

Council of Europe contribution for the 26th UPR session regarding the Republic of Moldova

Prevention of torture

On 12 January 2012, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to the Republic of Moldova, which took place from 1 to 10 June 2011 (report available in [French](#), [English](#) and [Romanian](#)). The Response from the Moldovan Government (available in [French](#) and [Romanian](#)) was published on 28 August 2012.

In its report, the CPT notes that a significant proportion of detained persons interviewed by its delegation complained of police ill-treatment during the months preceding the visit. Consequently, the Committee recommends that the Moldovan authorities continue to implement anti-torture measures with determination. The Committee also recommends reinforcing the mechanisms for the investigation of alleged ill-treatment.

The CPT makes a generally positive assessment of the conditions of detention at the temporary placement centre for foreign nationals in Chişinău, but recommends that the Moldovan authorities resolutely pursue the nationwide scheme to renovate police temporary detention facilities.

As regards prisons, in the light of allegations received by its delegation, the CPT recommends that the Moldovan authorities exercise greater vigilance vis-à-vis the behaviour of staff at Penitentiary establishments No. 11 in Bălţi and No. 17 in Rezina towards prisoners who have been segregated for their own safety. Alleged beatings of inmates by other prisoners belonging to an informal hierarchy within the prison population were another subject of concern, and the Committee recommends that efforts to counter inter-prisoner violence and intimidation be stepped up. As for conditions of detention, the CPT notes with satisfaction that, in the light of the delegation's preliminary observations at the end of the visit, an action plan was immediately drawn up to combat overcrowding and improve material conditions in prisons.

In the fields of psychiatry and social care, the delegation found no evidence of ill-treatment of patients by staff. On the contrary, the patients interviewed spoke positively of the staff at the establishments visited. The report contains recommendations aimed at improving living conditions in Orhei psychiatric hospital and in the secure ward of Chişinău psychiatric hospital. At Orhei Psychoneurological Home for boys, the living conditions were satisfactory. That said, the CPT stresses that, as a rule, children should be accommodated separately from adults.

Council of Europe Commissioner for Human Rights

On 30 September 2013 the Commissioner for Human Rights at the Council of Europe released a [report](#) following his visit to the Republic of Moldova from 4 to 7 March 2013. During his visit he focused on reporting on (i) the administration of justice and (ii) systematic work for implementing human rights and National Human Rights Institutions.

Regarding the administration of justice, the Commissioner notes with concern a report of the European Commission for the Efficiency of Justice (CEPEJ) which reveals that the public budget allocated to courts in the Republic of Moldova is the lowest among Council of Europe Member States. Moldovan judges also have a salary that is ten times less than the European median salary. Furthermore, ambiguities in relevant legislation appear “to contribute to lack of proper institutional cooperation while negotiating the courts’ budget”. The Commissioner urges the authorities to address the issue of judges’ salaries as a matter of priority and to ensure that judges benefit from the provision of the necessary social and economic guarantees. He also concludes that decisions on the allocations of funds to courts must be taken with the strictest respect for judicial independence and he strongly encourages the authorities to review the current legislation with a view to ensuring proper institutional cooperation.

Judges are appointed initially only for a five-year probationary period, and their appointment can be blocked by the President on the basis on information given to him by the intelligence services. The Commissioner therefore recommends that the probationary period for judges be revoked in the interest of preserving judicial independence. The appointment of the Prosecutor General meanwhile is reported to have always been a highly politicized issue, with none of the six Prosecutors General serving between 1998 and 2012 completing their mandate. The Commissioner stresses that when the appointment of the Prosecutor General is highly politicized, the functioning of the prosecutor’s office suffers, and public trust and respect of the judiciary is undermined.

The report finds that impunity for ill-treatment by law enforcement officials remains a serious problem. The authorities are urged to “undertake measures to raise awareness among judges and prosecutors of their duty to thoroughly investigate all allegations of ill-treatment by law enforcement officials, in line with the case law of the European Court of Human Rights.”

Alongside this issue is the systematic problem of non-enforcement or delayed enforcement of court judgments. The Commissioner encourages the authorities to take further steps to provide adequate and effective redress to those whose right to have a case examined or a final judgment enforced within a reasonable time has been breached.

Regarding systematic work for implementing human rights and National Human Rights Institutions, the Commissioner notes the approval by Parliament in May 2011 of the National Human Rights Action Plan for 2011-2014 (NHRAP). However, representatives of civil society pointed out to the Commissioner several deficiencies in the implementation of the NHRAP, including insufficient funding (only 26% of the actions for the year 2011 were allocated with a budget, with this amount furthermore being mostly from international donors). Therefore, implementation is poor and prioritization of projects is needed. There was a lack of consultation throughout the implementation process and sometimes progress reports were not submitted to the National Commission responsible for the implementation of the NHRAP. Furthermore, problems with the Ombudsman institution and dissemination of the NHRAP are identified. Taking these observations into account, the Commissioner recommends that the implementation of action plans be reviewed in a regular way, both among the authorities reporting back to the government and within the government itself. It is noted in this regard that after a review of the

NHRAP following the Republic of Moldova's Universal Periodic Review, a revised edition was approved by Parliament in December 2012 and was made public in March 2013.

[Fight against racism and intolerance \(ECRI\)](#)

On 15 October 2013, the European Commission against Racism and Intolerance (ECRI) published its fourth [report](#) on the Republic of Moldova.

