

In 2021, several cases of intimidation of journalists in Moldova were recorded. Non-profit media organisations alarmed about intimidation of staff of the media outlet NewsMaker by police employees, which occurred after the outlet's editorial office was sued by two police officers following the publication of an article about a criminal case against such officers (1). The media organisations requested the Ministry of Internal Affairs to take note of the illegality of actions carried out by the head of the Police Sector no. 1 and to communicate publicly the measures taken in relation to the matter At the same time, the organisations

urged the law enforcement bodies to abide by the provisions of the law, and refrain from any abusive and illegal intimidation of journalists.

### **References**

- <https://agora.md/stiri/84829/ong-urile-de-media-condamna-actiunile-de-intimidare-ale-angajatilor-politiei-in-raport-cu-jurnalistii-newsmaker>
- <https://newsmaker.md/ro/cu-ce-s-a-incheiat-publicarea-unui-articol-nm-despre-infractiunile-in-interiorul-sistemului-politiei/>

### **Corruption**

Against the background of an increasing number of cases of disclosure of illegal practices and other disclosures of information on public interest matters, Law no. 122/2018 on whistle blowers strengthens the legal framework for the protection of whistle blowers by:

- promoting the climate of integrity in the public and private sectors;
- ensuring the protection of whistle blowers against revenge in the context of examining disclosures of public interest of illegal practices;
- preventing and sanctioning revenge against whistle blowers.

The Law establishes that, in case of external and public disclosures of illegal practices, the protection of whistle blowers is ensured by the People's Advocate, in accordance with the provisions of Law no. 52/2014 on the People's Advocate (Ombudsman).

In order to contribute to an effective implementation of this law, with the support of the UNDP the People's Advocate Office, with the financial support of the UN Development Programme, developed an e-learning application integrated in the institution's website, as mentioned in last year's ENNHRI rule of law report (1). The first online course made available on this e-learning platform is on the topic of 'whistle blowers'. The course provides information about whistle blowers, the action of disclosure of public interest matters and the protection offered to persons engaging in such disclosures. By taking the online course, offered in Romanian and in Russian, users have the opportunity to build and test their knowledge on the topic.

Furthermore, the application "Online submission of claims for whistle blower protection" was developed and launched within the institution's website, offering a channel for people who want to request protection (2), and ensuring confidentiality and security of the provided information.

The reinstatement of whistle blowers in their place of employment is a complex and lengthy process. 6 such cases have been under consideration by the People's Advocate for more than a year. Employers have been notified with recommendations for the immediate reinstatement of whistle blowers in accordance with the guarantees provided by the whistle blower mechanism. The recommendations were not implemented by the employers and the whistle blowers challenged the sanctioning orders in court. In these 6 cases, the People's Advocate intervened in the process, in order to submit conclusions in order to defend the rights, freedoms and legitimate interests of the persons engaging in the disclosure. In one case, the employer has not yet provided an answer regarding the implementation of the recommendations addressed to him.

With regard to the first case concerning the protection of a whistle blower in which the People's Advocate intervened (as reported in the last year's ENNHRI rule of law report), the Supreme Court of Justice annulled the decisions of the two lower instance courts, which had ruled in favour of the whistle blower and ordered the cancellation of the order/decision on dismissal and the reinstatement of the person in the position previously held. An application by the whistle blower challenging the Supreme Court's decision is currently pending before the European Court of Human Rights (ECtHR).

It should be noted that in this case, as is the case in other proceedings, the courts, although they accepted the conclusions submitted by the People's Advocate, do not refer in their decisions to the protection mechanisms provided by the Law on whistle blowers. Instead, the courts refer to Labour code provisions in their judgments.

### *References*

- (1) <http://ombudsman.md/courses/>
- (2) <http://ombudsman.md/avertizari-de-integritate/>