THE HUMAN RIGHTS CENTER OF MOLDOVA

REPORT

ON HUMAN RIGHTS OBSERVANCE IN THE REPUBLIC OF MOLDOVA IN 2002

CHISINAU, 2002

CONTENTS

PREAMBLE

This Report is the fifth in the row of the Human Rights Centre's reports and is aimed at concluding to a certain extent the activity of parliamentary advocates for the period of vested mandate as established by the legislation.

We faced a difficult period when launching and consolidating the national institution for the protection and promotion of civil rights, especially if considering that these rights have been almost unknown and that the state has not even been aware about the necessity to consequently protect them. It took us much effort to change the mentality, first of all the state one, to understand the role and the importance of the Centre, to accept the necessity to invest in the field of human rights and to remain persevered in action, education and culture. We tried to convince the society that a prosperous state may be established only if exercising fundamental rights and liberties and that there are no domains that, partially or totally, do not include and provide the mandatory observance of these rights and liberties.

We had to form a strong and well-trained staff. All of us made all effort to gain a good and reliable image in the society. We have been trying for five years to stay consistently and to get the best orientation as to re-establish the rights of thousands of people. We aimed our activity at bringing the national legislation in compliance with the stipulations and provisions of the Constitution, conventions and pacts within which the Republic of Moldova acts as member part.

To a large extent we have contributed to the training of different categories of citizens by organising and holding training courses, publishing tens of folders, booklets, books, other field literature and by systematically informing the community about the latest situations. We managed to conduct all these activities with the support of the United Nations Development Program for Moldova, to whom we would like to extend the most sincere gratitude. We would like also to bring all our appreciation to all the people that supported us in different ways, mentioning first of all the Embassy of the United States of America in the Republic of Moldova, the UN Representative Office for Refugees, as well as the Institution of the Commissioner for Human Rights in the Russian Federation, the People Advocate in Romania, the Institution of Ombudsman in Belgium and the Ombudsman European Institute, etc.

We have efficiently co-operated with a number of state institutions and authorities and with many non-governmental organisations.

At the same time, we had to face attempts to intimidate and reduce the independence of parliamentary advocates.

We gained experience. Today we have a better understanding of our drawbacks, errors, failures and reserves.

Currently, the imperative relief from certain patterns, the application of new original efficient forms and methods to protect and promote civil rights and liberties become a must.

We have learned a lot from those over 29 thousand petitioners that applied for the assistance of parliamentary advocates during these five years. We felt their pain. We appreciated their patience. We tried to stand together against indifference, bureaucracy, intimidation of rights, intentional or accidental limitation and restriction of rights and liberties of these people as citizens of this state.

The Report for 2003 largely reflects the situation in previous years. Economic, social, cultural, civil, as well as political rights continued to be prejudiced. This condition is determined by both economic crises and certain inefficient legislative and administrative implications. The state of facts is complicated by the indifference and lack of competence at different levels of human rights hierarchy. All that resulted in long-term social explosions. The Parliamentary Meeting of the European Council twice discussed the situation in the Republic of Moldova and adopted resolutions aimed at re-establishing the role, place and independence of the democratic institutions, such situation being viewed as a must for the full and unabashed exercise by citizens of their fundamental rights and liberties and the establishment of a state of law.

The Report is formed of three chapters. The first chapter provides a review of the economic, social and cultural rights. The second chapter outlines the civil rights. We did not emphasised political rights, as these rights are more or less prejudiced in Transnistria; parliamentary advocates do not have any access to this region and the Centre has hardly received petitions from this region.

Chapter three gives a short description of activities conducted by parliamentary advocates with the view to re-establish constitutional rights of citizens and to provide training to the community.

Conclusions and proposals for the improvement of the overall situation, as well as for the further consolidation of the Centre for Human Rights are brought at the end of this Report.

CHAPTER I

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The universal instruments, including the International Covenant on Economic, Social and Cultural Rights, within which the Republic of Moldova acts as member part, incorporate a number of commitments and liabilities of member states. The implementation of these stipulations should lead to the consolidation of a democratic, harmonious and prosperous society with no discrimination, within which each citizen could live a dignified life.

The Constitution of our country practically repeats the provisions of the Universal Declaration of Human Rights, of other judicial acts with universal and regional character, including: the right of decent life, of receiving social assistance and protection (art. 47); the family right of social, legal and economic protection (art. 48 and art. 49); protection of orphaned children for (art. 49); protection of mother, children and young people (art. 50);

special protection of disabled persons (art. 51); the right of private property and its protection (art. 46); the right of health security (art. 36); the right to live in a healthy environment (art. 37); the right of access to education (art. 35); and others.

In such a way the state guarantees a number of civil rights.

Yet, the guarantee of rights does not evidently mean the protection and exercise of rights. Within this very context we have to face the biggest problems. If trying to make an overall assessment, there are no fields within the general rights mentioned above not to be somehow affected in the Republic of Moldova. Although certain violations do not generate immediate negative impact, others may affect the everyday life, as demonstrated in the petitions submitted to the Centre of Human Rights.

Social Assistance and Protection

The reform of the social protection and social ensurance as established and promoted by the Parliament and the Government has a significant role within the current situation. This reform stipulates the ensurance of a decent life for the most disadvantaged categories of citizens.

Such a tendency is well motivated. As in accordance with the research studies conducted by national and international experts, the poverty in the Republic of Moldova reached the highest levels as compared to other states, placing Moldova among the poorest countries of the world. Although during the last two years some positive changes could be observed, the public living standard of the largest majority of the population did not record real improvement.

Official statistic data denote an increase of the Gross Domestic Product (GDP). Pensions, some indemnities, other social allocations and wages were increased in a 3-phase process. Yet, citizens still wonder how under such condition the living standard is continuously decreasing. More than 80% of the population is at absolute poverty limit or under it.

The minimum consumer budget is the criteria of human existence. Overall, this budget exceeds almost twice the average wage in economy. The ratio of average disposable wages of the population to minimum subsistence value hardly exceeds 50%. The income of other categories of population is even lower. There are big discrepancies between the minimum subsistence value in urban and rural areas, between males and females, between different categories of citizens.

According to conducted studies, on the background of a slight increase in salaries, pensions, indemnities of different kind and other social allocations, the minimum consumer budget denoted significant increase in 2002. As a result, measures aimed at ensuring the right of a decent life could not be observed in the community.

Currently, only indicators of poverty determinations are operated in the Republic of Moldova. As there is no set poverty threshold, the state, respectively, does not provide a guaranteed minimum income. Moreover, the mechanism used to calculate the real public income is not defined. Further on, arrears and delays in salaries aggravate the situation. According to preliminary data, arrears of labour remuneration as on 31 December 2002 amounted to more than 380 million lei, including around 113 million lei in the budgetary sector and over 270 million lei in the non-budgetary sector. Despite opposite affirmations, arrears of salaries continue to rise. The share of persons that did not receive their remuneration within legal limits accounted for 55% of total wage-earners.

Under such circumstances, the social protection of families in difficult condition has an inequitable character and depends on existent precarious resources, leaving the government free from fully mobilising forces " … to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with the view to achieving progressively the full realisation of the rights recognised in the present Covenant … " (Art. 2, International Covenant on Economic, Social and Cultural Rights).

Within this context, commitments related to social security maintenance assumed by our state following the ratification of the Revised European Social Carta have a decisive importance.

Statistic data denote the existent discrepancy in insuring the right of a decent life even within the poorest categories of the community.

Family and Children

Following the ratification of the International Covenant on Economic, Social and Cultural Rights, the Republic of Moldova recognised that "The widest possible protection should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children" (art. 10). Similar stipulations are provided in the UN Convention with regard to Rights of Children, ILO Convention no. 103 on Maternity Protection, the

Convention on Protection of Children and Co-operation in International Adoption, the European Convention for the Defence of Human Rights and Fundamental Liberties, the European Convention on Legal Status of Children Born Out Of Wedlock, the Revised Social Carta and others.

The national legislation and other normative acts are sufficiently adjusted to instruments of regional and universal character. Since the proclamation of independence, more than 40 laws and decisions aimed at ensuring the right of family and children for social protection and assistance have been adopted and implemented.

Thus, a number of money allocations to families, especially to families with many children, different indemnities to one-parent families, to orphaned children, to disabled persons, etc. are provided on an annual basis. The decision to increase by 50% all types of indemnities to children that include over 28 thousand beneficiaries is an encouraging step.

The state recognises that currently families with children represent the largest and the most disadvantaged social group, which is under the permanent risk of poverty. As in accordance with recent evaluations, the category of very poor people include as follows: families with four and more children (around 30%); families with three children (around 25%); and families with one child (around 22%).

On the background of permanent social and economic uncertainty, the constitutional right of decent life is prejudiced especially in the case of families with three and more children, including with invalid children, one-parent families and young families, especially within rural areas. Such families are included in the social category of most disadvantaged people with a high poverty risk. The current indemnity for care and education of a child under 1,5-year old amounts to 50 – 75 lei and from 1,5-year old to 16-years old – to 18 lei for families with 1-2 children and to 27 lei for families with three and more children, providing that the income does not exceed 18 lei and 27 lei respectively. Thus, the set ceiling practically deprives the largest majority of families with children from the right of state social protection. Moreover, even if complying with set parameters, many families either benefit from such indemnities for children with large delays, or do not benefit at all. At the same time, the volume of single indemnities upon childbirth shows a decreasing trend as compared to the number of born children.

Amplified by the miserable income value, such situation shall inevitable lead to a higher food insecurity and sub-nutrition among mothers and children. In accordance with the estimations by the Ministry of Health, 28% of children and 20% of mothers suffer from anaemia. Every tenth child under 10-years old is under normal physical development.

The morbidity and mortality rates denote increasing trends, while the birth rate is decreasing.

Current normative acts are mainly aimed at consequence liquidation and not at determination and prevention of causes and reasons to require children be covered by the protection system, inclusive the social one. Social services should be directed towards families under a high risk of degradation, of abandonment or institutionalisation of children, families with disabled children and families in extreme poverty, etc.

The poverty, social insecurity, economic shocks, the lack of an adequate family environment generate situations when children become victims of abuses, exploitation, abandonment and human traffic.

Trying to ensure their families with a relevant decent life, lots of mothers look for jobs abroad, leaving their children under the care of relatives, friends, neighbours, etc. As a result, families degrade and dissolve and the children are those that have to suffer the most.

The higher juvenile crime, inclusive the larger number of juvenile offenders implicated in crime perpetration is a very alarming signal. According to estimations, about 50% of condemned people are young persons. In 2002 law authorities registered over 2500 infractions committed or implying juveniles; this figure exceeded by almost 3.2% the one of the previous year. The situation is determined also by the lack of relevant social development conditions, the social and economic instability within the society, the deviated behaviour of children and juveniles, etc.

Disabled People

The social protection of invalid people is regulated by a number of laws and decisions, like Law no. 821 of 24 December 1991 on Social Protection of Invalid People with further modifications, Law no. 121 of 3 May 2001 on Additional Measures for the Social Protection of Invalids, WW II Veterans and Their Families, Law no. 909 of 30 January 1992 on Social protection of Citizens Suffering from Chernobyl Catastrophe, with further modifications, the Decision of the Government no. 1153 of 16 November 2000 on Approval of the National Program on Social Protection, Rehabilitation and Integration of Disabled Persons for the years 2000 – 2005 and others.

As compared to other categories of social vulnerable persons, invalids depend almost totally on state institutions of social protection and this very dependence makes them the most

vulnerable category. Economic suffering, not to mention physical suffering, is to be endured first of all by 1st–group invalids, unable to work. As in accordance with estimations, yearly, every third invalid unable to work in the total number of invalids is under the poverty threshold. Such a situation may not be attested in any European country.

There are around 150 thousand invalids with mental and physic handicap in the Republic of Moldova. Over 80% of this number faces terrible poverty or is even under this poverty minimum. These persons ask in their appeals addressed to the Centre the observance of their rights as stipulated in international and national acts.

The State conducts certain measures to settle these problems. Invalids are granted different indemnities and facilities; rehabilitation, charity centres and canteens offer heir services, etc. With the support of social assistance units, non-governmental organisations and international institutions, humanitarian aids in form of medicines, cloths, footwear, foodstuffs, etc. are brought and distributed among invalids.

The city of Chişinău and the county of Bălți may serve as good examples to be followed. In the county of Bălți, for example, the rehabilitation Centre "Vtoroe dihanie" is visited on a yearly basis by around one thousand people, the Jewish charity Centre "Hased Iacob" serve over 600 people, the neurological hospital may receive 600 patients yearly. Charity activities imply lots of missions, including foreign ones. The Christian Mission, which provides lunch four days a week to 50 persons, conducts its activities within the headquarters of the consultative section of the county hospital.

It is worth mentioning that the assistance to persons with special needs extends also in rural areas. For example, in the village of Iabloana, district of Glodeni, a new charity house "Tabita" serving 26 persons was opened. In the village of Grigorăuca, district of Sîngerei, the "Holly Mary" centre renders medical ambulatory aid to invalids.

Such examples may be found in other districts, too.

Yet, on the overall level, the situation may not be improved without the active implication of relevant authorities. Currently, the most urgent problem is the provision of wheelchairs to persons with locomotory handicap. These wheelchairs are the only means that may facilitate the move of invalids. Without such transportation means, people are predestined not to leave their house and that makes them drive to despair.

There is much to be done in the field of orthopaedic prosthetic appliances.

Invalids with auditory deficiencies face the problem of auditory appliances. Such an appliance costs around 500 lei; considering the small pension of these invalids, it is obvious that the large majority cannot allow themselves to acquire this equipment. If ensured with

relevant devices, deaf people would easier find a job and increase the value of subsistence means.

In fact, the employment of 2nd - and 3rd – group invalids represents another major problem. Every fourth person within this category faces poverty and the appointment of these people for paid jobs would give them the possibility to increase to a certain extent their family remuneration. The relevant legislation needs tuning; the current one is not observed; programs on social integration of disabled persons have a pure declarative character and do not provide adequate financial coverage. The social assistance staff is not sufficient and the wage policy within social protection is under urgent and strong need of revision.

There are problems that may be settled at small expense. For example, the simple application of access strips in apartment blocks, hospitals, polyclinics, shops for wheelchairs way. Such strips are mostly missing. Local public authorities are reluctant in solving the problem and, at the same time, do not support the initiatives within the field by a number of non-governmental organisations. As the Centre for Tolerance and Pluralism Promotion informed us, many managers with different authority refuse to install such access strips for invalids without giving any explanation or reason, although the Centre propose the performance of such works at its own cost and expense.

Pensioners

The mechanism used to implement the right of elderly people for a decent life, of social assistance and protection is regulated following a number of laws and normative acts. To a large extent, national instruments used within the field are adjusted to international standards officially recognised by the Republic of Moldova.

According to the report on Government activity in implementing the Program "Economic Recovery – Country Recovery", the social policy was directed towards the further implementation of the relevant reform in the social ensurance system. The state undertook a number of measures aimed at modifying and completing certain legislative acts with the view to achieving the principle of pension system unification and to promoting and implementing the Social Assistance Reform Strategy. The monthly old age pension increased by 63 lei. Slight rises were recorded in certain indemnities, nominative compensations and other social allocations.

Although many efforts were put forth, the right of pensioners for a decent life is further prejudiced. Every fifth pensioner lives in deep poverty. According to the Revised European Social Carta, the rate of wage replacement with pension should account for 45% of the average salary in economy. The average monthly wage in economy in 2002 amounted to around 666 lei and the old age pension – to 166 lei. Thus, the average wage is four times higher than the average pension. This discrepancy shall be even larger if excepting the "average term". For example, the wage of employees within financial structures exceeded 2400 lei; within electricity, gas and water sector – over 1100 lei; within transportation and telecommunication – over 1000 lei … Salaries of Government staff, of deputies, of employees within law authorities and of others wage-earners are much higher. Pensions of these categories of people are, respectively, by 8 – 10 times higher, too, not mentioning that the pensions of the largest majority of elderly persons cover the ninth part of the minimum subsistence value. In cases when labour remuneration contradicts to provisions of the International Covenant on Economic, Social and Cultural Rights (art. 7), established pensions are also discriminated.

Although the Law on Pensions provides the annual indexation of pensions in case of increasing inflation rate depending on the rise in prices of consumer goods, the pension quantum was increased following the recalculation method, and not the indexation one. Since the introduction of this Law on 1 January 1999 no practical indexation of pensions has been conducted. The pensioners' living standard would have significantly improved if the legislation had observed even under the economic precarious condition.

Discrimination may be observed also between pensioners within the agricultural sector and the urban area. In conformity with the Budget for 2002, landowners had to pay a land tax to the social fund. As the largest majority of landowners are constituted of elderly people, the land tax to be paid to the social fund annihilated the state increase of pensions and practically generated their actual decrease, as certain farmers noted. Moreover, farmers do not understand the idea to pay to the social fund, considering the relevantly ensured pension as a result of yearly honest work.

Within this context, the approval and implementation of legislative and normative acts and of administrative measures to ensure the observance of equality and non-discrimination principles would be really salutary.

The Unemployed

The rights of unemployed persons are regulated through a relevantly significant number of international instruments ratified by the Republic of Moldova and national normative acts.

Art. 43 of the Constitution of the Republic of Moldova stipulates that "every person has the right to freely choose his/her work, and to benefit from equitable and satisfactory working conditions, as well as to be protected against unemployment". This right is executed following Law no. 878 of 21 January 1992 on Use of Labour Forces, Law no. 714 of 6 December 2001 on Unemployment Fund, the Code of Labour and a number of decisions and programs adopted by the Government.