ECRI welcomes the progress made since its [third report](#) (published on 19 December 2008), including the adoption of several action plans through which the authorities have "demonstrated their willingness to undertake major reforms which would make it possible to combat racism and racial discrimination more effectively." Positive developments include the adoption of the Law guaranteeing equality in 2012 and the establishment in 2013 of the Council to Prevent and Combat Discrimination and Ensure Equality, a specialised body to combat racism and racial discrimination. The alteration of the freedom of expression law to exclude remarks inciting hatred or violence from protection and the planned reform of the Ombudsman institution are also welcomed.

However, despite the positive developments, the report highlights some continuing areas of concern. Despite Moldova's ratification of the Convention on Cybercrime, it has postponed ratification of Protocol No. 12 to the European Convention on Human Rights (Anti-discrimination). Furthermore, although the implementation of an Action Plan to support the Roma ethnic group is welcomed, it is noted that it makes almost no provision for specific funding. There are also a significant number of cases of police misconduct and the police are reluctant to register complaints of racism and racial discrimination.

The report contains findings and recommendations regarding the following issues:

- The existence and application of relevant legal provisions (including constitutional provisions, criminal law, application of national anti-racism legislation, and anti-discrimination bodies)
- Discrimination in various fields (education, employment, housing, health, access to services)
- Climate of opinion, public discourse and opinion leaders
- Racist violence
- Vulnerable groups (ethnic and religious minorities)
- Conduct of law-enforcement officials
- Monitoring of racism and racial discrimination
- Education and awareness-raising
- Of the specific recommendations made in the report, ECRI requests priority implementation for three of them:
 - Ratification of Protocol No. 12 to the European Convention on Human Rights
 - Putting in place a system a for recording and following up racist incidents reported to the police as well as systematically collecting data on principles of confidentiality, informed consent and voluntary self-identification.
 - Informing groups who are victims of racism and racial discrimination of relevant legislation and institution and encouraging them to contact these institutions, while the latter should establish

contact with these groups, deal seriously with allegations made and carry out effective investigations with a view to providing appropriate redress and punishment.

Conclusions on the implementation of these recommendations will be published in May / June 2016.

Links to ECRI reports and interim follow-up conclusions can be accessed under: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Moldova/Moldova_CBC_en.asp

Protection of minorities

Framework Convention for the Protection of National Minorities

The Republic of Moldova has signed and ratified the Framework Convention for the Protection of National Minorities. The fourth cycle of the monitoring procedure undertaken by the Council of Europe Advisory Committee on this Convention is currently underway. The Moldovan authorities submitted their State Report on 10 June 2015, outlining in some detail the steps taken on the implementation of the Convention and the progress achieved in the field since the third review cycle in 2009.

European Charter for Regional or Minority Languages

When acceding to the Council of Europe in 1995, the Republic of Moldova committed itself to ratifying the European Charter for Regional or Minority Languages (ECRML) by 13 July 1996. The Republic of Moldova signed the ECRML in 2002 but has not yet ratified it. In February 2012, a working group comprising representatives of the Moldovan authorities, national minorities, and Council of Europe experts prepared a draft ratification instrument. This document contains the selected Charter provisions that the Moldovan authorities intend to apply to the Bulgarian, Ukrainian, Gagauz, German, Polish, Romani, Russian and Yiddish languages. However, the authorities later in 2012 decided to suspend the ratification of the Charter. The Republic of Moldova is strongly encouraged to ratify the ECRML.

Action against trafficking in human beings (GRETA)

On 19 May 2006 the Republic of Moldova ratified the Council of Europe Convention on Action against Trafficking in Human Beings. It entered into force on 1 February 2008.

The Convention's monitoring mechanism, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), published its first evaluation [report](#) (Romanian version / French version) concerning the implementation of the Convention on 22 February 2012.

The report notes the establishment of the National Committee for Combating Trafficking in Human Beings, territorial commissions for combating trafficking in human beings, and multidisciplinary teams at regional level which coordinate the provision of assistance to victims. Furthermore, the launching of a National Referral System of Assistance and Protection of Victims and Potential Victims of Trafficking is noted, as is the publication of a report on the implementation of the 2010 National Plan for preventing and combating human trafficking.

While welcoming these steps taken by the Moldovan authorities to prevent and combat trafficking in human beings since ratifying the Convention, GRETA and the Committee of Parties make a number of [recommendations](#) and urge further action in specific areas. Although awareness-raising and education in partnership with international organisations and NGOs feature heavily in the action taken, GRETA considers that the Moldovan authorities should “take steps to design and implement preventive measures for groups particularly vulnerable to trafficking.” It also urges Moldova to “strengthen the element of prevention through social and economic measures addressing the identified causes of human trafficking”.

GRETA urges the development and implementation of further measures to identify victims and potential victims of trafficking, as well as provisions for further measures regarding assistance to such victims, including provision of adequate human and financial resources, effective participation of local authorities in the National Referral System, and the establishment of a State compensation scheme.

Furthermore, GRETA recommends that the investigation of trafficking cases should be improved, with a view to their effective prosecution resulting in proportionate and dissuasive sanctions. Better protection and assistance to victims and witnesses is recommended as is the regular training of judges, prosecutors and other legal professionals.

From 11 to 15 May 2015, GRETA carried out a second evaluation visit to the Republic of Moldova in order to assess progress implementation of the Convention since the first evaluation. On 4 March 2015, the [reply](#) from the Moldovan Authorities to the questionnaire sent by GRETA in respect of this second evaluation cycle was published. GRETA’s second round evaluation report is expected to be published in May 2016.