Despite undertaken legislative and administrative measures, the problem of unemployment is still a very difficult issue. According to preliminary data, the unemployment rate shall not exceed 9% in 2002. There are around 30 thousand unemployed officially registered, of which women account for 52%. Yet, according to international experts, official figures do not denote the real situation. The methodology used by the International Labour Office envisages the existence of over 150 thousand jobless people in our country. A significant number of persons able to work are neither employed, nor included in the unemployed category. Over 100 thousand citizens are temporary on forced leave of absence (for 5, 6 and more months) and this situation is not under the regulation of the current legislation. Within this category of so-called latent unemployed, these persons face prejudice not only to the right of working, but also to a number of other civil rights, like the right of paid leave, the right of protection against unemployment, the right of medical ensurance, the right of free job retraining, etc.

Youth unemployment represents another stringent problem. According to evaluations by the Department for Youth and Sports, young people of 16 to 20 years old account for 46% of total registered unemployed. According to independent analysts, the unemployment rate among young people is twice larger the general rate; this fact demonstrates that the youth has the most reduced possibilities to find a job. At the same time, young persons have to face serious economic and social problems, including the impossibility to acquire floor space, the limited access to medical services, to education, etc. The program approved by the Parliament on provision of credits to young persons and families has not been implemented for the second year in a row.

Graduates from gymnasiums are even in a worse situation when not managing to continue their studies, especially in urban areas and not finding a job. A possible solution for

them is for the state to adopt a series of normative acts aimed at stimulating economic agents to hire graduates of both high and specialised education institutions and gymnasiums.

Moreover, the non-declaration of vacant jobs by economic agents as obliged by the legislation violates the stipulations of Art. 10 of the Law on Use of Labour Forces. As a rule, the number of vacant jobs within economic units is yearly 3-4 times higher than the official data on use of labour force submitted to state institutions. The conducted analysis denotes that in fact, only unqualified and low-paid vacant jobs are declared. Under such conditions, a competent and efficient management of the labour market by authorised authorities is very complicated.

The strategy of management training in the field of legislative rights and protection is both inefficient and accidental, or is almost missing. Relevant results of human rights violation following these situations are obviously expected.

Difficulties within the local labour market generate the migration of labour forces from the republic. This phenomenon is just gaining momentum: currently, the real figure accounts for around 1 million of citizens hired within different activities abroad. This people leave the country illegally in the majority of cases and are practically deprived of their rights. The Human Right Centre of Moldova receives a lot of petitions of this kind. Parliamentary advocates are actively involved in solving raised issues. However, this is not enough to settle the overall situation within the country.

On the background of lacking national program on creation of new jobs with an adequate financial coverage based on a complex monitoring of the labour market under conditions of long-term economic decline, redistribution of labour forces, ineffectiveness of professional training and job re-training, the problem of unemployment shall remain unsettled for quite a long period of time.

Health protection

Article 12 of the International Covenant on Economic, Social and Cultural Rights stipulates as follows: “1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be take by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for: a) the provision for the reduction of the stillbirth-rate and of the infant mortality and for the healthy development of the child; b) the

improvement of all aspects of environmental and industrial hygiene; c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness". The Republic of Moldova has also ratified other international legal acts in the field of health protection.

Generally speaking, national instruments do not contravene to universal standards. Article 36 of the Constitution of the Republic of Moldova guarantees the right of health security. The Parliament adopted a series of other laws within this field: Law no. 411 of 28 March 1995, Law no. 1513 of 16 June 1993 on Sanitary and Epidemiological Security of the Population, Law no. 185 of 24 May 2001 on Protection of Reproductive Health and Family Planning, etc. The Government adopted a number of decisions and programs on application of the relevant legal framework. If considering the number of different normative act, national programs and plans, regulations, international projects on protection of the right of health (over 60 in total), we should not have currently any problem within this field.

However, health protection is a deplorable issue, even if compared with other sectors and is marked by grave violation en masse of other rights. This is a conspicuous situation, as the more violations of the human right for decent living, the more affected the right of health protection. The most socially and economically disadvantaged layers of the population are in greater need for medical services, which, consequently, requires adequate financial basis. This interconnection leads people to despair.

The quality of population health is also of great concern: many maladies have become chronic; the general and infantile invalidity, congenital pathologies, non-adaptive syndromes are in continuous increase. The significant growth of the morbidity rate and the temporary loss of working capacity amplify the situation. The mortality rate denotes upward trends on the background of reduced birth rate. The standardised mortality rate exceeds by 50% on an average the relevant indices in the majority of European countries, while the birth rate is one the lowest in Europe. Moldova registers also the worst figure as for the longevity of life, the average one accounting currently for 67,5 years.

Maladies of the peripheral nervous system, cardiology, respiratory and locomotory system, traumas, influenza, hepatitis, etc. are the most frequent maladies.

The package of free medical services rendered to patients and the number of such patients significantly reduced during the last years. The budget for 2002 provided for only 49% of the required minimum package of medical services. Budgetary allocations to health

protection denote downward trends accounting for only 2.9% of GDP as compared to 6.3% in 1994.

The volume of applications and the community access to urgent medical assistance is also reducing.

The woman's health is the indicator of the reproductive potential of any community. The fertility rate in our country accounts now for 1.6%, while the minimal rate that ensures a natural reproduction should be 2.1%. The abortion volume is increasing: around 20 thousand females have abortion each year. Moreover, 70% of females suffer from traumatised methods of pregnancy termination, which contravenes to WHO requirements and recommendations and implies many risks for the reproductive health of mothers.

Consequences for pregnant juveniles are even worse. According to experts, 14% of these females remain sterile.

Females are also under greater risk of mammary glands cancer, skin cancer and cancer of the cervix of the uterus.

Another alarming issue is the spread of alcoholism and drug addiction, especially among young people under 30.

According to estimations conducted based on WHO recommendations by the Ministry of Health, the number of drug addicted people in the Republic of Moldova increased by almost 10 times and amounts to around 50 – 55 thousand.

AIDS is also rapidly increasing. The majority of these cases is recorded among users of injectable drugs; the disease is also transmitted by sexual contact, especially among women.

Following the recognition by the Republic of Moldova of international rights, the state committed itself to undertake all the legislative and administrative measures aimed at reducing stillbirth and infantile mortality and to ensure the child's healthy development. However, these targets may not be achieved under condition of significantly reduced access by children to stationary medical assistance. According to the Law on State Guaranteed and Free of Charge Minimum, only children under 5 years old, invalid children and orphans may benefit from free of charge stationery treatment. Children over 5 years old enjoy certain indemnities only in cases of emergency. Thus, a large number of children are deprived of their right of relevant treatment, as the majority of them belong to socially vulnerable layers of the society and may not afford the payment of medical assistance.

In 1997 the state adopted the National Program of Children's Nutrition, according to which children under 1 year old not fed from mother's breast should be ensured with adapted

dairy mixtures. Unfortunately this Program, like many others, has failed to be implemented and these children are underdeveloped and subject to the risk of different maladies.

Children's nutrition is one of the prior issues. The precarious social and economic situation, the miserable living and the lack of nutritional culture generate larger risks of various maladies. Moreover, food products register a deficit of ferrum and iodine, which is currently the main reason of intellectual degradation of children and teenagers, stillbirth and infantile mortality, psychomotor deficiencies and hypothyroidism of new-born.

Accidents and intoxication of children without parent supervision affect the infantile mortality, also. According to data of the Ministry of Health, the demise of 9.7% of children under 1 year old and 17,17% of children under 5 years old was the result of accidents, traumas and burns. Many children remained invalid because of same reasons.

There are cases when parents refuse medical assistance and children pass away at home.

The Human Rights Centre raised the issue on observance of the right of health security for a number of times, inclusive in its Annual Reports submitted to the Parliament. The situation may be improved following the elaboration and implementation of a relevant national policy covering all the priorities, strategies, practical actions by sectors, including education and providing real and sustainable financing support.

Education

Within the International Covenant on Economic, Social and Cultural Rights, the right to education is dedicated one of the largest articles (Article 13). The right to education is much larger in connotation than the right to learning. It implies not only a mere accumulation of knowledge; first of all "education" is "… directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms". Following the ratification of this Covenant, the States Parties agree " … that education shall enable all persons to participate effectively in a free society …". The same principles are stipulated in the UNESCO Convention on fight against discrimination in education, the UN Convention on Children's Rights, the European Convention on defence of Human Rights and Fundamental Freedoms.

The legislation of the Republic of Moldova (the Constitution, the Law on Education, the Law on Children's Rights, etc.) ensures to a certain extent the right to education. A series

of strategies, conceptions, programs and projects to comply the national education system with recognised general democratic standards have been adopted.

However, currently, as a result of certain objective and subjective reasons, many rights in the field of education are violated and the reform of the education system is in a difficult situation.

The scarce financing of the educational process that substantially impedes the right of access to education is one of the main reasons of this situation. The Law on Education (Article 61, paragraph 2) ensures the allocation of budgetary means to the educational system in a value of 7% of GDP at least. Following 1996 (10.3%), these expenses reduced more than twice. The same Law (Article 62, paragraph 3) stipulates the prior ensurance by the state of the development of the technical and material basis of the education system. In real terms, only around 5% of required system expense are allocated annually for these needs. Expense on current and capital reparations of education building accounts for about 50% of projected value.

As a result, the technical and material basis of the educational system is in a deplorable situation. The acute lack of technical endowment in schools is a major issue, especially if considering the large-scale informational progress in the world. Intuitive didactic materials are not sufficient. In the rural areas the situation is much more serious.

The worse condition of schools complicates even more during wintertime as a result of insufficient fuel for buildings heating. A number of schools are even closed.

The issue of children's schooling has become a chronic problem. In the school year 2000-2001, around 7000 children exercised their right of access to school. In the school year 2001-2002 over 11 thousand pupils abandoned school. This top is led by pupils from rural areas and the main reason is poverty: lack of cloths, footwear, foodstuffs, and very expensive schools supplies and handbooks.

Around one hundred of small rural areas are missing primary schools and gymnasiums and children cannot benefit of free of charge transportation to other schools in neighbouring areas. This is also a negative impact upon children's schooling.

According to evaluations, around 80% of children from 1 to 5 years old are not covered by pre-school education; the majority of these cases are recorded in rural areas. Only 60% of children between 5 to 6 years old are included in compulsory education programs. During the last six years the number of pre-school education institutions and didactic staff within this sector reduced by 36% and 70% respectively.

Teaching staff leaving the education system recorded the highest figures in the last two-three years. On the background of general ageing of our villages there is a similar trend of ageing of rural didactic staff. Graduates of relevant education institutions refuse to accept jobs in rural areas because of material reasons, especially because of miserable work remuneration. The average monthly salary of a teacher amounts to around 440 lei, while the salary of a young specialist recently employed is even lower by 2-3 times.

The deterioration of the didactic potential generates the cessation of a series of school subjects, which, further on, limits the young generation's right of access to higher education. Annually, around 450-500 thousand of compulsory education hours are not taught because of insufficient teaching staff. In some schools teachers have to cumulate the teaching process in a number of classes of different education and contingent level as to somehow improve the situation.

The lyceum education has not been finalised, too.

The discrepancy between access to education by children from socially vulnerable families and the ones from families with a better material condition continues to deepen. The costs of educational programs and services enlarge from year to year.

All these reasons, like many others, inevitably lead to the restriction of full exercising of the right to education as stipulated in the International Covenant on Economic, Social and Cultural Rights, especially of the following provisions: "primary education shall be available to all", "secondary education in its different forms, including technical and vocational secondary education shall be made generally available and accessible to all"; "higher education shall be made equally accessible to all, on the basis of capacity", etc.

CHAPTER II

C I V I L R I G H T S

The International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention against Torture and Cruel, Inhuman or Degrading Punishment and Treatment, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment constitute the

reference points when describing the situation of human rights observance in the Republic of Moldova.

The Republic of Moldova has, for the last years, undertaken a series of legislative, administrative and other measures aimed at implementing general standards within the field. However, the number of violations is still high and lots remain to be done.

Life, Dignity and Personal Security

Article 24 of the Constitution of the Republic of Moldova guarantees everybody the right to life and to physical and mental integrity. Article 21 stipulates the presumption of innocence. The Laws on Police, Preventive Detention, the Behaviour Code of Official Persons Responsible for Public Order and other legal normative acts provide explicit stipulations, attributing the primordial status to all civil rights and freedoms. The Penal Code, the Code of Penal Procedure, the Code of Penal Law Sanctions' Execution stipulate relevant sanctions and regulate certain reports on observance of these rights and freedoms.

The right for life, physical and mental integrity is largely conditioned by the criminal situation in the country. Unfortunately, the criminality rate is still high. The infraction phenomenon is especially determined by the general poverty situation, the redistribution of material assets, the lack of working places, the excessive use of alcohol, drug addiction, ignorance, etc.

According to the operative data of the Ministry of Internal Affairs, the number of infractions committed in 2002 on the controlled territory of the Republic of Moldova totalled 28500, including around 6600 flagrant offences. 199 persons have been assassinated in the period from January to September this year. Following road accidents 226 persons have died; 395 persons committed suicide. Persons suffering from bodily wounds recorded a significant figure, too.

As with regard to mental integrity, there are currently no relevant data in the country and nobody performs any investigation, synthesis and research.

The national legislation within the field is mainly directed towards the sentencing of infractions, denoting a more repressive character. The experience of other states with a consolidated democracy envisages that methods used to prevent infractions are much more efficient, as they imply co-option and consolidation of efforts by law authorities, local public administration and civil society

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment stipulates as follows: "... the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

Taking these stipulations as a reference point, we may state that one of the fundamental rights of the human being - the right of dignity, life, physical and mental integrity – is deliberately violated in the Republic of Moldova. The gravest violations are committed by police employees.

It became almost a rule for some policemen to provoke administratively arrested persons into showing resistance. In such cases, following the elaboration of relevant reports, detainees are escorted to isolators. The number of such cases is increasing during weekends, when judges are hard to be found and policemen manage to receive different proofs "necessary" during penal investigations by applying torture, cruel or inhuman treatment. Moreover, declarations obtained through such methods are used later on, during penal process against that relevant person. The Code on Administrative Convention stipulates the right of offender to advocate only in the process of case hearing. Thus, the offender is deprived of the right for defence. Policemen abusively use this drawback in the legislation and apply inhuman, degrading methods to obtain proofs.

Depriving preventively detained persons of the right for medical expertise immediately following escorting to isolators indirectly encourages torture. These persons practically cannot bring afterwards any proof of degrading and inhuman treatment application. The sentencing by some judges of detainees without any examination under all aspects of their state of health is also contributing to a certain extent to allowing policemen "hiding" offenders until complete disappearance of torture vestiges. Although prosecutor's establishments supervise the police activity, not all the cases are disclosed. Interventions by advocates are also difficult. According to the legal normative acts in effect, the meeting between the detainee and the advocate may take place only with the permission of the judge that applied the administrative sanction. Considering that the judge delivered his sentence without taking into account the detainee's state of health, such permission is hard to obtain.

The violation of rights of persons under administrative detention is sometimes more serious than the one referring to detainees within penal cases. According to the Code of Penal Procedure, penal detainees whose guilt has not been proved during legal proceeding, have the right to meet with the advocate upon the permission of the investigation body since the very beginning of the detention period.

As a rule, persons under provision detention are incarcerated in isolators of the penitentiary system subordinated to the Ministry of Justice. However, there are many cases when such citizens are kept in temporary detention isolators of police establishments for the period of preliminary investigation. To obtain wanted admission, policemen apply "sophisticated" and "less sophisticated" methods of torture. Punches, kicks, rubber sticks, stabs with different objects, seldom hanging head down, hyperextension position, asphyxiation with gas masks, plastic bags – these are the mostly used measures.

Article 101 (1) of the Penal Code explicitly and directly provides the infraction of torture, which is in line with international norms. Yet, official authorities usually consider actions with qualified signs of inhuman or degrading treatment as excess of power or service abuse. That is why policemen found guilty of torture are applied mere administrative sanctions, like temporary suspension, warning, censure, severe censure, demotion, passing from one subdivision to a different one, dismiss from police.

It is obvious that such measures do not contribute to the improvement of the situation.

Except this, policemen act in great solidarity: when any of them need defence, the other ones unite and intimidate the victims and witnesses, etc.

The meaning of "torture" for the purposes of the International Covenant on Civil and Political Rights does not explicitly cover the inhuman and degrading actions of traffic inspection. Torture cases are expected to possibly occur only in other structures. However, the analysis demonstrates that traffic inspectors are also liable to use of torture methods, especially of physic ones. These cases are envisaged by unduly stopping of vehicles, abusive holding back of driving licences, intimidation of drivers, searching without sanction of cards under private property, unauthorised radar installation, deliberately abasing of drivers in the presence of third parties, etc. The list may be continued.

The issue of policemen training is one reason leading to such behaviour. A large majority of policemen does not have relevant professional education: the largest police staff is formed of persons with middle education or even uncompleted middle education. The number of lawyers within police establishments is very low. A significant part of police staff is not acquainted with the national legislation in the field, inclusive the Law on Police, which

explicitly stipulates the priority of defence of civil rights and freedoms and not application of repression, not mentioning the ignorance, observance and application of international and regional instruments within which the Republic of Moldova is a state member. Such a mentality may de uprooted only through a well-thought selection of staff; decisive relieving of incompetent and corrupted persons and of persons found guilty of service abuse; the increase of the general cultural and professional level; and a consolidated training in law and civil rights of policemen.

Justice

The Universal Declaration of Human Rights (Articles 7, 8 and 10), the International Covenant on Civil and Political Rights (Articles 9 and 14), the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), other instruments of universal and regional character within which the Republic of Moldova acts as a Member State, guarantee the person's right of free access to justice, to fair and non-discriminatory legal procedures. Article 20 of the Constitution of the Republic of Moldova stipulates that "… every citizen has the right to obtain effective protection from competent courts of Jurisdiction against actions infringing on his/her legitimate rights, freedoms and interest". No law may restrict the right of access to justice. The same right is indirectly guaranteed following Articles 4 and 8 of the Constitution, which provide the priority of international instruments over national ones and the state commitment to observe the ratified conventions and covenants.

A series of national laws are aimed at implementing the mechanism of execution by civilians of the right of free access to justice and defence.

Conducted investigations denote that this right is still seriously prejudiced in the Republic of Moldova. Violations may be observed in refuses to accept appeals for examination in the court instance; in tergiversation of examination of penal and civil cases; the delays in execution of court decisions on civil cases; the lack of financial means in cases of patrimonial litigation and the impossibility to bear court expenses; the restriction of court independence; the depriving of administrative detainees of effective defence in certain cases; etc.

The non-execution of court decisions on reinstitution in function; on reimbursement of caused damages and of salaries for the period of illegitimate dismisses is another problem of

serious effect. Unfortunately, the establishment of the Department for Execution of Court Decisions did not help to improve the situation.

All these situations have an inevitably negative impact upon the justice image.

Detainees

In accordance with the stipulations of international and national legal acts, persons under detention should benefit from certain fundamental, unconditioned and inalienable rights of integrity and physical and mental development. The society democratisation in countries with consolidated democracy is assessed depending on both observance of detainees' rights and detention conditions within penitentiaries.

The facts envisage that the rights of detainees are seriously violated in the Republic of Moldova, despite all efforts put by relevant authorities to redress the situation.

The lack of financial means allocated to penitentiaries is the greatest problem of all. In 2002 the Department of Penitentiary Institutions was allocated only 46.1% of projected needs. The daily expense on a detainee was evaluated in an amount of 17.83 lei, including 2.77 lei for food, while the required daily minimum totals 7.5 – 7.6 lei. Real amounts constituted 15.46 and 2.32 lei respectively, as a large part of allocated funds was used to pay historical debts for water supply, sewerage, fuel and electricity, which exceeds 17 million lei.

Penitentiaries continue to be over-agglomerated.

Many establishments do not comply with sanitary and hygienic norms.

The miserable and unhealthy conditions are nor justified and are disproportional as related to committed offences, causing suffering, physical and mental degrading to detainees.

The well functioning of the penitentiary system is jeopardised also by medical ensurance. The financial needs for medicines and dressing were covered in 2002 by only 5.5%.

The general morbidity rate among detainees is increasing. Tuberculosis is one problem of great concern. Over one thousand of detainees contaminated with this disease are within penitentiaries. The real figure may be even higher, as the thoracic cavity micro-radiography is conducted accidentally or at large intervals.

The number of AIDS contaminated detainees is increasing, too. The relevant treatment conditions are even under larger risk as compared to previous detainees.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obliges the States Members "to undertake legislative, administrative, legal and other efficient measures to hinder commitment of torture acts on the territory under jurisdiction". Torture may not be justified in any way. The Convention on Protection of Human Rights and Fundamental Freedoms provides a similar stipulation (Article 3).

The European Court for Human Rights has, following the examination of certain cases of torture, envisaged in its decisions that conditions under which detainees are kept may be also classified as inhuman or degrading treatment. The situation in the penitentiaries of the Republic of Moldova falls exactly under this framework.

In circumstances when one may understand, to a certain extent, poverty in penitentiaries, maltreating may be argued in no way. Despite all efforts, detainees are still subdued to torture. According to the internal Regulation, sanctioned detainees are allowed to address an appeal to the chief of the relevant institution, to the commission formed of institution staff or to the prosecutor. Such a procedure does not comply with international norms. Detainees are often applied repeated and long-term isolation in cells with tough conditions. They are also maltreated, beaten and insulted.

Hundreds of signals, even if with certain credibility limitations, denote wrongdoing. The largest majority of inhuman and degrading treatments are nor confirmed, partially due to the "internal specific" within penitentiaries, partially because the establishments of the prosecutor's office authorised to supervise the penitentiary system do not comply in their actions and decisions with the definition of "torture" as stipulated in Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

CHAPTER III

CENTRE ACTIVITY

Like in previous years, parliamentary advocates traced out three prior directions within their activity: examinations of appeals, audience and reinstating of citizens in their rights; legislation analysis and submission to constitutional control; and community informing and training.

APPEALS AND HEARINGS

The Human Rights Centre of Moldova received in 2002 appeals signed by 3349 persons. Audience was given to 3107 citizens, including at Branches and during on-site trips of parliamentary advocates. 388 appeals were accepted for investigation, 412 appeals were remitted with the applicants' consent to other competent authorities, 414 appeals were sent back to addressees with relevant explanation of problem examination possibilities. The other applicants were given oral legal assistance.

With the view to settling litigation, central and local public authorities were submitted over 20 notes. The principle of parties' conciliation was applied in 9 cases. 3 request for reinstating citizens in their rights were submitted to court authorities.

According to conducted studies, the largest majority of appeals with regard to violation of rights came from pensioners, jobless, unemployed in labour market, invalids and detainees. This situation was envisaged both following the investigations by parliamentary advocates and the general trends within the republic.

According to the analysis of appeals, the following constitutional rights were mainly violated in 2002: the right of decent living; the right of receiving social assistance and protection; the right of free access to justice; the right of private property; the right of access to work; the right of access to education; the right to live in a healthy environment; the right of personal security and dignity; etc.

Decent Living, Social Assistance and Protection

Appellants have mentioned the following problems:

- the low quantum of state social pensions that do not comply with minimal living standards;
- the low quantum of pensions for invalid children;
- the low quantum of monthly indemnities for children upbringing;
- social discrimination following advantaged and disadvantaged condition upon retirement of different groups of persons;
- delays in payment of unemployed compensation;
- social discrimination of war invalids and their families;
- non-payment of pensions because of lacking domicile registration; etc.

Elderly persons are mostly affected by the economic crisis. The appeals forwarded to the Centre by this category of persons are desperate.

Extracts from the letter of a former teacher:

"I am the pensioner L.M. I am a labour veteran retired in 1980. My monthly pension amounts to 102 lei: this amount is sufficient to buy only a loaf of bread each day. Since money reform, I couldn't afford myself to buy a single gram of meat or butter. I leave alone in the village. My children that live in other places cannot help me because they also live from hand to mouth. I need charcoal, woods, gas, but I cannot buy all this. I am ill, almost blind, but I don't have money at least for the two operations recommended by doctors, nor for medicines. Please help me to be reinstated in my rights."

To assure a decent living, many pensioners, former public employees wish to continue their work. However, following the modification of Article 29 of the Law on Public Service, these persons were deprived of the right to benefit from pension if they are active in the labour market. Following the introduction of such cases by parliamentary advocates at the Constitutional Court, the relevant provision has been declared as non-constitutional. Although the Parliament had to immediate comply with this decision, the Article of the mentioned Law was brought into compliance with constitutional provisions only after a period of ten months. Moreover, the relevant financial means required to cover unpaid pensions were not allocated. The Centre needed three years to reinstate this category of pensioners in their legitimate rights. The decisions of the law establishments on recovery of judgement failed to be observed, too. Following the last note of 08.10.2002 addressed to the Parliament, the Ministry of Labour and Social Protection informed the institution of parliamentary advocates that these pensioners should be reinstated in their rights, as the social ensurance budget for 2003 provides an amount of over 2 million lei for such expenses.

Many invalids consider that a number of stipulations within the Law no. 121 of 03.05.2001 on Additional Protection of War Invalids, of II WW Participants and their Families are not duly observed. According to petitioners, such situation of incorrect interpretation to the detriment of invalids could be observed especially if considering the provision that stipulates the right of additional protection only to survivors inapt to work and persons that did not establish families, etc.

The Centre requested the Parliament in its letter of 10.10.2002 to explicitly explain this provision. The second letter followed in two months.

" To Mrs. Eugenia Ostapciuc,

Chairperson of the Parliament of the Republic of Moldova.

Within the context of preparation of the Report on Human Rights Observance in the Republic of Moldova in 2002, we would appreciate the information to the Centre on the examination of our formal interpellation of Art. 2 paragraph 3 of the Law on Additional Protection of War Invalids, of II WW Participants and their Families.

Thank you very much for assisting the noble and complicated mission of human right protection in the Republic of Moldova.

Alina Ianucenko, parliamentary advocate"

Petitioners are still waiting.

The Law on Pensions within State Social Ensurance and the Regulation on Pension Payment does not require pensioners to come to establishments of social assistance to receive their pension. Pensions may be received via postal mandate, savings book, banking card, etc.

Nevertheless, contrary to the current legislation, many pensioners are requested to personally come to relevant offices and show the domicile residence, proving that they did not pass away meanwhile.

Following the investigation of this problem, parliamentary advocates have once again confirmed the violation of these persons' constitutional rights of social ensurance and free circulation.

Based on Article 27 of the Law on Parliamentary Advocates, the National House of Social Assistance was submitted a note providing measures to be undertaken as to reinstate these petitioners into their constitutional rights based on the Decision of the Constitutional Court no. 16 of 10.05.1997 that declared the "domicile residence" as unconstitutional.

Complying with this note, the National House of Social Assistance gave relevant indications as to remove all restrictions, to reinstate petitioners in their rights and not to admit such violations in the future.

In cases when appeals may be covered within relevant competence, the parliamentary advocates make all their efforts to solve the situations related to social protection of citizens. However, many of them are the result of the economic crisis and the lack of financial means to improve the overall situation. As consequence, elderly people, invalids, unemployed persons, mothers with many children, jobless people fail to fully exercise the right of decent living and

social protection and assistance as provided by constitutional warranties and international commitments.

Labour and Labour Protection

According to conducted investigations, the most urgent current problems within the context of right of working and work protection are as follows:

- significant reduction of job places following the liquidation of many enterprises;
- availability of employees and staff;
- salary indebtedness and delays both in the public and private sectors;
- increase of number of unemployed persons;
- forcing of employees to go on long-term leave of absence;
- unfair payment for a same work;
- work security;
- violation of labour legislation; etc.

These and other rights are violated both by economic agents and civil servants at different levels.

Here are some examples.

The citizen E. A. submitted a petition to the Human Rights Centre, requesting the implication of parliamentary advocates to reinstate him in his constitutional right of work remuneration. Following conducted investigations it was traced out that the Ministry of Transportation and Telecommunications has not been paid the employee's wage amounting to 5280 lei since 2000. The management of the Ministry did not comply either with the decision of the law court. The intimation of the parliamentary advocate has also generated no effect. Long time and special notification sent to the Ministry of Justice were needed for the citizen to be reinstated in his constitutional rights.

Another similar case was recorded at the Ministry of Transportation and Telecommunication with regard to the citizen L.P., who could receive salary debts only after the Centre's intervention.

The same Ministry has seriously violated the right of working in another case – of the citizen P.U. The three applied judicial fines failed to convince the minister to comply with the labour legislation. Following the intervention by the parliamentary advocate and a long period of time, the citizen was reinstated in his function.

The work litigation between the citizen F. and the mayor of the municipality of Orhei has been lasting already for three years. Law courts have declared a number of decisions to reinstate the petitioner in her rights and the mayor has partially executed the decisions only following the intervention of the parliamentary advocate. Moreover, the citizen F. was illegally dismissed each time. Currently, the decision of the Administrative Contentious College of the Chişinău Tribunal on the petitioner's reestablishment in function and the payment of 3550 lei is not observed. The Prosecutor's office of the county of Orhei refused to institute penal proceedings against the mayor. As submitted facts represent violation of rights as provided in Articles 43. 20 and 120 of the Constitution of the Republic of Moldova, the Centre addressed the chairman of the Orhei Court to request relevant legal procedures aimed at executing the decision imposed by judicial authorities.

Cases of violation of work security within economic units represent another matter of concern. The problem is very serious, especially if considering cases of demise and wounds following accidents at work places resulting in total or partial loss of working capacity. Certain petitioners wounded within work accidents have been addressing law institutions for years hoping to be reinstated in their rights.

Here is a concrete example.

The citizen P.B. requested the assistance of parliamentary advocates as the management of the Vinification College of Stăuceni, county of Chişinău, explicitly refuses to pay the monthly compensation for partial loss of working capacity following an accident at the working place. Following conducted investigations, the facts have been proved true.

The Centre is currently investigating a petition submitted by a group of residents of the Medical Department of the Free International University of Moldova (ULIM). The petitioners assume the violation of their constitutional rights as provided in the Constitution of the Republic of Moldova (Articles 34 and 43).

Serious violations are also committed by the managers of economic units, especially within the private sector. According to statistics, about 75% of the population apt of work is hired within the private sector, where the most severe and numerous cases of violation of the rights of working and work protection are recorded. As a rule, such cases refer to conclusion and annulment of individual work contracts, working and leisure program and regime and work remuneration, etc. Certain economic agents hire employees in an oral manner as to avoid possible conflicts with legal authorities. As a result, employees are dismissed without relevant remuneration and allocation of indemnities as provided by the legislation.

The Centre is continuously investigating the issue and shall duly submit a relevant report. Yet, one decision may be already taken: the approval of a new Labour Code that would imply the realities within the filed is of utmost importance.

Right of Property

Out of the total number of appeals submitted to the Human Rights Centre in 2002, over 17% are related to the violation of the right of property.

Parliamentary advocates were requested to intervene mainly as follows:

- owners of land plots requested reinstitution of value quotas and of other values within former collective farms;
- former rehabilitated deported persons and members of their families requested the reinstitution of confiscated and nationalised property;
- former owners and their successors requested the restitution of land;
- people that suffered from illegal confiscation and sequestration of property;
- depositors with the Savings Bank of Moldova;
- depositors with shell commercial banks;
- people wishing to privatise dwelling, etc.

Practically, tens and hundreds of people declare every day, either in the office or on-site, about the impossibility to exercise the right of property.

Here are a few examples.

A group of citizens requested the intervention of parliamentary advocates as the management of the Clinic Hospital of Traumatology and Orthopaedy of the city of Chişinău has differently impeded them to privatise dwelling within hostel. Following a relevant notification, the persons were reinstated in their legitimate rights.

The associate members of the "Catarga" consumer association complained about the illegal distraint upon their private property and the prejudice of the right of access to justice. The Centre has investigated the appeal and following the action by the parliamentary advocate, petitioners have been reinstated in their rights.

Depositors with the Savings Bank of Moldova have been facing the biggest problems since the introduction of the national currency. These people have been deprived practically over night of a significant share of their property. The Centre has been investigating this issue

for a number of years trying to reinstate these persons in their legitimate rights. Measures undertaken in 2002 include also writs of summons.

To Mr. Vasile Tarlev

First Minister of the Republic of Moldova

WRIT OF SUMMONS

on

Reinstitution in rights of persons that deposited money means with establishments of the Savings Bank

The Human Rights Centre of Moldova is submitted a significant number of petitions in which thousands of citizens raise the problem of payment of money means deposited until 1992 at the Savings Bank. Conducted investigations denote the violation by the state of the constitutional right of property.

At the moment of URSS collapse, the JSCB "Banca de Economii" (Savings Bank) used to be the only bank in Moldova in which the internal state share exceeding 14 billion roubles was formed of the balance of public deposits accounting for 40% until 1 March 1991 and for 75% until 1 January 1992 and of expenses accounting for 7% per year on calculated compensations and expenses related to the acquisition by the public of securities (state loan of 1992, treasury bonds).

On 13 March 1992 the Government of the Republic of Moldova signed with the Russian federation the Agreement on State Debt Servicing, according to which relevant expenses had to be assumed by both parties from the account of own budgets.

The Decree of the President of the Republic of Moldova no. 72 of 18 March 1992 on Compensation of the Population of the Republic of Moldova of Losses following Savings Devaluation and Prices Liberalisation provided the establishment of a compensation accounting for 75% of deposits balance until 1 January 1992. This Decree stipulated the transfer of the amount of these expenses to the state internal debt. The state internal debt servicing schedule was regulated following the Decree of the Republic of Moldova no. 261 of 30 December 1992.

Further on, on 24 November 1993 the President of the Republic of Moldova signed the Decree no. 200 on the Introduction of the National Currency on the Territory of the

Republic of Moldova, according to which public deposits should have been recalculated at the exchange rate of 1 Leu for 1000 (one thousand) coupons (roubles).

Thus, thousands of citizens became poor over one night. With the view to ensuring the protection of public deposits, on 17 December 1993 the President of the Republic of Moldova issued Decree no. 222 on Certain Issues related to State Internal Debt Servicing of the Republic of Moldova. This document regulated the payment of compensation accounting for 40% of active accounts as until 29 November 1993 resulting form their balance as up to 1 January 1992 and the transfer of expense amount to state internal debt.

However, the problem was not completely solved. Pensioners that lost their savings and that relied on this money as to ensure a decent living at an old age happened to face the most difficult situation. According to data as of 2 January 1992, the Savings Bank had on depositors' accounts 5.2 billion roubles. Following the Decree of the President of the Republic of Moldova no. 30 of 17 December 1993 on Additional Measures of Social Protection of Pensioners, the Government had to submit proposals with regard to additional indexation of money deposits of the population.

With the view to further recover the situation, the Parliament has, following the Government proposal, adopted Decision no. 201-XIII of 29 July 1994 on the Regulation of the Indexation of both Current Deposits and Deposits Renewed at the date of relevant Decision Approval. This Decision was based on the balance of deposits as up to 2 January 1992. Thus, the first thousand roubles on all accounts was subject to indexation at the ratio of 1 (one) Rouble to 1 (one) Leu for all the depositors that reached the age of 60 years old until 1 January 1994.

According to the Decision of the Government no. 108 of 16 February 1995 on Indexation Mechanism of Deposits by the Population at the Establishments of the Savings Bank of the Republic of Moldova, the calculation and payment of indexed amounts were provided to unfold in four stages starting with 1995 within the limits transferred by the Ministry of Finance to the account of the Savings Bank.