The Authorities’ report on “measures taken” since the 1st round report can be accessed under : http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply_REC/CP_2014_8_RR_MDA_en.pdf

Preventing and combating violence against women and domestic violence

The Republic of Moldova has not yet signed or ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. For this reason, it is not yet concerned by the monitoring procedure under this Convention.

Fight against corruption (GRECO)

The Group of States against corruption (GRECO) published two compliance reports, both covering “Transparency of Party Funding” and “Incriminations”, on [3 April 2013](#) and [1 April 2015](#) respectively, with the latter being extended through an [addendum](#) published on 9 December 2015. These address the measures taken by the Moldovan authorities to implement the 17 recommendations GRECO published in its evaluation reports on [party funding](#) and [incriminations](#) for the third cycle on the Republic of Moldova on 6 April 2011.

In the appendix to the second compliance report, GRECO concludes that Moldova has “implemented satisfactorily or dealt with in a satisfactory manner” 15 of the 17 Recommendations, with the two remaining recommendations having been partly implemented. There are a limited number of points of concern that remain on the part of GRECO. Firstly, with regard to incriminations, GRECO remains unconvinced that sufficient safeguards are in place to prevent the misuse of the defence of “effective regret” and it more generally invites the authorities to “continue their efforts to ensure that full use is made in practice of the criminal law provisions relating to bribery and trading in influence offences.”

With regard to the transparency of political funding, GRECO calls upon Moldova to seek to ensure that the rules adopted are applied in practice, notably by ensuring that the relevant supervisory mechanism has the “necessary resources to implement substantive, proactive oversight of the financing of election campaigns and of political parties in general.”

Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2015, there were 270 cases against the Republic of Moldova pending before the Committee of Ministers for supervision of their execution.

79 of these cases were “leading cases”, i.e. raising a new general problem and requiring the adoption of general measures, the other cases being “repetitive cases” concerning issues already raised before the European Court of Human Rights.

The main case or groups of cases supervised under the enhanced procedure and revealing structural or complex problems are listed below:

- Non-enforcement or lengthy enforcement of domestic judicial decisions, delivered mainly against the state:

There are 55 cases concerning this issue in the **Luntre group** of cases. In June 2015 the CM urged the Moldovan authorities to take the necessary individual measures to ensure that all the judgments in this group of cases are enforced without delay. As relates general measures it noted with satisfaction that the Moldovan authorities have taken significant measures to resolve the problem of non-enforcement of judgments, including the introduction of a new bailiff system and the reform of the system of allocation of budgetary funds to ensure full and timely enforcement of court judgments, encouraged them to pursue their efforts to ensure that the measures adopted are implemented effectively and invited them to provide further information on the functioning of the new execution system.

The Court delivered a pilot judgment in the case of **Olaru and others** in July 2009 - non-enforcement or delayed enforcement of domestic judicial decisions concerning social housing (this group was transferred to the standard procedure in March 2012).

- Ill-treatment by police and lack of effective investigations: **Corsacov** and **Taraburca** groups of cases.

There are 24 cases concerning this issue in the **Corsacov** group of cases. In September 2014, the CM has noted as regards individual measures the partial progress achieved in certain cases thank to the investigations carried out and urged the authorities to speedily finalise pending investigations,

encouraged them to reopen the investigations in other cases, irrespective of the applicants' initiatives, and invited to keep the CM informed of all relevant developments. As regards general measures, the CM was notably satisfied with the important legislative changes introduced by the Moldovan authorities, aiming at fighting impunity and reinforcing guarantees against ill-treatment and invited them to evaluate their concrete impact and to provide detailed statistics on the number of torture complaints, the number of cases sent to trial and of the convictions or sentences imposed. In the light of the above, updated information with respect to both individual and general measures is awaited.

The **Taraburca** group deals specifically with the problem to control the action of the police in situations of mass riots (post-election violence in Chisinau in April 2009).

- Poor conditions of detention, including lack of adequate medical care in detention and lack of effective remedies: **Becciev**, **Ciorap** and **Paladi** groups of cases.

When examining these groups of cases in December 2013, the CM, *inter alia*, strongly encouraged the Moldovan authorities to make rapidly progress in their reflection concerning the setting up of preventive remedies, by taking full benefit of the technical co-operation which was proposed to them in the framework of the specific Human Rights Trust Fund Project (HRTF project). In July 2014, the authorities participated in a multilateral round-table, held in Strasbourg, where they had the opportunity to share their experience concerning the compensatory remedies. While advancement appeared to happen on compensatory remedy, no progress has been made in the introduction of the preventive remedy. A study visit to Italy was then organised in February 2015 within the HRTF Project, focusing on the preventive remedies and the reduction of sentences as a compensatory remedy. In April 2015, a working group to address the issue of introducing an effective domestic remedy in respect of poor conditions of detention was set up by the Minister of Justice. The Department for the Execution of judgments and Council of Europe experts met with this working group in Chisinau in June 2015 to discuss the modalities of the remedies. On 15 September 2015, the European Court delivered a judgment in the case of *Shishanov* with specific indications under Article 46, notably that authorities should, without delay, put in place an effective preventive and compensatory remedy, or a combination of remedies, concerning inadequate conditions of detention in Moldova. The Moldovan authorities are expected to submit an updated action plan by 15 June 2016.