To conduct the indexation of public deposits with the Savings Bank, the State Budget was provided in 1995 an amount of 70 million lei, in 1996 – 10 million lei, in 1997 – 1998 by 25 million lei each year. Within all these years the Ministry of Finance transferred to the Savings Bank only 91.3 million lei.

The authorised Commission by the Government established from 1995 to 1998 ten subscribing quotas of these money means to the depositors' accounts, which accounts for

26,65% or 266,5 lei for the first complete thousand of roubles subject to indexation (1995 – 18,85% or 188,5 lei; 1996 – 1.8% or 18 lei; 1997 – 6% o 60 lei).

Following a relevant investigation and with the view to reinstating in legitimate rights of citizens, the parliamentary advocate proposed to the Parliament and the Government to extend the Decision of the Parliament no. 201 of 29 July 1994 over those persons that reached the age of 60 years old during the years following 1995. The Ministry of Finance in common with the Ministry of Economy and Reforms, the Ministry of Privatisation and State Property Administration, the Ministry of Justice and the representative of the World Bank examined a number of variants of indexation of public deposits with institutions of the Savings Bank.

The best variant, including the indexation of deposits by persons that reached 60 years old after 1995 and the draft decision on Modification of the Decision of the Parliament no. 201 of 29 July 1994 were submitted to the Parliament for examination and approval. Unfortunately, the legislative body did not support this proposal.

Moreover, from 1999 to 2002 the Parliament has completely suspended through the Law on the State Budget the action of the above-mentioned decision.

In such a way the Parliament has violated the rights of a large number of persons as stipulated in Articles 9, 46, 47 and 127 of the Constitution, according to which the property in the Republic of Moldova is divided into public and private; the right to possess private property is guaranteed and protected by the State; and the State shall take every measure to assure a decent living for every person.

Moreover, according to the Laws on the State Budget for 1999 – 2002 the Parliament had not the right to suspend the action of certain previously adopted normative acts. The issue regarding the action of a normative act within a time framework and the correlation of this document with other previously adopted normative acts may be settled only if approving this respective normative acts. The action of the Decision of the Parliament no. 201-XIII of 29 July 1994 on the Indexation of Population Deposits with Establishments of the Savings Bank of Moldova might have been suspended only through the approval of a special normative act and not through laws on the state budget. However, such situation was not observed.

According to general rules, a new normative act does not have a retroactive power and may not repeal the order as set through a previously adopted normative act and may not annul its consequences. In such case, to repair at least partially the violation of

constitutional rights of citizens, the Ministry of Finance is obliged to ensure the indexation of population deposits at the Savings Bank amounting to at least 220 million lei.

The Parliament and the Government have violated the stipulations of Article 17 of the Universal Declaration of Human Rights, Article 1 of the First Additional Protocol to the Covenant of Human Rights and Fundamental Freedoms Protection (every person has the right for property, no one can be arbitrarily deprived of his/her property).

As in accordance with Article 4 of the Constitution, constitutional dispositions on human rights and freedoms are interpreted and applied in conformity with international legal acts within which the Republic of Moldova acts as member-state. In case of discrepancies between international instruments on human rights and internal laws, international regulations have priority status.

The elaboration and application of state economic and social policies fall under the responsibility of the legislative and executive bodies. Yet, constitutional and international principles and norms with regard to set human rights should be observed and implemented while elaborating relevant solutions.

Based on Articles 7, 21 and 29 of the Law on Parliamentary Advocates and with the view to reinstitution in constitutional and international rights of tens of thousands of persons,

IT IS PROPOSED:

1. ***To give urgent indications to the Ministry of Finance to fully assure the indexation of population's deposits for the years 1995 – 1997 as in accordance with the stipulations of relevant laws and state budgets;***
2. ***To submit to the Parliament within urgent regime the draft decisions and laws on restore into action the decisions and laws that ensured the indexation of citizens' deposits at the establishments of the Savings Bank;***
3. ***During the elaboration of new draft normative acts on the indexation of deposits special priority should be given to invalids, mothers with 3 and more children and invalid children since childhood, one-parent families, war veterans and affiliated persons, persons that used to participate at the liquidation of Chernobyl damage, pensioners and persons over 60 years old.***

Alexei Potîngă

Parliamentary Advocate"

The response of the Ministry of Finance practically repeats the facts included in the writ of summons and provides that " taking into consideration the critical situation related to budget execution and the necessity to conduct under priority regime payments related to salaries, pensions and state debt servicing, no financial means were provided from 1998 to 2002 to pay amounts subject to indexation (342 million lei). A relevant draft law has been duly elaborated."

Unfortunately, no other effect could be expected, as the Ministry of Finance is not vested the same powers as the executive body.

Within the context of this problem, the parliamentary advocate tried to defend the rights of a citizen at court with the view to create a precedent, but failed to reach recovery of judgement. As a follow up, a request was submitted to the European Court of Human Rights: as a response, we were informed that the issue should be examined in the shortest possible time.

The new Law on Deposits Indexation has entered already into effect. The Law modifies the payment manner and the age of persons with the right to receive savings. A new normative act does not have a retroactive power, may not repeal the order previously established through a different act and cannot annul the relevant consequence, especially if the new legal act worsens the contents of the previously adopted normative act.

The Right to Live in a Healthy Environment

This right includes the fields of ecology, health, living, nutrition, consumer goods and information.

Petitioners raise in their appeals the following problems:

- continuous pollution of rivers and lakes following the evacuation of residual waters by economic units, farms and individuals;
- pollution of wells, inclusive with petroleum goods;
- unreasonable exploitation of natural resources;
- degradation of forest fund;
- insufficiency of ecological information, especially with regard to harmful to life factors;
- depositing of harmful substances or transition of toxic staffs through the territory of the republic, etc.

Parliamentary advocates were submitted in 2002 a complaint from the residents of the country of Străşeni. Following the consumption of non-qualitative water, many inhabitants were contaminated with hepatitis. As no urgent efficient actions have been taken, the country was affected by this epidemic decease. The parliamentary advocate Alexei Potingă reacted to this complain by submitting to the Government a writ of summons in which he has, inter alia, warned about a possible creation of a dangerous epidemic hotbed if no administrative measures are taken, which may generate serious unpredictable social explosions with grave consequences. The parliamentary advocate recommended the Government the establishment of a special experienced commission to solve the problem and to elaborate a special actions program, inclusive the allocation of relevant means to fight infection and to non-admit it in the future.

The Government complied with proposed recommendations.

The Centre's activity program for 2003 includes a more detailed investigation within the filed of human right of healthy environment, especially within the context of observing commitments assumed and ratified following the Arhus Convention on Access to Information, Justice and Public Participation at Decision Taking within the field of Ecology.

The Right of Family, Intimate and Private Life

Inviolability of Domicile and Secret of Correspondence

Petitions containing complains within this field are new in the Centre's post. However, it does not mean that violations were not traced out in this domain before. Since the phenomenon started to develop, more and more persons address the parliamentary advocates.

Illegal actions were recorded as follows:

- legally unauthorised and non-permitted intrusion into dwellings;
- violation of secret of correspondence.

The citizen E.R. form the city of Chisinău wrote in his complaint to the Centre:

"On 28 March 2002 the representatives of electric networks came to my place to verify the legality of electricity consumption. My small daughter, having my strict instructions, did not open the door to strangers. These persons addressed our neighbours and have, however, entered the apartment. A relevant report was elaborated. My daughter was proposed to invite someone to countersign the document. According to the current legislation, the legal

representatives of minor children may be only the parents or tutors. Moreover, my daughter got scared. The court should decide upon the legality of this report. I consider that the right of inviolability of domicile was violated in this situation and request the opinion of the parliamentary advocates"

Such complains were received from many citizens. Based on Article 27 of the Law on Parliamentary Advocates, a special notification was sent to the director of Electric Networks of the city of Chişinău. We hope that the relevant authorities shall take all due measures as to exclude cases of inviolability of domicile.

Cases of domicile violation by policemen are even graver. There are no limits for this disorder. Petitioners claim that in our case the policeman is a prosecutor, judge and executor in one face. The majority of people that suffered from such actions are afraid to address prosecutor's offices, as at the end they will have to meet the same policemen, who may very "professionally" fabricate any report as to take revenge.

The right of secrecy of correspondence is often violated under pretext of verification of parcels. The citizens inform the Centre that the correspondence to or from abroad is subject to control. Letters address to international organisations, especially to the European Court for Human Rights are paid special control attention and in many cases even do not reach the addressee.

Following the investigation of these cases we have traced out that the Republic of Moldova does not dispose of technical equipment to examine the contents of parcels with the view to determine possible goods to be subject to taxation. That is why, all the parcels are opened and goods are counted and registered in a special report. In fact, under pretext of parcel verification, the control covers also the correspondence considered to be damaging for the state.

The Right of Education

As compared to previous years, in 2002 we received a much larger number of complains within this field. To a large extent problems are the result of actions by the Ministry of Education.

The deplorable situation within this system is a well-known factor. Teachers leave the school en masse, especially in rural areas. In 2001 2497 teachers abandoned the education system; this figures accounts for more than a half of the abandonment value for 1998 to 2000.

The graduates of high institutions refuse to be enrolled in the professorial staff because of low salaries.

Education programs are not complied with.

Thousands of pupils do not go to school.

The compulsory education system for children between 5 and 6 years old is distorted because the closing en masse of kindergartens.

The discrepancy between the access to education by children from poor families and the ones from well families denotes increasing trends.

Practically, the right of education is violated almost everywhen in the education system. Stipulations of national and international legislation, international norms are not observed.

Under such circumstances, the field ministry additionally undertakes actions that generate tensions within the society. Parliamentary advocates had to react to citizens' appeals.

To Mr. Vasile Tarlev
Prime Minister of the Republic of Moldova
To Mr. Gheorghe Sima
Ministry of Education

NOTIFICATION

On reinstitution into constitutional rights of graduates of education institutions of the Republic of Moldova wishing to continue their studies abroad

The Human Rights Centre was submitted an appeal by a group of children that graduated education institutions of the Republic of Moldova wishing to continue their studies in Romania based on scholarships granted by this state. Considering that the Government, inclusive the Ministry of Education has, through its actions, violated their fundamental right of education as stipulated in the Constitution and international legal acts within which the Republic of Moldova acts a a member-state, the petitioners request the assistance of parliamentary advocates to be reinstated in their constitutional right. Following the investigation of this appeal, the following has been traced out.

Currently, considering the acute financial crises, the Republic of Moldova may not ensure a large number of scholarships within internal education institutions as to create fair conditions to all applicants for free of charge continuation of education. Because of a long-lasting poverty, the largest majority of the population is not capable to cover all expenses related to contractual studies. Thus, the provisions of Article 35 paragraph 4 (state public education is free), paragraph 7 (the access to education is open to all) and paragraph 9 (the priority right of choosing an appropriate educational background for children lies with the parents) of the Constitution are violated.

Despite this, the Ministry of Education of the Republic of Moldova did not ratified the Bilateral Agreement on Cooperation in the Field of Education with the similar ministry from Romania and undertakes actions that restrict the right of two thousand of graduates of free access to free education.

The Republic of Moldova has assumed the commitment to observe the ratified international judicial acts (Article 8 of the Constitution). The actions or non-actions by the Ministry of Education run counter to a number of current international conventions and acts in effect for our state. Especially, the state does not observe the stipulation of Article 26 of the Universal Declaration of Human Rights, Article 13 paragraph 2 c) of the Covenant on Economic, Social and Cultural Rights (the high education should be equally accessible to everyone in all due means), Article 13 paragraph a) of the Convention on Fight against Discrimination within Education (the state commitment to abrogate any legislative or administrative disposition and to terminate administrative practice that may imply discrimination within education) , Article 2 of the Additional protocol no. 1 to the European Convention on Protection of Human Rights and Fundamental Freedoms (the right of education may not be restricted to no one, parents shall have the right to choose the education background).

The stipulations of the International Convention on Children' Rights (in effect for the Republic of Moldova since 25 February 1993) are violated in a very flagrant manner. Following Article 28 of this Convention the Republic of Moldova committed itself to ensure access to high education to everyone through all relevant means (paragraph 1 c)), to promote and to encourage international cooperation in the field of education (paragraph 3). The Convention general rule stipulates that the state shall in all its actions give priority to the child's superior interests.

We would like to remind to you that as in accordance with Article 4 of the Constitution of the Republic of Moldova, the stipulations of international judicial acts ratified by our state have priority status.

Considering the above-mentioned and with the view to urgently reinstating in rights the persons wishing to continue their studies in Romania, based on Articles 27 and 29 of the Law on Parliamentary Advocates, I propose to take all necessary measures to urge the signing of the relevant Agreement between the Republic of Moldova and Romania, taking into account the principles of the fundamental right of education, non-discriminatory, by encouraging international cooperation and placing the child's superior interest on the top as in accordance with constitutional provisions and international instruments within which our state acts as member-party.

Alexei Potingă
Parliamentary advocate

To the Human Rights Centre of Moldova

Please be informed that in accordance with Article 63 of the Law on Education, the Ministry of Education has the right to establish relationships and to conclude bilateral agreements on cooperation within the field of education with the countries of the world. At the same time we would like to specify that this Article does not oblige the Ministry to sign agreements and protocol on cooperation; the Article just stipulates the relevant right. Cooperation agreements are signed as a result of negotiations.

Within this context we would like to mention that the international judicial acts ratified by the Republic of Moldova do not oblige us to sign cooperation protocols with the countries of the world.

Following two rounds of negotiations in June – July 2002 between the representatives of the two ministers, the inter-ministerial cooperation protocol for the academic year 2002 – 2003 was not signed. This situation may not be regarded as violation of youth rights to get education abroad. They may go to continue their studies to any country, including Romania, if they are accepted by the education institutions of this relevant country.

Gheorghe Sima

Minister"

The Centre's activity program for 2003 provides training courses within the field; the representatives of the Ministry of Education shall be also invited to these programs.

Right of Petitioning

The citizens' right of petitioning is guaranteed following Article 52 of the Constitution, according to which "… all citizens have the right to apply to public authority by way of petitions formulated on behalf of applicants. (1); legally established organisations may petition exclusively on behalf of associations or bodies they represent (2)".

The Law on Petitioning regulates the manner and order of applications' submission and examination.

The Law on Parliamentary Advocates stipulates specific provisions within this field.

There are also other legal acts in effect that stipulate the procedures to examine citizens' application.

The number of applicants addressing the Centre asking for restitution in legitimate rights increased during the last time. As a rule, invoking the violation of a certain right, applicants especially refer to the violation of the right of petitioning. Conducted investigations demonstrate that in many cases citizens would have been reinstated in their rights and freedoms if the right of petitioning would be explicitly observed. Different institutions transformed the so-called citizens' audience rooms into a kind of structures meant to protect dignitaries and keep them away from people's problems. The audience schedules are not observed. Petitions are not examined at all or the process of their settlement is tergiversated. Sometimes petitions are nor responded at all or are given some official replies. These and other reasons determine the citizens loosing months to try to reach different authorities.

To improve the situation, the parliamentary advocates, other employees of the Human Rights Centre have on-site visits to places where this right is more often violated and organise the audience of citizens.

Other forms are also practised. For example, in common agreement with the Ministry of Health and the Municipality of Chişinău, the lawyers of the Centre have set concrete days

for the audience of patients and employees of a number of policlinics and clinics from the city. The schedule is published and everybody may contact the parliamentary advocates.

In many cases the managers of public authorities, of institutions and organisations, of economic units are submitted notes with concrete recommendations with regard to the observance of citizens' right of petitioning.

For example, such a notification was sent to the administration of the "Union Fenosa" company following the petitions received from the consumers of electricity.

Complying with the recommendations provided by the parliamentary advocate, the management of Union Fenosa examined the notification at a special meeting at which the Centre's representative was invited, too. The meeting generated explicit measures aimed at increasing the access of citizens and the more rapid settlement of issues raised within petitions.

There are also other positive measures of drawback liquidation. However, many times the managers of different level not only violate the Law on Petitioning, but also give no reaction or tergiversate the answers to notifications or writ of summons by parliamentary advocates.

The Right of Free Movement

The number of petitions within this sector increased in 2002. The largest majority of them are related to the illegitimate actions by the staff of traffic inspection: the abusive and long-term holding back of vehicles; the blocking of streets or whole sectors of the traffic, especially in the city of Chişinău; the undue hindering of public circulation; the groundless handling back of citizens' documents that impede the free circulation of such citizens, etc.

However, there are cases of different nature. Here is an example.

The Human Right Centre of Moldova received the petition of the citizen R.S. from the city of Chişinău. The petitioner addressed the passport office of the district of Buiucani with the view to get the identity card; as he had not the domicile residence, he was refused. Further on, R.S. failed to receive audience at the Information Technologies Department.

The Centre has evaluated the actions of the passport office and the IT Department as groundless based on the following reasons: following the Decision of the Constitutional Court no.16 of 19.05.1997 the provisions of article 10 paragraph 2 of the Regulation on Drawing Up and Provision of Identity Cards within National Passport System were declared as

unconstitutional. The Decisions of the Constitutional Court, as in accordance with Article 140 of the Constitution of the Republic of Moldova have definitive status and become null and void from the moment of pronouncing of certain normative acts or parts of thereof.

Article 4 paragraph 1 of the Law of the Republic of Moldova on identity cards within the national passport system provides: "Identity cards shall be provided by competent authorities designated by the Government, in accordance with the applicant's motivated request based on documents as stipulated by the legislation". However, the Law does not stipulate the compulsoriness of the "domicile residence", which may constitute an impediment in the process of documents drawing up. Otherwise the citizens' right to free movement, one of the fundamental freedoms of a human being stipulated in Article 27 of the Constitution, other conventions and treaties ratified by our state, is violated.

Based on all above-stated, the parliamentary advocate recommended to the IT Department to undertake relevant measures in conformity with the legislative framework as to reinstate the petitioner in his rights and to avoid such violations in the future. The case was successful.

The Rights of Detainees

Persons within confinement and punishment places submitted to the Human Rights Centre around 300 petitions in 2002. The main raised problems are as follows:

- violation of detention standards;
- prejudice of the right of defence;
- pronouncement of supposed illegal judgements;
- censoring of correspondence;
- application of inhuman treatment, etc.

The situation within penitentiaries was under the permanent attention of parliamentary advocates. Many situations provided in complaints come true to a large extent. Penitentiaries are over-agglomerated. The density rate as according to bed number accounts for 103.8%. The sanitary and hygiene conditions do not comply with norms. The indices of morbidity and mortality, contamination of detainees with different diseases, especially with tuberculosis and HIVS, denote increasing tendencies.

The system is not sufficiently covered with financial means.

Many more examples may be given with regard to the precarious condition within these detention places. For example, as in accordance with data submitted by the Penitentiary Institutions Department, the available technical program of preventive detainees at the investigation Isolator no. 3 of the city of Chişinău accounts for 1400 persons, while the real number is more than 1800 persons.

The risk of expansion of such diseases like pediculosis, scab, tuberculosis, etc. is permanent. Detainees do not have access to light, as the majority of windows are closed up with holey plates. Moreover, no ventilation is available.

Even water is given to detainees for only two times per day.

Buildings have not been repaired for years; the sanitary situation is critical – high humidity generated rapid spread of infectious diseases, especially of tuberculosis.

The epidemiological situation within the penitentiary system is also critical. The general illness level reached in 2002 over 11900 cases. 3139 persons affected by tuberculosis were taken under dispensary control. 93 persons demised.

The situation worsened even more when the penitentiary for tuberculosis contaminated detainees from the city of Bender was closed. The parliamentary advocate Alina Ianucenko submitted an approach to the Tiraspol authorities, yet, as expected, no reaction followed.

Inhuman and degrading treatment, even cases of torture within the penitentiary system complicate the problems mentioned before. The case recorded by the parliamentary advocate in the penitentiary institution from Pruncul during the on-site control following some petitions from detainees, serves as an eloquent example.

Here is an extract from the writ of summons by the parliamentary advocate Alina Ianucenko addressed to Valentin Sereda, general director of the Department of Penitentiary Institutions:

"Following the investigation of received petitions, detainees (names follow) from colony no. 9 of Pruncul supported the arguments mentioned in their complaints. On 24 January 2002 the detainees were requested to come to office no. 1 where they were beaten with sticks by the staff (names follow). The supreme officer (name and function of this person follow), present in the room, verbally contributed to maltreating, insulting and abasing the detainees' human dignity. As the maltreated persons mentioned, the reason they were called was their refuse to stand up upon the coming in of the institution staff. It is true, some of them were eating, lying or reading at that very moment. They refused to obey the order to stand up. As a result, they were requested to come in the office and read the articles

from the current normative acts. However, as the detainees started to complain about detention conditions, the institution staff applied special means of calming.

All the staff said that applied measures were in conformity with the stipulations of Article 99 of the Code on Execution of Penal Law related Sanction.

Following the examination and evaluation of explanations given by detainees and the institution staff in the context of international and national legislation, the following has been stated:

In accordance with Article 24 of the Constitution of the Republic of Moldova "no one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment". Facts of maltreating of detainees are also confirmed by the explanations of the chief of lazaret (the name is indicated), who established body lesions of detainees.

I consider that the officers (name follow) either are not acquainted with the contents of Article 99 of the Code on Execution of Penal Law related Sanction, or do not understand it. The detainees' refuse to stand up at order was a disciplinary action. I wonder whether the punishment is related to the fact. Article 31 of the standard minimal Rules of behaviour with detainees, adopted following the Resolution of the First UN Congress on Criminality Prevention and Behaviour with Criminals mentions: body lesions, closing in dark rooms and cruel, inhuman or degrading punishment shall be prohibited as punishment for disciplinary actions.

Within the context of the first part of Article 100 of the mentioned Code the application of special means, inclusive of rubber or plastic sticks may be admitted only in cases when the non-subordination or other actions may jeopardise the public security, life or state of health of persons around. In our case, the refuse of detainees to stand up, complain with regard to detention conditions did not give the institution officers the right to apply special measures.

The number of petitions invoking cases of maltreatment received by the Centre in February from penitentiary no. 9 amounts to 27. …"

Following the examination of this writ of summons, the general director of the Penitentiary Institutions Department issued an order that stipulated the study of the national and international legislation within the filed by the whole staff of penitentiaries of the republic. The chief of every penitentiary was vested the personal strict responsibility to control application of physical force and special means towards detainees.

The rehabilitation of persons put free from punishment institutions is another special problem.

The citizen V. writes to the parliamentary advocates:

"I've served my sentence. Now I am free. I found myself a job. But I don't have a place to live. According to the legislation my dwelling was withdrawn when I was sentenced. I was brought up in an orphanage and I have no relatives. I don't know what to do and where to go. Maybe I should commit one more infraction: in the penitentiary I have at least a bed and something to eat."

The Law on Social Adaptation of Persons Put Free from Detention Places is in effect. However, this Law practically does not work because of poverty.

ANALYSIS OF LEGISLATION

Appeals to the Constitutional Court

In accordance with Article 31 of the Law on the Parliamentary Advocates, the parliamentary advocates are empowered to appeal to the Constitutional Court with the view to observing the constitutionality of Parliament laws and decisions, decrees of the President of the Republic of Moldova, Government decisions and dispositions and to verifying whether these documents are in line with the general accepted principles and international judicial acts on human rights protection.

This right was fully exercised.

Thus, the Constitutional Court was appealed to pronounce on the constitutionality of completion of Article 4 a) conducted based on Law no. 726-XV of 07.12.2001 and promulgated following the Decision of the President of the Republic of Moldova no. 380-III of 11 December 2001.

Until legal modifications requested to be subject to the constitutionality control, as in accordance with Article 4 a) of the Law on Administrative Contentious only exclusive political acts by the Parliament, President of the Republic of Moldova and Government could not be appealed in establishments of administrative contentious.

Law no. 726-XV of 07.12.2001 extended the number of acts accepted at administrative contentious establishments from judicial control, adding "and administrative acts of individual character issued by the Parliament, the President of the Republic of Moldova and the Government within the context of exercise of attributions expressly provided following legislative or Constitutional norms, with regard to election, nomination or dismiss from public functions of state official persons exponents of certain significant public or political interest".

Parliamentary advocates considered this modification as unconstitutional, as it runs counter to the norms stipulated in Articles 8 and 29 of the Universal Declaration of Human Rights, Articles 2 and 29 of the International Pact on Civil and Political Rights, Articles 6 and 26 of the European Convention of Human Rights and Article 20 of the Constitution of the Republic of Moldova.

The administrative contentious is an instrument aimed at defending human rights from eventual abuses by public administration institutions and civil servants acting within these institutions and provides the possibility of everyone considering that his/her constitutional rights were violated to request and to obtain the annulment or modification of the administrative act and the reparation of caused damage. The very Law on Administrative Contentious highlights the target "to counteract power abuses and excess by public authorities, to defend human rights within the context of legislation, … to ensure rule of law" (Article 1). As in accordance with Article 3 of this Law, the subject of the administrative contentious covers the administrative acts of normative or individual character issued by public authorities.

If a citizen considers that a certain administrative act affects his/her legitimate interests, he/she may appeal this act at court.

Except this, the Constitutional Court was requested to pronounce its decision on the constitutionality of the unique article, point 1 of Law no. 833-XV of 7 February 2002 on the modification and completion of the mentioned Law.

Until modification and completion, Article 4 d) of the Law on Administrative Contentious had the following wording: "commandment actions of military character cannot be appealed at institutions of administrative contentious". The new text provides an added wording "and actions of disciplinary sanctions application and of dismiss of militaries and persons with military status".

This completion runs counter to the Constitution and international acts ratified by the Republic of Moldova.

The right of judicial protection provides the existence of relevant warranties, which would allow their full exercise with the view to ensure the access of everyone to justice. Such a warranty stipulates that the person that suffered from violation of constitutional rights following administrative actions or delay in application solving within legal framework by a public authority, has the right to receive recognition of claimed right, annulment of act and compensation of damage.

The Constitutional Court was also appealed to pronounce upon the constitutionality of stipulations within points 1, 3, 4, 5, 6, 7 and 8 of the unique article of Law no. 726-XV, points 3, 4, 5 and 6 of the unique article of Law no. 833-XV of 07.02.2002 based on the following arguments.

According to point 1 of the unique article of Law no. 726-XV, "actions of management issued by public authorities as legal person on administration and use of goods under private property, inclusive of goods under collective property" may not be appealed in the administrative contentious. Before this modification, only management actions related to the administration and use of own private property used by public administration only within the exercise of vested attributions were accepted from judicial control. The new regulation refers to all goods belonging to all members under the subordination of the relevant authority, which runs counter to Articles 127 and 128 of the Constitution.

Points 3 and 7 of the unique article modifies Articles 10 b) and 30 paragraph (4) following which irrevocable decisions of the administrative contentious institutions may be appealed through extraordinary means with action for cancellation at the Supreme Court of Justice only by the General Prosecutor and his deputies. In such a way the parties at the process are restricted in their right, which runs counter to Article 20 of the Constitution.

In Article 13 "Exception of illegality" paragraph (1) it is provided that "the legality of a unilateral administrative act may be examined at any time within a process of ordinary action following way of exception in office or at the request of the interest party" and in point 4 the wording "unilateral" is replaced with the wording "with normative power issued by a public authority,…".Under such circumstances it will not be possible any more to consider the legality of an unilateral administrative action within a process of ordinary action, which restricts the right of access to justice and runs counter to Article 20 of the Constitution.

According to point 5 of the unique article in Article 16 paragraph (1) the wording "inclusive the moral damage" is excluded. Thus, the person that would consider that his/her personal rights as recognised by the law were trespassed following an administrative ruling,

shall not be able to request compensation of moral damage, although Article 53 of the Constitution stipulates payment of such damages, too.

According to point 6 of Article 21, paragraphs (1), (2) and (3) were excluded. These paragraphs provided as follows: "In well-grounded justified cases and with the view to preventing impending damage, when making an appeal to a public issuing or higher hierarchic authority, the person infringed in his/her legitimate rights may request the competent institution of administrative contentious to suspend the execution of the contested administrative action upon himself/herself until final execution of preventive application; (2) The institution shall examine the request on suspension of contested administrative action execution within urgency regime; (3) The conclusion of contested administrative action suspension is legally enforced and may be asked for recourse within 5 days from the date of communication". Thus, after modification, Article 21 provides only possible suspending simultaneously with bringing of action, which largely results in the loss of effect of address within the context of the Law on Administrative Contentious.

Following point 8, Article 32 (3) is modified as follows: "If the chairman of the public authority responsible for decision execution fails to execute the decision in due time, he may be hold answerable as in accordance with the provisions of the current legislation". Before modification, under such situations the chairman could be sanctioned with a fine in a value of up to 10 salaries for each day of delay; this measure used to be an efficient instrument for the execution of court decisions.

The access to justice is one of the human fundamental rights. No one and no law may impede this right. The Code of Civil Law provides in Article 1 that "the legislation on civil law establishes the judgement procedures with regard to matters resulting from civil, economic, labour and family judicial relationship and matters of administrative contentious and special procedure. Matters of administrative contentious and special procedure are subject to judgement as in accordance with general rules of procedure, with some exceptions, as provided by the legislation".

The exception within matters of administrative contentious is determined following Article 53 of the Supreme Law, on the basis of which the state may establish special additional norms aimed at protecting human rights from eventual abuses by authorities of public administration and civil servants within these authorities. The specific character of the administrative contentious results from the activity of certain state institutions exercising state attributions, within which at least one party represents an administrative public service. The

state authority is targeted to ensure and guarantee the dignity of individual, human rights and freedoms and a free development of a human personality.

When adopting the Law on Administrative Contentious, the initial legislator paid due consideration to these targets and provided special regulations aimed at reinstating prejudiced human rights, freedoms and interests in cases of eventual power abuse and excess by different state bodies.

As in accordance with the unique Article, point 3 of Law no. 833-XV, in Article 14 (1) of the Law on Administrative Contentious the wording "6 months from getting acquainted with the action" is replaced with the wording "30 days from the date of action communication" and in paragraph (3) the wording "6 months" is replaced with the wording "30 days".

This legislative interference implies restriction of appellant's capacity to obtain acknowledgement of claimed right, if considering the risk of non-compliance with set time framework.

Point 4 modified Article 16(3) following which the complainant is not further exempted from payment of state tax. Thus, the procedure of reinstating infringed rights became more complicated.

Article 24 (2) provides that "the fail of parties and / or their representatives to stand at court session without submitting well-grounded justified reasons shall not impede the examination of request". This Article is completed following point (5) with a new wording as follows: "in cases when the action may not be judged in absence of complainant, the establishment of administrative contentious shall take the action out of roll as in accordance with the Code of Civil Law".

Article 24 (1) provides that "the institution of administrative contentious shall examine the request in the presence of complainant and defendant and / or their representatives under condition of the Code of Civil Law with certain exceptions as stipulated in this Law".

According to the general rule as provided in Article 159 of the Code of Civil Law, the court shall take the request out of the roll in the following cases: (1) the complainant that was duly informed about court session did not show up; (2) the complainant did not submit to the court relevant reasons for not coming to sessions or submitted groundless reasons; (3) the complainant did not request the hearing of cause of action in his/her absence.

Thus, the general rule provides well-grounded justified reasons to take the complaint out of roll if the complainant is absent, while the modification of the Law on Administrative Contentious stipulates that the complain shall be taken out of roll only when it will not be

possible to examine it complainant's absence, without any justified or groundless reasons. Within this context, the modification implies an impediment in the right of access to justice.

Point (6) excludes from Article 25 (3) and (4) the stipulations with regard to compensation of moral damage if the claimed legitimate right is acknowledged and cancellation of the rulling. Thus, the Law on Administrative Contentious was definitively excluded the regulations with regard to compensation of moral damage, which runs counter to Article 53 of the Constitution.

The Parliament, which, according to the Supreme Law, is the supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the sate, should exercise its attributions as in conformity with the norms set in the Constitution. This authority should take into account in the process of law elaboration the general principles of a state of law, according to which the human dignity, rights and freedoms, the free development of personality, the justice and the political pluralism should be viewed as supreme values and duly ensured. The procedure of establishing norms to restrict these rights is not admissible.

The Constitutional Court recognised as unconstitutional only the followings:

- the wording "inclusive goods under collective property";
- the wording "inclusive cases of application of disciplinary sanctions and removal from office of militaries and persons with military status";
- point 6 unique article of Law no. 833-XV according to which in Article 25 paragraph (3) of the Law on Administrative Contentious the wording "material and moral damage" is replaced with the wording "material damage";
- point 6 unique article of Law no. 833-XV according to which paragraph 4 of Article 25 of the Law on Administrative Contentious was excluded.

Article 20 "Free Access to Justice" of the Constitution in effect: "(1) Every citizen has the right to obtain effective protection from competent courts of Jurisdiction against actions infringing on his/her legitimate rights, freedoms and interest. (2) No law may restrict the access to justice"

The Constitutional Court was requested to pronounce upon the constitutionality of Law no. 583-XV of 25 October 2001 on Application of Article 16 of Law no. 514-XII of 6 July 1995 on Judicial Organisation.

The Law on Application of Article 16 of the Law on Judicial Organisation no. 514-XIII provides that "… chairmen and vice chairmen of courts, tribunals and the Court of

Appeal nominated until the enforcement of Law no. 486-XV of 28 September 2001 shall stay in function till the expiration of the 4-year term that starts on the date of nomination. According to this Law, "the Supreme Court of Magistrates shall select candidates for positions of chairmen and vice chairmen of judicial institutions whose term of function at the date of enforcement of Law no. 486-XV of 28 September 2001 exceeded 4 years and shall within one month submit them for nomination to the President of the Republic of Moldova."

Thus, the norms of Law 583-XV run counter to the stipulation of the Constitution and the international treaties ratified by the Republic of Moldova. In fact, according to Law no. 514-XIII, the chairmen and the vice-chairmen of courts, tribunals and the Court of Appeal were nominated by the President of the Republic of Moldova at the proposal of the Supreme Council of Magistrates for an indefinite term. Following Law no. 486-XV, the activity term of persons that acted in above-mentioned position is established as 4 years. This term has been enforced since the adoption of Law no. 486-XV based on the general accepted judicial rule of non-retroactivity of legal norms.

The Constitutional Court acknowledged the modification by the Legislative authority as constitutional. Thus, following the Presidential Decree, a number of chairmen and vice-chairmen of courts were removed from office without any argument in a very short period of time.

The judicial and legal reform is one of the main components of the transition to a democratic society as it covers all aspects of social life. A viable legal system is a requirement within the filed of investment attractions, of fight against corruption, intolerance, discrimination, of efficient protection of human fundamental rights and freedoms. Within this context, an independent court is the main warrantor in observing human rights and freedoms.

The Court was requested to pronounce upon the constitutionality of the Decision of the Parliament of the Republic of Moldova no. 807-XV of 5 February 2002 on Establishment of Date for General Local Elections.

Article 1 of this Decision provided as follows: "The local general elections shall take place on 7 April 2002".

Article 2 provided as follows: "In accordance with Article 12 paragraph (3) d) of the Law on Special Legal Status of Gagauzia (Gagauz-Yeri), the Parliament recommends to Gagauzia People's Meeting to set the date of elections of local public administration authorities as for 7 April 2002".