- Different problems related to detention on remand (detention without a court order; lack of relevant and sufficient reasons for detention):

There are 14 cases concerning this issue in the **Şarban** group. When examining these groups of cases in December 2014, the CM welcomed the efforts made by the Moldovan authorities aimed at aligning legislation and practice with the Convention requirements and the Court's case-law in relation to detention pending trial and considered with satisfaction that the issue of detention pending trial without legal basis and the issue of the lack of confidentiality of lawyer-client communication on account of the glass partition at the then Centre for Fighting against Economic Crimes and Corruption

have been resolved. The Moldovan authorities are expected to provide information on the progress achieved on the outstanding issues.

- Domestic violence:

There are 4 cases concerning this issue in the *Eremia* group of cases. At its DH meeting in December 2015 the CM noted the proactive attitude displayed by the Moldovan authorities in taking individual measures in these cases, the fact that no new incidence of violence against the applicants has been reported and the Moldovan authorities' commitment to continue closely supervising the applicants' individual situation and considered, therefore, that no further urgent individual measures are required. It further noted the wide range of measures taken in 2012 – 2015 to prevent and combat domestic violence and gender-based discrimination, including legislative, institutional, capacity building and awareness raising measures, and strongly encouraged the Moldovan authorities to continue their efforts in tackling the complex problems at issue in the present group. Also, the CM invited the Moldovan authorities to consider signing and ratifying the Istanbul Convention on preventing and combatting violence against women and domestic violence.

- Ban on holding demonstration by LGBT community: Genderdoc-M case.

When examining this case in September 2015, the CM, *inter alia*, noted with satisfaction the reforms made in the Moldovan legislation, in particular with regard to the lifting of the requirement to seek authorisation from the authorities to exercise the right to peaceful assembly as well as the removal of the local authorities' power to ban public events and welcomed the adoption of the Anti-discrimination Law as well as the creation of the Anti-discrimination Council. It further noted different measures taken by the authorities aimed at providing adequate protection to demonstrators and encouraged the Moldovan authorities to continue taking all necessary measures to ensure that the applicant NGO exercises its right to peaceful assembly without undue restrictions and that adequate security protection is provided to it when necessary.

Social and economic rights

As indicated in the [country factsheet](#) providing an overview of the accepted provisions of the Social Charter, the Republic of Moldova ratified the Revised European Social Charter on 08/11/2001. It has not accepted the Additional Protocol of 1995 providing for a system of collective complaints.

The monitoring of the implementation of the European Social Charter by the European Committee of Social Rights (ECSR) is thus based on the evaluation of national reports provided by the Moldovan authorities on accepted provisions belonging to thematic groups (thematic monitoring cycles).

Please refer to the attached country factsheet containing the detailed 2012 ECSR Conclusions (covering the reference period 2007-2010) regarding the accepted provisions relating to Thematic Group 1 "*Employment, training and equal opportunities*", and the detailed 2013 ECHR Conclusions (covering the reference period 2008-2011) related to Thematic Group 2 "*Health, social security and social protection*".

In its 2014 conclusions (covering the reference period 2009-2012) on the relevant provisions relating to Thematic Group 3 “*Labour Rights*” (Articles 2, 4, 5, 6, 21, 26, 28, 29 of the Revised Charter), the ECSR identifies in total nine situations of non-conformity. These findings concern the right to just conditions of work (Article 2§3 : absence of guarantees regarding annual holidays with pay, Article 2§7 : absence of a medical check-up before being assigned to night work), the right to a fair remuneration (Art. 4§4 : absence of a notice period for termination of employment, Art. 4§5 : unauthorised deductions resulting in the absence of a fair remuneration of workers with the lowest pay), also pointing to infringements on the right to organise (Art. 5) and the right to bargain collectively (Art. 6§2 : non-promotion of voluntary negotiations, Art. 6§2 : restrictions imposed within some sectors on collective action). Finally, the ECSR conclusions point to the ineffective protection against moral harassment (Art. 26§2: right to dignity in the workplace) and the insufficient protection of worker’s representatives as well as the lack of sufficient facilities accorded to them (Art. 28).

Published in January 2016, the 2015 ECSR Conclusions (covering the reference period 2010-2013) on the accepted provisions pertaining to Thematic Group 4 “*Children, families and migrants*” identify 12 situations of non-conformity:

- Article 7§1 (*right of children and young persons to protection - prohibition of employment under the age of 15*) : insufficiently precise definition of light work
- Article 7§3 (*prohibition of employment of children subject to compulsory education*) : excessive daily and weekly working time for children subject to compulsory education (which cannot be qualified as light work), absence of a guarantee of at least two consecutive weeks of rest during summer holiday.
- Article 8§1 (*right of employed women to protection of maternity - maternity leave*): non-conformity on the ground that it has not been established that interruptions in the employment record are included in the calculation of the qualifying period for maternity benefits.
- Article 11§2 (*right to protection of health – advisory and educational facilities*): non-conformity on the ground that it has not been established that screening for diseases responsible for high levels of mortality is available to the population in general.
- Article 11§3 (*prevention of diseases and accidents*) : non-conformity on the ground that it has not been established that there are adequate measures in force for the prevention of accidents
- Article 12§1 (*right to social security – existence of a social security system*): manifestly inadequate minimum level of unemployment benefits.
- Article 12§2 (*maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security*) : non-conformity on the ground that it has not been established that such a social security system is maintained.
- Article 13§1 (*right to social and medical assistance – adequate assistance for every person in need*): manifestly inadequate level of social assistance, also for elderly persons without resources.
- Article 16 (*right of the family to social, legal and economic protection*) : non-conformity on the ground that it has not been established that there is adequate protection for women victims of domestic violence and that foreign nationals enjoy equal treatment regarding family benefits.