In accordance with Article 4, paragraph (1) of the Law on Territorial – Administrative Organisation of the Republic of Moldova no. 191-XIV of 12.11.1998, the territory of the Republic of Moldova is administratively formed of counties, cities and villages. Based on paragraphs (2) and (3) of the same Law, certain localities in the Southern part of our republic constitute an autonomous territorial unit with special status established through organic law; while certain localities on the left bank of the Nistru river may be attributed special forms and conditions of autonomy as in accordance with the special status established through organic law.

Paragraph (4) of Article 4 stipulates that the administrative organisation of the territory of the Republic of Moldova if formed of two levels: villages and cities represent the first level and counties, the autonomous territorial unit Gagauzia and the municipality of Chişinău – the second one.

On 27 December 2001 the Parliament adopted Law no. 764-XV on the Territorial and Administrative Organisation of the Republic of Moldova, according to which the territory of the Republic of Moldova is subject to administrative reorganisation into districts, cities and villages. Thus, the administrative organisation of the Republic of Moldova includes villages (counties) and cities (municipalities) on the first level and districts – on the second one.

According to the title and dispositions of the decision requested to be subject to constitutional control, it results that this decision establishes the date of general local elections, while the above mentioned norms provide the necessity to conduct anticipated partial (regional) elections depending on relevant modifications, which are also considered as unconstitutional. Taking into account that villages (counties) and cities (municipalities) remained the same, there was no reason to conduct such elections.

Moreover, this decision was adopted, as in accordance with its preamble, in conformity with Article 122, paragraph (1) of the Election Code, which referred until the modifications of 25 January 2002, to general local elections, while as in accordance with modifications in the legislation, only the authorities of counties subject to reorganisation should have been deemed for re-election. Thus, the organisation of new elections until the expiration of valid mandates of counsellors and mayors legitimately elected in 1999 was illegal.

Actions provided by this decision determined the mitigation of the very essence of elections that constitute a decentralisation criterion based on free exercise of civil rights and freedoms at local level, the latter being one of the fundamental features of a state of law. The decision resulted in the deprivation of people from the right to actively participate within the

political public life, especially within the election and revocation, if needed, of representatives that form the local public administration authorities.

The Constitutional Court decided that the Decision of the Parliament no.807-XV on Establishment of the Date for General Local Elections generates legal effects that run counter to the constitutional regime. By setting the date for general local elections, the Parliament has de iure and de facto interrupted the mandate of local counsellors elected for a term of 4 years. Moreover, neither the Constitution, no the current legal framework, vest the Parliament with the power to interrupt the mandate of locally elected persons. Authorised by the election law to adopt decisions on the establishment of dates for general or anticipated local elections, the Parliament is however, based on Article 54 paragraph (1) of the Constitution, not allowed to suppress or reduce the human fundamental rights and freedoms.

As in accordance with the constitutional principle of eligibility (Article 109 paragraph 91), the local councils and the mayors are, as in conformity with Article 112 paragraph (1) of the Constitution, elected to exercise the local autonomy within villages and cities. Elected local councils and mayors act within the legal context as autonomous administrative authorities and are involved in solving public issues within cities and villages (Article 112 paragraph (2) of the Constitution) for the period of the 4-year mandate that effectively starts on the day of general local elections.

At the same time, the Court decided that the provisions of the normative acts with regard to the establishment of elections date and organisation should be in line with Article 38 of the Constitution, which provides the right of voting and being elected. Considering the implied constitutional dispositions and the legal framework for the system of national elections and local public administration, the Court decided that the Decision of the Parliament no. 807-XV runs counter to Article 2 paragraph (1), Articles 38, 54, 72 paragraph (3) a), 109, 112 and 120 of the Constitution and declared it as unconstitutional.

The Centre requested the Court to verify the constitutionality of modifications to Article 11 and 19 of the Law on Judge Status.

The Law on the Status of Judge (Official Monitor of the Republic of Moldova, 1995, no.59-60/664) was modified following Law no. 373-XV of 19 July 2001. Article 11 was modified following the introduction of paragraphs (3) and (4) with the following wording:

“(3) If the candidature proposed for the position of judge is rejected by the President of the Republic of Moldova or, upon case, by the Parliament, the Supreme Court of Magistrates

may repeatedly propose the same candidature upon submission of new circumstances to the advantage of the candidate.

(4) The rejection, inclusive the repeated one by the President of the Republic of Moldova or, upon case, by the Parliament of the candidature proposed for the position of judge serves as ground for the Supreme Council of Magistrates to propose the remove from office of this person."

Article 19 paragraph (7) has the following wording:

"(7) The judge may be subject to administrative sanctions only by court authorities with the consent of the Supreme Council of Magistrates. The judged detained on grounds of suspected committed administrative contravention shall be put free immediately following identification".

During the examination of modifications to articles of the mentioned law, it was stated that the following stipulations of the Constitution should have been taken into consideration: Article 6 that provides the separation of legislative, executive and legal powers in the Republic of Moldova; Article 8 paragraph (1) that stipulates the commitments of the Republic of Moldova to observe the UN Carta and ratified treaties; Articles 116 paragraphs (2) and (5) according to which judges within court institutions are nominated by the President of the Republic of Moldova upon the proposal of the Supreme Council of Magistrates and the sanctioning of judges is conducted as in accordance with the legislation; Article 123 that provides that the Supreme Council of Magistrates, according to legal organisation rules, ensure the nomination, movements, promotions and disciplinary measures towards judges.

Thus, it was concluded that there are no legal grounds for the President of the Republic of Moldova to reject the proposed candidature for the position of judge, as well as for the possibility to retain the judge if suspected of committing administrative contravention without the consent of the Supreme Council of Magistrates.

The comparison of mentioned modifications with the constitutional provisions denotes the existence of discrepancies between norms of law. The reasons are as follows. The judges within court establishments are, according to the Constitution, independent, impartial and irremovable. The dispositions of the Supreme Law regulates the nomination, movement, promotion and application of sanctions towards judges; all these measures may be conducted only following the proposal by the Supreme Council of Magistrates. This body, in the context of vested constitutional attributions, ensures the protection of judge independence and supervises the observance of judge irremovability, acting also as a disciplinary council.

Moreover, the modification of paragraph (4) is illogical and senseless, as it is not clear from what position the judge may be removed considering that his candidature is proposed for the first time.

The Parliament, acting as supreme representative body and the sole representative authority of the state, should have taken into consideration the constitutional stipulation when elaborating Law no. 373-XV and providing the constitutional prerogative of the President of the Republic of Moldova to nominate, remove from office or promote judges. This public authority should also observe the constitutional warranties of judge independence, impartiality and irrevocability and retention upon suspicion of committed administrative contravention only with the consent of the Supreme Council of Magistrates.

The effective observance of human fundamental rights and freedoms as stipulated in the Constitution and international treaties largely depends on the way the legal authorities exercise their functions and attributions within the filed.

The modification of the Law on the Status of Judge generated the violation of mentioned constitutional provisions and international treaties ratified by the Republic of Moldova, especially of Article 6 of the European Convention of Human Rights, which sets the right of everyone to judgement of action by an independent and impartial court. To put it other way, one of the human fundamental rights is violated: the right of free access to justice.

The High Court decided that such an appeal is not within the competence of parliamentary advocates and practically did not examine it.

Following Article 1 point 4 of Law no. 563-XV of 19.10.2001, the Parliament modified and completed Law no. 110-XIII of 18 may 1994 on Control Over Individual Arms. Thus, it was stated (Article 21 paragraph (2) that "the commercialisation, inclusive on commission, of hunting and sporting fire arms (with sleeking, rifled and combined barrel), of relevant spare parts and cartridge, as well as of component parts for cartridge production shall be conducted by the Society of Fishermen and Hunters of Moldova through the network of own specialised shops based on due license and authorisation issued by the Ministry of Internal Affairs".

Parliamentary advocates appealed to the Constitutional Court by submitting the following arguments.

Before the modification of Article 21 of Law no. 110-XIII and the introduction of paragraph (2), the Article had the following wording: "The state shall have monopoly on the commercialisation of arms and related munitions. Such commercialisation shall be conduced through state specialised shops based on due license and authorisation issued by the Ministry

of Internal Affairs". Thus, the Law has initially vested the state with the monopoly status over all types of armament. It seems that the legislator made this modification following Article 10 (3) of the Law on Entrepreneurship and Enterprises, which stipulates that state enterprises have the exclusive right to "produce and commercialise special military and battle techniques, any types of armament, as well as to relatively repair such items (except hunting and sporting fire arms) and to produce and commercialise munitions and explosive articles".

According to this Law, "the entrepreneur activity represents the activity related to production of goods, execution of works and provision of services, conducted by citizens and citizen association in an independent manner, following own initiative, on own name and account, under their patrimonial responsibility with the view to ensuring a constant income source." According to the Law on Public Association, "the public association represents a voluntary, independent and self-managing establishment, formed through free manifestation of will by citizens associated based on common professional and / or other interests with the view to commonly exercising civil, economic, social and cultural rights; the public association is a non-profit organisation".

Based on mentioned norms, the trade with arms and munitions constitutes an entrepreneur activity and not a public one. Thus, the Parliament violated the principles of legislation and issued a contradictory norm that may not be framed within the definition of economic activity.

Moreover, Article 5, paragraph (1) of Law no. 906-XII of 29.01.91 on Restriction of Monopolist Activity and Promotion of Competition provides: "Power and administrative authorities shall not have the right to adopt acts and (or) undertake measures aimed at establishing discriminatory conditions or, on the contrary, favourable conditions for the activity of certain economic agents, if such acts or actions result or may result in limitation of competition and (or) prejudice of economic agents' interests. The authorities shall also not have the right … to restrict rights of sale (purchase, acquisition, exchange) of goods."

According to Article 3 of the Law on Protection of Competition "the state shall acknowledge fair competition as one of the fundamental principles of economic development. Within this context the state shall promote a policy aimed at ensuring a free entrepreneur activity and protecting fair competition". Article 4 stipulates that "the state shall ensure the protection of rights and interests of the economic agent and of the citizen (consumer) from monopolist activity", which is one of the basic principles of competition protection.

The Constitutional Court mentioned in its Decision no. 30 of 10.11.1997 that: "the economic activity shall be conducted directly by economic agents on the basis of their legal

autonomy, … if these economic agents promote a state interest or if the state acts as shareholder within joint stock companies, they have equal legal status within the context of market relationship". In Decision no. 67 of 7 December 1999, the High Court states: "As in accordance with Article 126 of the Constitution, the state role within market economy is limited to essential problems related to the defence and promotion of public interest in the context of economic activity conducted directly by economic agents on the basis of legal independence of these economic agents. … With the view to protecting and promoting interests of general character, the state apply indirect instruments through the Government that enforce specific mechanisms …" According to this Decision, the state applies legal measures towards certain activities "with the view to strictly observing qualification norms and standards relevant to these types of activity, as well as to ensuring the security of individual, society and state and protecting their interests".

According to parliamentary advocates, the modification of Article 21 of Law no. 110-XIII, which provides the exclusive right of the Civil Society of Hunters and Fishermen to trade fire arms and related munitions, represents a violation by the Government of appealed constitutional provisions, as it jeopardises the security of individuals in the Republic of Moldova and violates the provisions stipulated in Article (3) of the Constitution, according to which the Republic of Moldova is a democratic state of law that establishes and ensures the high values of human dignity, human rights and freedoms, free development of human personality and justice and political pluralism.

The Supreme Court declared that the provisions under appeal were constitutional and stated that according to the legislation "the legislator acknowledged the right of civil associations to conduct economic activities in common" and considered as irrelevant the references to Article 5 paragraph (1) of the Law on Restriction of Monopolist Activity and Development of Competition and Article 3 of the Law on Protection of Competition. Moreover, adopting such a Decision, the High Court has practically debated its own previous decisions on this issue.

The Constitutional Court was requested to pronounce on the constitutionality of Article 23 of Law no. 514-XIII of 06.07.1995 on Judicial Organisation. This Article provides as follows: "(1) The Ministry of Justice shall provide organisational, material and financial ensurance of judges, tribunals and the Court of Appeal by strictly observing the principles of independence of judge and judge responsibility to law; (2) Court institutions shall be materially and financially supported from the state budget by the Ministry of Justice; (3) The

Government shall provide court institutions with premises, transportation means and other endowment through local public administration authorities; (4) Premises and allocated endowment provided by local public administration authorities shall not be subject to withdrawal without the consent of the Ministry of Justice."

The institution of parliamentary advocates considers that these stipulations run counter to the Constitution and international treaties ratified by the Republic of Moldova on separation of state powers and observance of human rights and freedoms. The establishment to the largest possible extent of the functions of political powers, the correct distribution of "specialised" authorities, the maintenance of mutual cooperation and the implementation of measures aimed at excluding possible overlap of powers represent a very important aspect of power separation principle.

The independence of court institutions in exercising assumed attributions is an indispensable principle of justice administration and the highest condition of a state of law. It is also established based on the relationship with other public authorities notwithstanding their position. Justice is an essential element in promoting the force of law and observing human rights and as so, should be attributed also financial independence.

As with regard to financial means of court institutions, the Constitution explicitly provides in Article 121 that such means are subject to approval by the Parliament and inclusion in the state budget. The Constitution does not provide any regulation on management of such financial resources, while the Parliament, as sole legislative authority of the state regulates, following the organic law (Article 72 of the Constitution) the organisation and operation of court institutions. Having as cornerstone the general recognised principle of court independence, the Legislative should ensure the exercise of all warranties stipulated in the Constitution within a relevant legislative framework.

Article 23 of the Law on Judicial Organisation provides the responsibility of the executive authority (the Government and the Ministry of Justice) to ensure the organisational, material and financial support of all court institutions. As such, this Article violates the independence of the judicial authority. The current situation with regard to financial ensurance may not be accepted any longer, as the judicial authorities largely depend on the Executive and its impact. As a result, the human fundamental right of free access to justice is violated.

The Constitutional Court rejected the examination of appeal, arguing that such appeal does not stay within the competence of parliamentary advocates. As in conformity with Article 31 of the Law on Parliamentary Advocates, parliamentary advocates have the right to appeal to the Constitutional Court with the view to requesting control over the

constitutionality of laws and decisions by the Parliament, Decrees by the President of the Republic of Moldova, decisions and dispositions by the Government and verification of compliance of these documents with the generally accepted principles and international legal acts on human rights.

The Constitutional Court was requested to pronounce upon the constitutionality of Law no. 348-XV that ratified the Treaty between the Republic of Moldova and Ukraine with regard to the State Border, as well as the additional Protocol to this Treaty on passing under the property of Ukraine of the Odesa-Reni highway segment in the locality of Palanca of the Republic of Moldova and the land under this segment as well as their exploitation, signed in Kiev on 18 August 1999.

This Law runs counter to Article 1 (1), Articles 3, 8 (2) and 142 (1) of the Constitution.

Article 10 of the Treaty provides: "The Contracting Parties shall sign an additional protocol to this Treaty, which shall constitute integral part of it and shall regulate the procedure of passing under Ukraine's property of the segment of the Odesa-Reni highway in the locality of Palanca, Republic of Moldova as well as the land under this segment and the regime of their exploitation".

According to the additional Protocol the Republic of Moldova shall unconditionally pass under the property of Ukraine the segment of the Odesa-Reni highway in the locality of Palanca, Republic of Moldova and the land under this segment.

As a result, according to these international documents, the Parliament gave to Ukraine a part of Moldova's territory, modifying, at the same time, the border of the Republic of Moldova.

Article 3 of the Constitution of the Republic of Moldova stipulates as follows: "(1) The territory of the Republic of Moldova is inalienable; (2) The borders of the Republic of Moldova are confirmed through organic law, observing unanimously recognised norms and principles of international law". Thus, any alienation of the territory is forbidden and certain conditions with regard to border modification are implicitly established.

Inalienability of territory means the prohibition to alienate territory in any form. The abandonment, loss following prescription, cession, donation, sale of territory is incompatible with the principle established in the Constitution. Or, the territory (either the whole one or a part of it) has a special legal status that puts is beyond the civil circulation and places it under the exclusive power of people and national sovereignty.

Moreover, it should be mentioned that the territory of the Republic of Moldova is not only inalienable, but also indivisible. This principle is provided in Article 1 (1) of the Constitution that stipulates that "the Republic of Moldova is a sovereign and independent, unitary and indivisible state". The territory, which is one of the main elements of the state, is indivisible like the state. The territory indivisibility represents its unity and is very close to inalienability. We may conclude that this Treaty provides principles that run counter to the Constitution and its revision should have preceded the ratification.

However, as a possible revision of the Constitution relates in this case to the unitary status of the state (territory), it should have been taken only following a referendum approval with the majority vote of citizens included in election lists, as Article 142 (1) of the Constitution stipulates. This Constitutional norm was further developed in Article 11 (3) of the Law on International Treaties of the Republic of Moldova that stipulates as follows: "no ratification, acceptance, approval of, or adherence to an international treaty shall be admitted if such action limits the sovereign or unitary character of the state, as well as affects the permanent neutrality of the state, expresses in particular in cession or exchange of territory, transfer of national competence to the favour of a supranational structure or in adherence to institutions of collective security, except if such issue is subject to examination within state referendum." The mentioned Law has not been modified.

The holder of the national sovereignty in the Republic of Moldova is and should be the people: that is why, no one, inclusive the Parliament may use the power of political and legal decision-taking as an instrument of state undermining. The sovereignty is inalienable, as representative authorities are transmitted only a form of its exercising, without any right to pass it to a different subject of the international public law. The sovereignty is indivisible, as it cannot be segmented and distributed neither to groups, nor to individuals. Law no. 348-XV violated one of the people's fundamental right – the right of sovereignty.

The Constitutional Court rejected the examination of this appeal as it stays beyond the competence of parliamentary advocates.

There are also other appeals submitted by parliamentary advocates to the Constitutional Court for examination.