- Article 17§1 (*right of children and young persons to social, legal and economic protection - assistance, education and training*) : non-conformity on the ground that children can be taken into residential care due to material circumstances of the family
- Article 17§2 (free primary and secondary education – regular attendance at school) : non-conformity on the ground that the net enrolment rate in compulsory education remains too low and the measures taken to ensure that Roma children complete compulsory education are not sufficient
- Article 19§8 (*right of migrant workers and their families to protection and assistance – guarantees concerning deportation*): non-conformity on the ground that the legislation permits the expulsion of migrant workers in situations where they do not pose a threat to national security, or offend against public interest of morality.

Please find attached all detailed ECSR conclusions 2012, 2013, 2014 and 2015 regarding the Republic of Moldova.

Venice Commission (detailed comprehensive overview of the work related to the Republic of Moldova over the period 2012-2015)

1. *Opinion on the Law on the People's Advocate (Ombudsman)* - [CDL-AD\(2015\)017](#)

The opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova was prepared at the request of the newly elected People's Advocate. The adoption in April 2014 of a new legal framework for the operation of the Moldovan Ombudsman was a step forward in the efforts made to reform this institution.

The legal framework pertaining to the newly designed institution was, overall, in line with the applicable standards and principles, as laid down in particular in the Paris Principles. The Law provided the People's Advocate with extensive competences and contained important guarantees regarding the People's Advocate mandate, his/her powers and methods of operation. The opinion recommended: stronger independence guarantees for the People's Advocate (a qualified majority requirement for his/her election by Parliament; clearly specified grounds and a higher qualified majority for his/her early revocation, which should involve public hearings and a challenging procedure in court; wider immunity guarantees for the People's Advocate, his/her Deputies and staff; clearer legal guarantees for the provision, from the state budget, of adequate financial resources for the independent and effective operation of his/her Office; a clearer definition of the position (and autonomous status) of the People's Advocate for the rights of the child.

The opinion further recommended that the competence of the institution in relation to the private sector and the courts be re-examined and clearly specified in the Law. It was especially recommended that jurisdiction over courts be excluded.

2. *Joint Opinion on the draft Law on the Law on the Prosecution Service of the Republic of Moldova* - [CDL-AD\(2015\)005](#)

On 18 November and on 19 November 2014 respectively, the Minister of Justice of Moldova sent letters to the Venice Commission and, through the OSCE Mission in Moldova, to the OSCE Office for Democratic

Institutions and Human Rights (hereinafter “OSCE/ODIHR”), requesting assistance from both institutions in reviewing the Draft Law on the Prosecution Service of the Republic of Moldova.

The pending reform at the time was of particular importance for the Republic of Moldova, where corruption, a widespread phenomenon within various sectors of the society, was also affecting the judiciary, at its different levels, thus leading to distrust with regard to its independence and its efficiency. The assessment of the Draft Law was part of a longer process of co-operation with the Moldovan authorities on the legal framework pertaining to the Prosecution Service. In 2008, the Commission had already adopted an opinion on a previous draft law, subsequently amended by the Moldovan parliament.

Overall, the Draft Law represented a substantial improvement of the current Law. Many of the proposed amendments entailed the implementation of the Commission’s 2008 recommendations. It was in particular positive that the Draft Law provided for a significant reduction of the tasks of prosecutors - most of which should expire within three years from the entry into force of the Draft Law - which are outside the scope of their main task of criminal prosecution. Additional steps were proposed to secure the autonomy of individual prosecutors and the service’s own independence from external influence, its demilitarisation; further improvements concerned the appointment and tenure of the Prosecutor General, the appointment and promotion of other prosecutors, as well as performance evaluation and disciplinary procedures. The proposed procedure for the appointment of the Prosecutor General, likely to help enhance his/her independence from political influence, was clearly preferable to the current procedure but would involve a constitutional amendment.

To further improve the Draft Law, the Moldovan authorities were invited inter alia: to provide a narrower delineation of the prosecutors’ powers outside criminal law and for judicial supervision of their actions in this area; to provide clear and specific regulations for the dismissal of the Prosecutor General and more precise safeguards for the internal independence of prosecutors; and to duly harmonise provisions of the Draft Law with corresponding provisions of the Moldovan legislation, notably the Code of Criminal Procedure. The opinion also recommended reconsidering the proposals which are not consistent with the organic law on the Autonomous Territorial Unit of Gagauzia and stressed that any interference with the status of Gagauzia would be a particularly sensitive step which would require, if done at all, appropriate consultation with the competent bodies of Gagauzia.

Follow-up to the opinion CDL-AD(2015)005

On 21 April 2015, at the invitation of the Ministry of Justice, a delegation had participated in a round table dedicated to the presentation and discussion of the action taken to improve the draft Law, before its submission to parliament, in the light of the recommendations contained in the Joint Opinion.

The group of experts responsible for finalising the draft Law had provided a detailed report on the follow-up given (or planned to be given) to most of the recommendations. More generally, the event had shown a clear commitment of the expert group and of the Moldovan government to improving the draft Law as suggested by the Opinion, particularly regarding the powers of prosecutors outside the criminal sphere, the revocation of the Prosecutor General, and the arrangements for the appointment of prosecutors in the Autonomous Territorial Unit of Gagauzia. It was pointed out, however, that some of the legislative amendments envisaged by the reform of the Prosecution Service might require an amendment of the Moldovan Constitution, which remained a very complex challenge in the political context of the country. Thus, the draft Law provided for a transition period as well as alternative

solutions, which would not require constitutional amendments. The revised draft had subsequently been adopted in first reading by the Moldovan Parliament.

3. *Amicus curiae brief on certain provisions of the Law on Professional Integrity Testing (anti-corruption law) of the Republic of Moldova - [CDL-AD\(2014\)039](#)*

On 18 September 2014, the President of the Constitutional Court of the Republic of Moldova requested an amicus curiae brief relating to certain provisions of the Law on professional integrity testing (anti-corruption law) concerning, in particular, Constitutional Court and ordinary court judges. Advice was sought in respect of whether the control and evaluation of the integrity of ordinary court and constitutional court judges attributed to a body that is controlled by the executive was in line with the principles of the separation of powers and the rule of law; and whether an integrity test applied to judges by a body of the executive was in line with the right to respect for private and family life (Article 8 ECHR).

The amicus curiae brief stated that efforts made by states to fight corruption should be welcomed, but they should not jeopardise the stability of democratic institutions nor weaken the independence and impartiality of the judiciary.

Setting up a truly independent anti-corruption agency was generally encouraged for the purpose of effectively fighting corruption, however, the National Anti-Corruption Center (NAC) and the Information and Security Service's (ISS) status needed to be more clearly defined so as not to raise any doubt whatsoever with respect to their autonomy. This Law therefore had the potential of negatively interfering with the principle of judicial independence, the separation of powers and the rule of law. The Law in question provided that testers systematically act as agents provocateurs. Dismissal was mandatory on the basis of the tester's reports that a bribe had been accepted. In order not to disclose the identity of the tester, the dismissed person could not examine him or her as a witness in the appeal against the dismissal. Although protection against the disproportionate application of surveillance measures is guaranteed by Article 8 ECHR, the Law made audio/video recording of testing mandatory. This could constitute an intrusion into the private life of a judge. The use of such means by the NAC (or ISS), without any counterbalancing checks, could pose a threat to judicial independence and may be wrongly used as an instrument to discipline judges (the Venice Commission was not aware of information regarding the existence of such counterbalancing checks). The state was under the obligation to provide the necessary safeguards in order to avoid abuse of such measures. The amicus curiae brief took into account the need to address corruption in the Republic of Moldova and the information received from the Moldovan authorities, notably from the NAC. It had addressed the latter's claim that the Law was not applicable to judges. However, since the request made a clear reference to this Law's application to judges and due to the fact that the constitutional complaint presupposed this Law's application to judges, the amicus curiae brief took these positions as a starting point.

Follow-up to the opinion CDL -AD(2014)039

In its judgement of 16 April 2015, the Constitutional Court of Moldova had extensively referred to the *amicus curiae* brief. The Court had found the law constitutional, with the exception, however, of some important provisions. Integrity testing could thus be applied to all professional categories of public officials if certain procedural safeguards were in place. The Court had found unconstitutional notably: the unlimited discretion in choosing the persons to be tested, the automatic dismissal of officials who

accepted even minor bribes; the assessment of functional behaviour in addition to corruptibility; the absence of a judicial warrant for audio and video recording and the insufficient independence of the testing agency. Currently, the Ministry of Justice is preparing a new draft, which should remedy these issues.

4. *Joint Opinion of the Venice Commission and the Directorate General of Human Rights (DHR) and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova - [CDL-AD\(2014\)009](#)*

At the request of the Minister of Justice of the Republic of Moldova, the Commission adopted, in March 2014, a Joint opinion on the draft law amending and supplementing certain legislative acts, promoted by the intelligence and security service of the Republic of Moldova, prepared by the Venice Commission in collaboration with the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe.

The main purpose of the draft law was to distinguish between the investigation within a criminal case of a crime already committed (as is the main task of the law enforcement authorities) and the prevention and countering of certain acts that may harm state security and which, most frequently, is not and will not be part of a criminal case (as is the main task of the Intelligence Service). In this connexion, the draft law suggested establishing a special procedure for granting to the Intelligence Service the authority to use the special investigative measures indicated in Article I.1 of the Draft Law outside a criminal case, under a “security mandate” which was to be granted by specially appointed judges.

The opinion noted that it was legitimate that the authorities wished to establish a new mechanism for security investigations to enable the Intelligence Service to perform special investigative measures outside the framework of a criminal investigation. However, the following issues should be addressed by the authorities in order for the Draft Law to meet international standards:

Firstly, according to the existing Law on the Intelligence Service, the Service had a mandate allowing the use of special investigative measures, which included protection against actions which “infringe constitutional rights and freedoms of citizens and endanger the State” and “assaults on high ranking officials”. The opinion considered that these provisions should be interpreted narrowly in order to limit the scope of the mandate to concrete acts which have reached a certain level of seriousness to be considered a real threat to the democratic order.