Proposals on Legislation Consolidation

Notices on Draft Laws

The Government requested a notice on the draft Law on the Modification and Completion of Article no.1349 of 17.10.1997 on Parliamentary Advocates proposed by a group of deputies. According to this draft, the wording "parliamentary advocate" had to be replaced with the wording "people's advocate". Further more, it was proposed to modify Articles 4 and 9 and paragraph (2) of Article 26, according to which "parliamentary (people's) advocates shall be removed from office on grounds of mistrust with the majority of voting cast of present deputies and not the quorum of two-thirds of elected deputies (as provided in paragraph (1) of Article 26). The Human Rights Centre qualified the initiative of Law modification as a tentative to undermine the independence of the parliamentary advocates' establishment. This fact runs counter to Article 6 of the Covenant of Human Rights and Freedoms Protection, to Paris Principles, to the final Act of the International Conference on Human Rights and Democratisation within Europe, Asia and Caucasus, which provide the ensurance of the independence of national institutions of human right protection and promotion.

The Government has taken into consideration the Centre's arguments.

The Parliament was submitted by the Government the draft Law proposed by a group of deputies on Modification and Completion of the Constitution of the Republic of Moldova with a new part V# with the following wording:

"Part V#. People's Advocate

Article 140#. Statute and Attributions

The People's Advocate is an independent state institution that contributes to the observance of human constitutional rights and freedoms.

The People's Advocate is elected with the majority of the voting cast of elected deputies.

(3) The People's Advocate submits to the Parliament the annual Report on the activity conducted during the reported year.

(4) The organisation, competence and performance of activities by the institution of the People's Advocate shall be established by organic law".

The international theory and practice defines the ombudsman as an independent person nominated either by the Parliament or the Executive body with the view to defending

constitutional rights and freedoms of citizens in their relationship with public authorities and especially with the executives ones.

The Centre supported the initiative to complete the Constitution with the definition of "People's Advocate", but did not agree with the requirement as for the institution to submit to the Parliament annual reports on conducted activity. According to Article 34 of the Law in effect on Parliamentary Advocates, the Human Right Centre submits to the Parliament a report on the situation of human rights observance in the Republic of Moldova during the previous year. The substitution of this attribution with a statement on conducted activity would practically change the essence, importance and quality of the Centre as an institution monitoring the situation within the context of human rights in the whole country. Moreover, it would be a violation of the principle of independence, as such regulation would run counter to paragraph (1), which stipulates that the People's Advocate in a state independent institution.

The principle of independence is guaranteed also by the Law on Parliamentary Advocates: Article 11 of thereof provides as follows: "within the exercise of vested mandate, parliamentary advocates are independent before deputies of the Parliament, the President of the Republic of Moldova, central and local public authorities and managers of all levels".

The Parliament did not operate this relevant completion of the Constitution.

The Centre has submitted to the President of the Republic of Moldova and the Chairman of the Parliament and of the Government adequate proposals to undertake urgent measures aimed at ensuring the publication in the Official Monitor of a number of pacts, treaties and international agreements ratified by the Republic of Moldova.

The international conventions, pacts and agreements currently regulate different political, social and economic relationship between the member states of a large international community. Within this context and considering the official status and significant importance of these agreements, the State is obliged to bring them to the knowledge of all the society members. Thus, Article 23 (2) of the Constitution explicitly provides as follows: "The State ensures the right of everybody to know his/her rights and duties. For that purpose the State shall publish all its laws and regulations and make them accessible to everybody". Article 34 regulates one of the fundamental human rights: "(1) Having access to any information of public interest is everybody's right, that may not be curtailed. (2) According to their established level of competence, public authorities shall ensure that citizens are correctly informed both on public affairs and matters of personal interest".

Law no. 173-XIII of 06.97.1994 provides that official acts are published in the Official Monitor within 7 days from the date they are received by the Press National Agency "Moldpres". The text of international treaties ratified by the Republic of Moldova entered into force, the integral texts of attachments and related documents, reserves or declarations of the Republic of Moldova performed at the moment of signing, ratification, adherence, acceptance or approval, as well as related acts on suspension, denunciation or conclusion of international treaties are subject to publishing in the Official Monitor by the Ministry of External Affairs within 15 days from their entering into force.

As for now, many international treaties ratified by the Republic of Moldova have not been published in the Official Monitor.

The Treaty between Moldova and Ukraine on State Border, ratified by the Parliament on 12 July 2001 has not been published, too.

The Report of the Human Rights Centre on Observance of Human Rights in the Republic of Moldova for 2001 had the same situation.

The Association of Trade Unions of Employees within Public Institutions of the city of Balti requested the Human Rights Centre's support in the modification of the Governmental Decision no. 58 of 11.02.1993 on Approval of the Instruction with regard to Establishment, Calculation and Payment of Indemnities within Medical Leave in the Republic of Moldova.

According to p.21 of this Instruction, the medical leave indemnity is calculated based on the real income of the employee or office worker, considering the real income in an amount not exceeding a double (monthly) function salary or a double tariff wage.

Applicants certified that this indemnity violates their material rights, as it accounts for only 20% to 25% of the salary fund and is not sufficient to cover medical ensurance.

The parliamentary advocate supported this proposal, as based on Articles 36 and 47 of the Constitution of the Republic of Moldova the right of health security is guaranteed and the State is obliged to take any action aimed at ensuring that every person has a decent standard of living, benefiting from medical care and the right to be ensured in case of disease due to causes beyond his/her control. As in accordance with Article 29 of the Law on Parliamentary Advocates, the Government was submitted for examination an adequate address with the proposal to modify Decision no. 58 with the view to fully ensure the exercise of the constitutional right of social assistance and protection of public servants.

The Ministry of Labour and Social Protection informed the Centre about the elaboration of a draft law related to the raised issue.

As in accordance with Article 40 paragraph (2) of the Law on Parliamentary Advocates, "branches of the Human Rights Centre may be established in other municipalities and cities". Such subdivisions have been already operating in the counties of Cahul, Bălți and Gagauzia (Comrat). However, the Law does not empower the Centre's branches with decision-taking attributions within the context of constitutional rights and freedoms observance. Resulting from all above-mentioned, the Parliament was proposed to complete Article 40 with a new paragraph (3) with a following wording:

"(3). The General Director for Human Rights shall define the attributions of branches' staff and shall conduct control over their activity".

This proposal has not been examined yet.

According to Article 50 paragraphs (1) and (3) of the Constitution, mothers and children have the right of receiving special protection and care and the State shall grant the required allowances for children and the aid needed for the care of sick or disabled children. In conformity with Article 51 (1), disabled persons shall enjoy a special form of protection and the State shall ensure that normal conditions exist for medical treatment, rehabilitation, and education, training and social integration.

With the view to implementing these constitutional stipulations, the Labour Code provides in Article 62 (3) that "one parent (tutor, curator) that brings up an invalid child shall be provided, following personal will, an additional free day per month with the remuneration accounting for one-day salary on the account of social ensurance funds".

The Law on the State Budget of Social Ensurance for 2002 did not provided financial means to solve this problem. Based on Article 29 b) of the Law of Parliamentary Advocates, the Parliament and the Government were proposed to re-examine the Law on State Budget of Social Ensurance no. 740 of 20.12.01 as to bring it in line with the constitutional norms and the right on labour, ensuring the rights of sick and handicapped children for special social protection.

Within a relevant letter of response, the Ministry of Labour and Social Protection mentioned that the implementation of claimed requirements is not possible, as the Labour Code became outdated.

The Centre expected such outcome, as the Ministry does not have the attributions of the Government and the Parliament.

Nevertheless, the Labour Code is still in force and its provisions and stipulations should have unconditional effect. By defying the current legal framework, constitutional provisions with regard to social protection and assistance for handicapped people shall remain a mere nice wording.

According to Article 3 (2) of Law no. 933-XIV of 14.04.2000 on Special Social Protection for Certain Categories of Population, victims of political repression of 1917 to 1990 are provided to benefit from nominative compensations, but only if assigned the 3rd invalid category. The same Article provides in paragraph (1) that persons that have worked in hinterland during the 2WW should also benefit from nominative compensations.

Following the examination of the appeal submitted by the citizen P.C. from the city of Chişinău, the Human Rights Centre considers that the above-mentioned Law should also protect rehabilitated repressed persons that have activated in the hinterland during the 2WW and that have also endure suffering.

Giving such reasons, the Parliament and the Government were proposed to re-examine the Law on Special Social Protection of Certain Categories of Population and to include related persons in the category of beneficiaries of nominative compensations.

The parliamentary Commission for social protection, health and family supported this proposal; however, the Government did not accept it on grounds of no financial coverage.

On 14.11.2001 the Parliament adopted the Law on Insolvency. Article 226 of this Law provides that insolvency procedures cover also insolvency proceedings instituted before the Law entered into force.

The Constitutional Court stipulated in its Decision no. 32 of 29.10.1998 on the interpretation of Article 76 of the Constitution of the Republic of Moldova "Law Enforcement" that "The Law shall not include facts committed before its enforcement, meaning that the Law shall not have retroactive effect. The Law covers only present and future cases and has no judicial effects as for the past". It is also mentioned that the non-retroactivity principle of the Law, which has incontestable authority, may include relevant exceptions of penal and administrative law. In such cases the Law shall have retroactive effect when removing or easing a sentence, i.e. the filed of the Law shall include also facts committed before Law enforcement. Based on these grounds and according to the Decision of the Constitutional Court "the Law published in the Official Monitor of the Republic of

Moldova shall enter into force on the date stipulated within the text, providing that such date shall not precede the date of Law publication".

Within this context, Article 226 runs counter to the Constitutions and ultimately determines the violation of the right of freedom of entrepreneurial activity, as stipulated in Article 126 of the Constitution.

As many petitioners raised this issue within their appeals, the Centre proposed to the Government and the Parliament to bring Article 226 of the Law on Insolvency in line with constitutional provisions.

The Centre of Legislative Issues has, following Government order, examined the proposal by the parliamentary advocate; according to the Centre's consideration, such modification of the relevant Article is not deemed, as the Article provides the exception "if explicitly stipulated that the Law covers certain facts in the past".

Further on, the Ministry of Finance, based on the Decision of the Constitutional Court no. 32 of 29.10.98 supported the Centre's proposal, establishing that the Law may not have retroactive power, that is why the actions of the Law on Insolvency should cover only proceedings initiated following Law enforcement.

As for now, the Legislative and the Executive bodies have to decide upon the opinion to be considered.

The citizen S.G. was complaining in her appeal to the Human Rights Centre that she could not obtain the fulfilment of a certain court decision, as the debtor lives in Germany. In the relevant response by the Ministry of Justice, it was traced out that the problem cannot be settled, as there is no such respective agreement concluded between the Republic of Moldova and Germany.

The Centre investigated this and other similar appeals and proposed to the Government to negotiate, sign and ratify such agreement.

The Ministry of Justice and the Ministry of Foreign Affairs replied by duly informing the Centre about the process of examination of a relevant draft agreement. At the same time, the Centre identified other possible options to solve the problem faced by the petitioner. Considering such circumstances and the availability of adequate materials, these Ministries were determined not to have duly reacted to a number of previous appeals by the citizen S.G.

Based on Article 73 of the Constitution, the parliamentary advocate requested the support of the President of the Republic of Moldova in the process of examination of the draft

Law on Modification and Completion of the Law on Parliamentary Advocates; of the draft Law on Completion of Law on Salaries no. 30.03.1993; as well as of the draft Decision on Modification and Completion of Attachments nos. 1, 2 and 3 of the Decision of the Parliament no. 1484-XIII of 05.08.1998 on Approval of the Regulation on Human Rights Centre, its Structure, Attributions and Financing with subsequent modifications. These completions and modifications are aimed at consolidating the organisation and performance of activities within the relevant subdivisions, inclusive branches of the Human Rights Centre and at stopping staff fluctuation.

As for now these proposals have not been examined yet.

The Law on Additional Social Protection of War Invalids, of 2WW Participants and Their Families provides in Article 2 paragraph (1) 5) that the quantum of state monthly allocations shall be established based on the category of beneficiaries as follows: one of parents unable to work, participants (among militaries) at military actions during peace-time and during the war for the defence of territorial integration and independence of the Republic of Moldova fallen for their country. Following the examination of a number of petitions, the Centre stated that such relevant allocations were not provided for both parents in divorce, whose children have been killed in actions during peace-time and during the war for the defence of territorial integration and independence of the Republic of Moldova.

Following the Government indication to examine the proposal submitted by parliamentary advocates the Ministry of Labour and Social Protection supported the idea to re-examine this Law and agreed upon the additional financing towards above-mentioned individuals.

There are other two proposals by parliamentary advocates submitted to the Government within the context of the same Law.

Firstly, Article 2 of the Law provides additional allocations to participants at the liquidation of Cernobyl consequences. However, such allocations refer only to those individuals delegated through military commissariats; individuals delegated by enterprises and organisations are not included within the field of this provision. Yet, it is well known that the risk was the same for everybody. Thus, this legal act violated Article 16 of the Constitution providing the equality of rights of all citizens before the law and public authorities.

Such discrimination has been revealed within many letters from petitioners. Following the investigation of these letters the Centre had the possibility to repair the situation by

submitting to the Parliament a draft Law on Completion of Article 2 (1) of Law no. 121-XV of 03.05.2001 as follows: the right of additional social protection shall be granted to "invalids among persons participating at the liquidation of Cernobyl consequences delegated by ministries, departments, organisations and enterprises".

The Centre has not received yet a due response.

The second issue relates to additional social protection of those parents whose children have been killed during military service within the Soviet Army.

The Constitution provides in Article 48 (4) as follows: "Children have a duty to look after their parents and help them in need." This commitment is also stipulated in the Family Code (Article 80 (1): "Grown up children have a duty to support and look after their parents unable to work in need of material assistance".

If such grown up children are not alive and there are no persons to look after parents, the State shall be obliged to assume this responsibility.

Following the request by many petitioners and the examination of relevant legislation, the Centre proposed to the Government and the Parliament to elaborate and to adopt a draft Law on Completion of the Law of the Republic of Moldova no. 121-XV of 03.05.2001 on Additional Social Protection of War Invalids, of 2WW Participants and their Families. The Centre proposed also to include in Article 2 (5) a new wording: "…, as well as militaries killed during military services within Soviet army" after the existent wording "killed in actions".

The Centre did not receive any answer to the proposal, either.

Following the generalisation of a large amount of petitions, the Human Rights Centre established that the refuse of medical commissions to examine elderly persons with the view to determining the invalidity category arouses prejudice to the right of social protection of persons benefiting from age pension. It is well known that the majority of serious health problems worsens especially at advanced, or pension age.

Both Article 19 (3) and Article 32 (2) of the Law on Pensions and Social Ensurance provide that invalidity pensions shall be provided until the standard age of pensioning. So, there are no legal regulations to ban medical commissions to examine pensioners and to establish the invalidity category, while these commissions categorically refuse to do so making references to the above-mentioned Law. In fact, doctors are committed to perform their due functions and not to interpret laws. The citizen should not face any problems if wishing to establish his/her invalidity category. This personal right is stipulated in Article 36

(1) (health protection) and Article 4 (1) (decent living) of the Constitution and many international treaties and conventions ratified by the Republic of Moldova. Moreover, both national legislation and legal instruments of universal character forbid discriminatory principles within the context of human rights and freedoms.

With the view to reinstating this category of people in their legitimate rights, the institution of parliamentary advocates proposed to the Parliament and the Government to work out and adopt a draft Law by excluding paragraph (3) of Article 19 of the Law on Pensions and State Social Ensurance, which imposes prejudice to the right of citizens reaching the standard pension age to be established an invalidity category; and the wording "but not more as until reaching the standard pension age" from paragraph (2) of Article 32.

The proposal has not been examined.

On 27 June 1997 the Parliament approved Law no. 1226-XIII on Preventive Detention. Article 18 (2) of this Law provides as follows: "Complaints, requests and letters by accused shall be subject to examination by the administration of the preventive detention institution. Complaints, requests and letters addressed to the Prosecutor's Office shall not be subject to control and shall be sent within 24 hours from their deposition".

Law no. 18-XIV of 14.05.1998 completed Article 73 of the Code of Penal Law related Sanctions by adding a new paragraph (2) with the following wording: "(2) Sent and received correspondence shall be subject to censorship, except correspondence within penitentiary institutions. The appeal to a parliamentary advocate by a detainee within a penitentiary institution shall not be subject to control by the administration of the penitentiary institution and shall be sent to the addressee within 24 hours".

According to these stipulations, all the correspondence is subject to censorship except the one between the accused and the prosecutor and the accused and the parliamentary advocate. Such situation runs counters to Articles 4 (2), 30 and 124 (1) and (3) of the Constitution and Articles 8 and 34 of the European Convention of Protection of Human Rights and Fundamental Freedoms. Requirements to ban censorship result also from the jurisprudence of the European Court for Human Rights.

The parliamentary advocate established that the regime of similar exceptions should cover all cases of correspondence between accused and prosecutor, advocates and parliamentary advocates, the European Court for Human Rights or the Secretary General of the European Council. Otherwise, considering the non-proportional restriction within relevant

circumstances of the right for secrecy of correspondence, such situation would be an explicit violation of Article 54 of the Constitution.

The Centre proposed to the Parliament and the Government to bring these Articles in line with the constitutional stipulations and international acts ratified by the Republic of Moldova.

Submitted proposals were examined and approved and the relevant laws were modified.

According to p. 2 paragraph 2 of the Government Decision no. 398 of 06.06.2001 on the Department of International Technologies and based on the Regulation on Internal Affairs Service and Establishments approved following the Decision of the Government of the Republic of Moldova no. 334 of 08.07.1991, the Ministry of Internal Affairs shall delegate to the IT Department the certified staff of the Population Recording and Documentation Department and its territorial subdivisions that shall until 01.01.2005 reach a work experience allowing to establish pensions as in accordance with the Law on Pension Ensurance of Militaries and Persons within Command Body and Internal Affairs Troops, maintain such staff within the Ministry's budget.