Secondly, Article I.2.(2) of the draft law which authorised the Service to access financial information outside a criminal case without obtaining a security mandate subject to judicial control, was problematic with regard to the proportionality requirements under Article 8 of the European Convention on Human Rights. The opinion also suggested that the appointment of the Director and Deputy Directors of the Service, who are empowered to request the special judge to issue a security mandate, should be based on clear and apolitical criteria. Furthermore, the opinion recommended the reconsideration of the provision that provides for the possibility never to inform the target person about the special measures taken in his or her respect, if this “affects national security”.

5. *Joint opinion by the Venice Commission, the Human Rights Directorate of the Directorate General of Human Rights and Rule of Law and the OSCE/ODIHR on the draft law on disciplinary liability of judges of the Republic of Moldova - [CDL-AD\(2014\)006](#)*

The opinion on the draft Law on disciplinary liability of judges was requested by the Minister for Justice of the Republic of Moldova. The opinion, adopted at the March 2014 session, stated that many of the provisions included in the draft Law were in line with European and OSCE standards.

However, it made several recommendations inter alia to explicitly restrict the removal of a judge from his or her position to the most serious cases or cases of repetition or of incapacity, or behaviour that renders judges unfit to discharge their duties; to specify in the draft Law the criteria for selection of candidates of civil society members of the Disciplinary Board; to strengthen the role of the inspector-judges in the procedure and to add a clear provision that would prevent the same member of the Superior Council of Magistrates from engaging in all the consecutive steps of the disciplinary proceedings.

Follow-up to the opinion CDL -AD(2014)006

The Commission was informed that, at the end of July 2014, the Moldovan Parliament had adopted the draft Law on disciplinary liability, as part of a package of draft laws for which the government had assumed its responsibility. Under these circumstances, although initial proposals aimed at implementing the recommendations, contained in the joint opinion had been made by the Government; none of these recommendations had been taken into account by the end of 2014.

6. *Joint Opinion on the draft Law amending the electoral legislation of Moldova - [CDL-AD\(2014\)003](#)*

In November 2013, the Speaker of the Parliament of Moldova requested the Venice Commission to comment on a text by a faction from the Democratic Party of Moldova (DPM), concerning a draft proposal to reform the electoral legislation of Moldova (CDL-REF(2014)001). In line with standard practice, the Venice Commission and the OSCE/ODIHR have undertaken a joint opinion of the draft legislation. In the request submitted to the Venice Commission, it was stated that the draft intended to replace the existing proportional electoral system with a mixed parallel electoral system, under which members of parliament would be elected through single-mandate constituencies and party lists in a nationwide proportional constituency.

This joint opinion should be read in conjunction with prior joint opinions of the Venice Commission and the OSCE/ODIHR on the Election Code of Moldova, as well as numerous election observation reports from previous OSCE/ODIHR and Parliamentary Assembly of the Council of Europe (PACE) election observation missions (EOMs) to Moldova, which provide good background for understanding the development of the electoral legislation in Moldova.¹

The draft proposal submitted for consideration introduces a fundamental reform, changing the proportional electoral system into a mixed system, in which 51 Members of Parliament (MPs) out of the 101 shall be elected by a proportional closed-list system in one single nationwide constituency and 50 MPs shall be elected in as many single-member constituencies. The proposed reform is not yet presented in an official draft, as it has not been registered with the parliament of Moldova. The choice of an electoral system is a sovereign decision of a State, but in the present Moldovan context, the proposed reform raises serious concerns and could have important shortcomings. Moreover, a clearer

¹ All OSCE/ODIHR and Venice Commission joint opinions on the Moldovan legal framework can be found at: <http://www.osce.org/odihr/elections/moldova> and <http://www.venice.coe.int/webforms/documents/?country=48&year=all>. All OSCE/ODIHR election observation mission reports can be found at: <http://www.osce.org/odihr/elections/moldova>. All PACE reports can be found at: <http://assembly.coe.int/defaultE.asp>.

methodology for the delimitation of constituencies and further provisions on the representation of Transnistria and of Moldovan citizens living abroad should be included.

The Venice Commission and OSCE/ODIHR, although welcoming the effort of the Moldovan authorities to seek their opinion before launching any reform, urge caution in introducing such fundamental changes to the electoral system in the limited time ahead of the next parliamentary elections. Additionally, prior to proceeding with such fundamental changes, it is essential to have inclusive public discussions and to seek consensus with electoral stakeholders on the electoral system and related provisions.

7. Report on prohibition of so-called “propaganda of homosexuality” - [CDL-AD\(2013\)022](#)

Following a request by the Committee on Equality and Non-Discrimination of the Parliamentary Assembly, the Venice Commission studied the compatibility with universal human rights standards of statutory provisions containing prohibitions of “propaganda of homosexuality” which had been adopted or proposed for adoption in the **Republic of Moldova**, the Russian Federation and Ukraine. This opinion (CDL-AD(2013)022), adopted at the June 2013 session, underlined that the statutory provisions were problematic from the perspective of the applicable standards, in particular the European Convention on Human Rights. It stressed that the provisions under consideration were not formulated with sufficient precision and that the terms used therein, such as “propaganda”, “aggressive propaganda”, “promotion”, etc. were too ambiguous to reach the standard of “foreseeability” as a requirement of the criteria “prescribed by law”. The opinion also pointed out that the domestic courts had failed to mitigate this ambiguity through consistent interpretations.

The opinion emphasised that the prohibitions under consideration were not limited to sexually explicit content or obscenities and that they were blanket restrictions aimed at legitimate expressions of sexual orientation; it further stressed that the justifications based on “public morality” and “protection of minors” for the said prohibitions failed to pass the essential necessity and proportionality tests as required by the ECHR.

It was also underlined that the prohibition of “homosexual propaganda”, as opposed to “heterosexual propaganda” amounted to discrimination on the basis of the content of speech about sexual orientation, because of the lack of any reasonable and objective criteria to justify the difference of treatment in the application of the right to freedom of expression and assembly.

8. Amicus curiae brief on the Immunity of Judges for the Constitutional Court of Moldova - [CDL-AD\(2013\)008](#)

On 15 November 2012, the President of the Constitutional Court of Moldova requested the Venice Commission to provide an amicus curiae brief relating to the amendments introduced by Law No. 153 of 5 July 2012 to Article 19.4 and 19.5 (inviolability of judges) of Law No. 544-XIII of 20 July 1995 on the Status of Judges. These amendments removed, inter alia, the need for consent for the initiation of certain criminal proceedings and for criminal liability, namely submitting the case to court against judges for crimes of passive corruption and of trafficking in influence as specified in the Criminal Code. The question before the Constitutional Court was whether the amended law violated Article 116.1 on judicial independence of the constitution. The opinion, adopted at the March 2013 session, welcomed the removal of the requirement of consent by the President of the Republic and by Parliament for bringing criminal proceedings against judges which improved judicial independence. The lifting of

immunity by the Superior Council of Magistracy alone reduced the dependence of the judiciary on political organs.

The opinion pointed out that the fact that only the prosecutor general could initiate criminal proceedings against judges, was a safeguard against individuals bringing false accusations against judges. However, this safeguard could not shield the judge against false accusations from the prosecutor general and this could be used as a tool to make judges compliant with the prosecution's wishes. However, the Moldovan legislation did not seem to contradict international standards. While some states, particularly in Eastern Europe, conferred a criminal inviolability on judges as an additional guarantee for judges, there was no internationally recognised norm requiring such inviolability. On the contrary, international standards supported the principle that, when not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen. Criminal judicial inviolability did not exist in the majority of European states. The opinion insisted that it only dealt with the issue of whether the removal of immunity for offences of passive corruption and trafficking in influence contradicted European standards. Whether the amendments contradicted the constitution remained to be decided by the Constitutional Court.

In its judgment of 5 September 2013, the Constitutional Court referred to the Commission's opinion and agreed that judicial immunity was not an absolute guarantee and should not provide privileges, but only shielded judges from external pressure. Nonetheless, the court found a section of the law to be partly unconstitutional because it was unclear who could take investigatory measures against judges (only the prosecutor general could bring a case to court) and because the fight against corruption could not justify the complete removal of immunity for administrative offences.

9. *Joint Amicus Curiae Brief for the Constitutional Court of Moldova on the compatibility with European standards of Law No. 192 of 12 July 2012 on the prohibition of the use of symbols of the totalitarian communist regime and of the promotion of totalitarian ideologies of the Republic of Moldova* - [CDL-AD\(2013\)004](#)

On 15 November 2012 the President of the Constitutional Court of the Republic of Moldova requested an *amicus curiae* brief relating to Law No. 192 of 12 July 2012, banning the use of communist symbols (the hammer and sickle and any carrier of it) in the Republic of Moldova through the amendment of three laws: the law on political parties; the code of contraventions and the law on freedom of expression. On the same day, the Constitutional Court of Moldova sent a similar request to the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), asking for its opinion on the compliance of the above-mentioned amendments with relevant international standards and OSCE human dimension commitments.

In March 2013 the Venice Commission and OSCE/ODIHR adopted a joint *amicus curiae* brief on the prohibition of the symbols of the totalitarian communist regime and of promoting the totalitarian ideologies. In this brief, the Commission and OSCE/ODIHR stressed that it was the task of the Constitutional Court to rule on the constitutionality of this law; they expressed the view that while a ban on the use of communist symbols was not, as such, contrary to international standards, the law under consideration presented certain shortcomings in terms of legality and proportionality of the interference. In particular, the impact on the existing and legally registered political parties appeared disproportionate.

On 4 June 2013 the Constitutional Court of Moldova issued its judgment and, sharing the views of the Venice Commission and the OSCE/ODIHR, it considered that the law in questions lacked clarity and foreseeability; it subsequently annulled several articles of the Law.

10. *Joint Opinion on draft legislation of the Republic of Moldova pertaining to financing political parties and election campaigns* - [CDL-AD\(2013\)002](#)

In July 2012, the Central Election Commission of the Republic of Moldova had requested from the OSCE an opinion on a draft law on amendment and completion of legislative acts. In September 2012, the Parliament of the Republic of Moldova had requested the OSCE to provide an opinion on the draft law on financing of political parties and electoral campaigns. Both requests were aimed at amending legislation pertaining to political party and election campaign financing. Therefore, the OSCE/ODIHR and the Venice Commission agreed to prepare a joint opinion on both pieces of draft legislation.

The opinion, adopted at the March 2013 session, underlined that both the draft amendments and the draft law met many international standards and good practices relevant to the funding of political parties and electoral campaigns. At the same time, in order to ensure full compliance with such standards, the opinion recommended a number of changes in the draft texts, inter alia, to reconsider the imposition of an annual ceiling for all permissible donations and member fees; to reduce annual ceilings for private donations to political parties; to remove the blanket ban on third-party donations; to consider establishing an independent directorate of financial control in the Central Election Commission and to enhance the system of sanctions.