According to paragraph 3 of the same article, the Ministry shall transfer the certified staff of the Population Recording and Documentation Department and the relevant territorial subdivisions not included in paragraph 2 of the same article to other services within the Ministry or shall dismiss these employees from establishments of internal affairs upon their own request and appoint them in the IT Department.

The procedure to select the staff as only in accordance with the pensioning age limit criteria runs counter to Article 43 of the Constitution (the right of work and labour protection) and other international treaties, while the wording "shall dismiss these employees from establishments of internal affairs upon their own request" not only violates the relevant constitutional norm, but also is inadequate, as own request may not be imposed by a certain normative act.

The institution of parliamentary advocates examined the petition of the citizen T.B. on this issue and proposed to the Government to re-examine its decision and to adjust it to constitutional and international norms with the view to reinstating many citizens in their legitimate rights.

Although the Government was addressed for two times, the problem has not been examined up to now.

The Centre examined the draft Law on Modification and Completion of Article 71 of the Code of Penal Law Sanctions Execution and stated as follows: the proposed completion, according to which only close relatives (parents, spouses, children, brothers and sisters, grandparents and grandchildren (descendants) shall have the right for long-term meetings, restricts the human right of communication and runs counter to Article 54 of the Constitution. Based on these grounds, the draft has been rejected.

Parliamentary advocates gave positive notifications to draft Laws on Modification and Completion of the Constitution of the Republic of Moldova and on Constitutional Court as with regard to legitimate rights of citizens to address to the Constitutional Court.

The institution of parliamentary advocates gave also positive notification on the draft Law on Modification and Completion of a number of legislative acts (Code of Penal Procedure, Code on Administrative Offences, Law on Police and Law on State Border of the Republic of Moldova). Following proposed modifications and proposals, the relevant legal acts shall be largely brought in line with constitutional provisions and international norms with regard to individual's liberty and security, access to justice, fighting torture and other punishments of inhuman or degrading character, other civil rights and freedoms.

The Centre rejected the draft Law on Verification of Public Servants and Candidates for such Positions based on the following grounds.

According to the draft, the public servant and the candidate for a public position are subject to verification with regard to authenticity of data included in the questionnaire, to compliance by verified person with current legislation and staff requirements and to the identification of all risk factors. Based on submitted results, the manager of the public authority shall decided upon the compatibility of the related persons' interests with the need or availability of proposed function.

According to Article 21 of the Constitution "Any person accused to have committed an offence shall be presumed innocent until found guilty on legal grounds, brought forward in a public trial in the course of which all guaranteed for necessary defence will have been taken." However, the draft Law leaves upon the discretion of the manager of the public authority to decide the guilt of the civil servant or the candidate for a public function.

According to the constitutional norm (Article 54) the exercise of certain rights and freedoms may be restricted only under law and only required in cases like: the defence of national security, of public order, health or morals, of citizens right and freedoms; the carrying out of investigations in criminal case; preventing the consequences of a natural calamity or of technological disasters. Such restriction should be proportional to the determining situation and should not affect the existence of rights or freedoms.

The provisions of the draft to be examined run counter also to international legal acts ratified by the Republic of Moldova.

Moreover, considering the largely abstract and subjective character of this draft Law, the stipulations thereof may generate possible premises for quarrels.

On 6 June 2002 Law no. 1099-XV on the Modification and Completion of Law no. 544-XIII of 20.07.1995 on the Lawyer's Statute and Law no. 950-XIII of 09.07.1996 on Disciplinary College and Lawyer's Disciplinary Responsibilities were enforced.

According to Article 4 of this Law, Law no. 544-XIII of 20.07.1995 on Lawyer's Statute was included a new Article 10', which provides that as for now, the Law subject to modification explicitly regulates the work experience within the filed of law allowing a person to run for the position of judge. Yet, the law work experience accumulated within the Human Right Centre remained beyond the field of the Law.

Such requirement results from the specific character of the Centre's activity. According to the Decision of the Parliament no. 1484 of 05.02.1998 on Approval of the Regulation on Human Rights Centre, Its Structure, Attributions and Financing, approved following the Law on Parliamentary Advocates, only lawyers may be hired for positions within petition services, audience and legislation analysis.

The Parliament and the Government were proposed to complete Article 10' (1) of Law no. 544-XIII with the view to implementing the right of the staff of the Human Rights Centre to run for the position of judge.

Anexa, Приложение, Annex 1

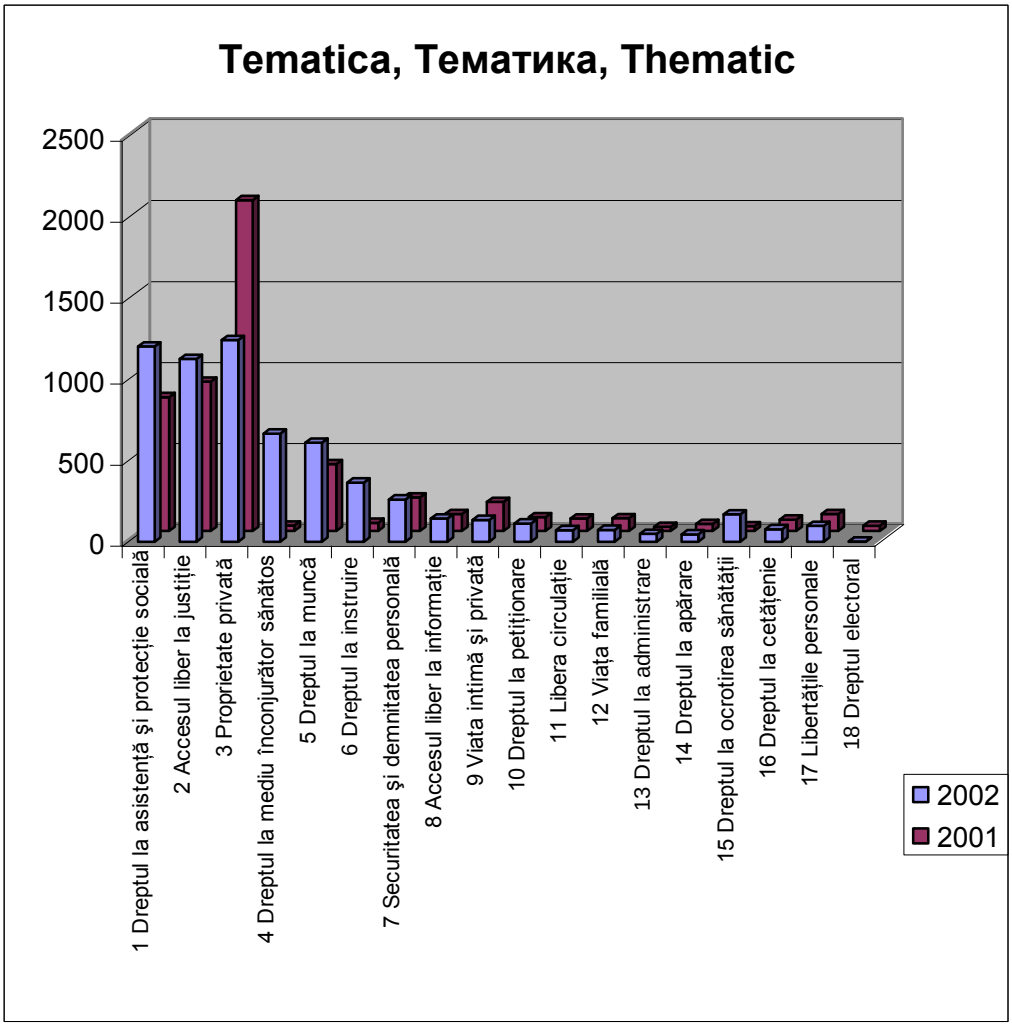
Caracteristica adresărilor conform drepturilor încălcate
Характеристика обращений согласно нарушенных прав
Classification of appeals by violated rights

Tematică Тематика Thematic	**Petiții Жалобы Complaints**	**%**	**Semnatari Подписавших Signatories**	**%**	**Audiența Приём Audience**	**%**	**Total Всего Total**	**%**
Accesul liber la justiție Свободный доступ к правосудию Free access to justice	327	26,94	548	16,36	580	18,67	1128	17,21
Proprietate privată Частная собственность Private property	233	19,19	453	13,53	792	25,49	1245	18,99
Dreptul la asistență și protecție socială Право на социальное обеспечение и защиту Right to social assistance and protection	219	18,04	719	21,47	486	15,64	1205	18,38
Dreptul la apărare Прово на защиту Right to defense	17	1,40	19	0,57	27	0,87	46	0,70
Libera circulație Свободное передвижение Free movement	16	1,32	18	0,54	53	1,71	71	1,08
Viata intimă şi privată Интимная и частная жизнь Intimate and private life	21	1,73	25	0,75	109	3,51	134	2,04
Securitatea şi demnitatea personală Личная неприкосновенность и достоинство Personal security and dignity	158	13,01	170	5,08	91	2,93	261	3,98
Viața familială Семейная жизнь Family life	15	1,24	15	0,45	58	1,87	73	1,11
Dreptul la muncă Право на труд Right to labor	59	4,86	248	7,41	363	11,68	611	9,32
Dreptul la petiționare Прово на подачу петиций Right to complain	10	0,82	11	0,33	102	3,28	113	1,72

Accesul liber la informație Свободный доступ к информации Free access to information	46	3,79	47	1,40	96	3,09	143	2,18
Libertățile personale Личные свободы Personal freedoms	55	4,53	61	1,82	37	1,19	98	1,49
Dreptul la ocrotirea sănătății Право на охрану здоровья Right to health protection	11	0,91	16	0,48	153	4,92	169	2,58
Dreptul la instruire Право на обучение Right to education	11	0,91	321	9,58	44	1,42	365	5,57
Dreptul la cetățenie Право на гражданство Right to citizenship	7	0,58	7	0,21	70	2,25	77	1,17
Dreptul la administrare Право на управление Right to administration	6	0,49	14	0,42	35	1,13	49	0,75
Dreptul electoral Право избирать и быть избранным Election right	0	0,00	0	0,00	1	0,03	1	0,02
Dreptul la mediu înconjurător sănătos Право на здоровую окружающую среду Right to healthy environment	3	0,25	657	19,62	10	0,32	667	10,17
Total **Всего** **Total**	**1214**	100,00	**3349**	100,00	**3107**	100,00	**6556**	100,00

Anexa, Приложение, Annex 2:

Tematica comparată a adresărilor
Сравнительная тематика обращений
Comparative analyses of appeals



1 – Право на обеспечение и защиту, Right to assistance and protection
2 – Свободный доступ к правосудию, Free access to justice
3 – Частная собственность, Private property
4 – Право на окружающую среду, Right to environment
5 – Право на труд, Right to labor
6 – Право на обучение, Right to education
7 – Личная неприкосновенность и достоинство, Personal security and dignity
8 – Свободный доступ к информации, Free access to information
9 – Интимная и частная жизнь, Intimate and private life
10 – Прово на подачу петиций, Right to complain
11 – Свободное передвижение, Free movement
12 – Семейная жизнь, Family life
13 – Право на управление, Right to administration
14 – Прово на защиту, Right to defense
15 – Право на охрану здоровья, Right to health protection
16 – Право на гражданство, Right to citizenship
17 – Личные свободы, Personal freedoms
18 – Право избирать и быть избранным, Election right

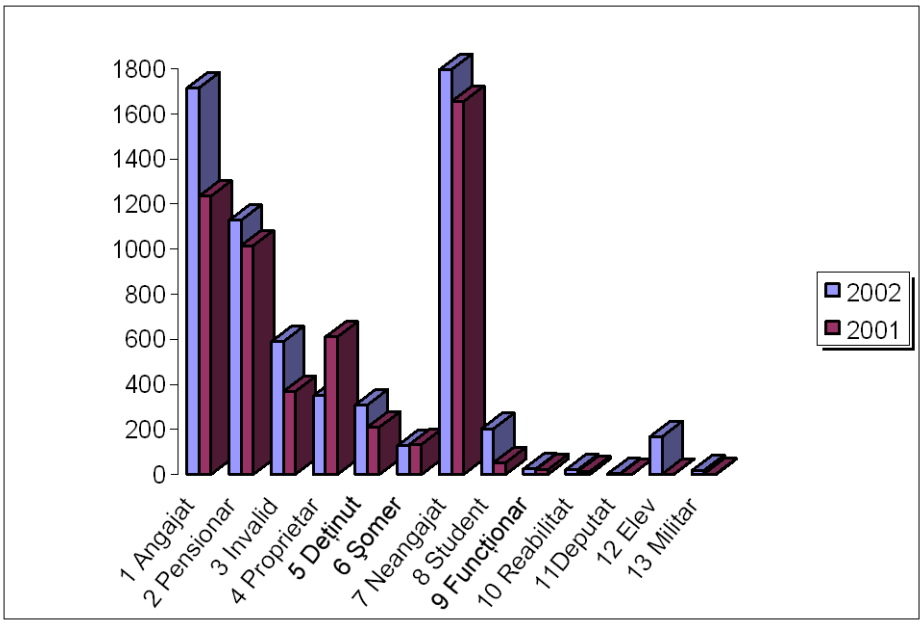
Anexa, Приложение, Annex 3:

Categoriile de semnatari
Категории подписавших
Categories of signatories

Categorii Категории Categories	**Petiţii Жалобы Complaints**	**%**	**Semnatari Подписавших Signatories**	**%**	**Audienţa Приём Audience**	**%**	**Total Всего Total**	**%**
Angajat Работающий Employed	172	14,05	678	20,24	1037	33,38	1715	26,16
Pensionar Пенсионер Pensioners	281	22,96	386	11,53	742	23,88	1128	17,21
Invalid Инвалид Invalids	83	6,78	321	9,58	268	8,63	589	8,98
Proprietar Собственник Owners	38	3,10	140	4,18	210	6,76	350	5,34
Deținut Заключённый Detainees	298	24,35	291	8,69	18	0,58	309	4,71
Şomer Неработающий Disengaged	22	1,80	22	0,66	106	3,41	128	1,95
Neangajat Безработный Unemployed	306	25,00	1178	35,17	618	19,89	1796	27,39
Student Студент Students	5	0,41	151	4,51	53	1,71	204	3,11
Funcționar Служащий Clerks	2	0,16	2	0,06	23	0,74	25	0,38
Reabilitat Реабилитированный Rehabilitated	7	0,57	7	0,21	15	0,48	22	0,34
Deputat Депутат Deputies	2	0,16	2	0,06	2	0,06	4	0,06
Elev Ученик Pupils	3	0,25	166	4,96	2	0,06	168	2,56
Militar Военный Militaries	5	0,41	5	0,15	13	0,42	18	0,27
Total Всего Total	**1224**	100,00	**3349**	100,00	**3107**	100,00	**6556**	100,00

Anexa, Приложение, Annex 4:

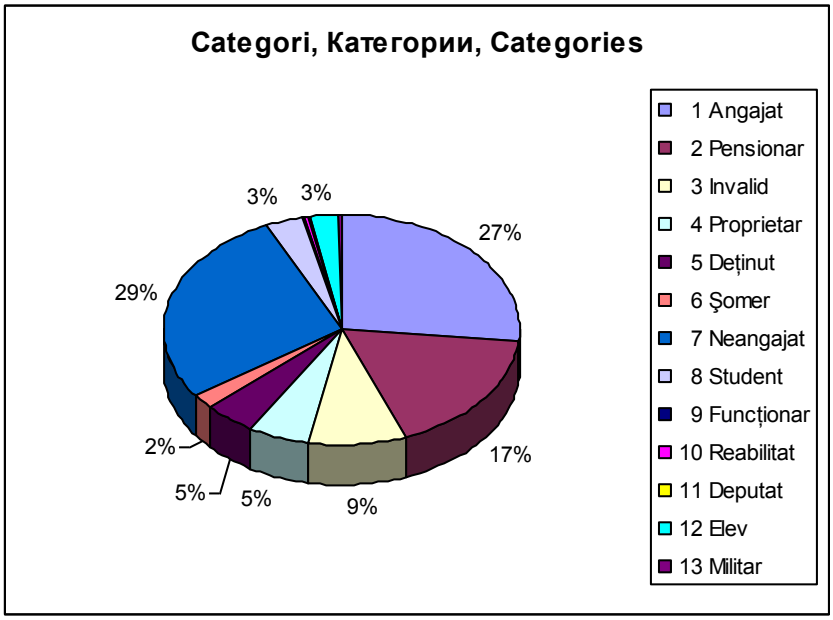
Tematica comparativă conform semnatarilor
Сравнительная тематика подписавших
Comparative thematic of signatories



1 – Работающий, Employed
2 – Пенсионер, Pensioners
3 – Инвалид, Invalids
4 – Собственник, Owners
5 – Заключённый, Detainees
6 – Неработающий, Disengaged
7 – Безработный, Unemployed
8 – Студент, Students
9 – Служащий, Clerks
10 – Реабилитированный, Rehabilitated
11 – Депутат, Deputies
12 – Ученик, Pupils
13 – Военный, Militaries

Anexa, Приложение, Annex 5:

Semnatari în procente
Подписавшие в прцентах
Signatories in percents



1 – Работающий, Employed
2 – Пенсионер, Pensioners
3 – Инвалид, Invalids
4 – Собственник, Owners
5 – Заключённый, Detainees
6 – Неработающий, Disengaged
7 – Безработный, Unemployed
8 – Студент, Students
9 – Служащий, Clerks
10 – Реабилитированный, Rehabilitated
11 – Депутат, Deputies
12 – Ученик, Pupils
13 – Военный, Militaries

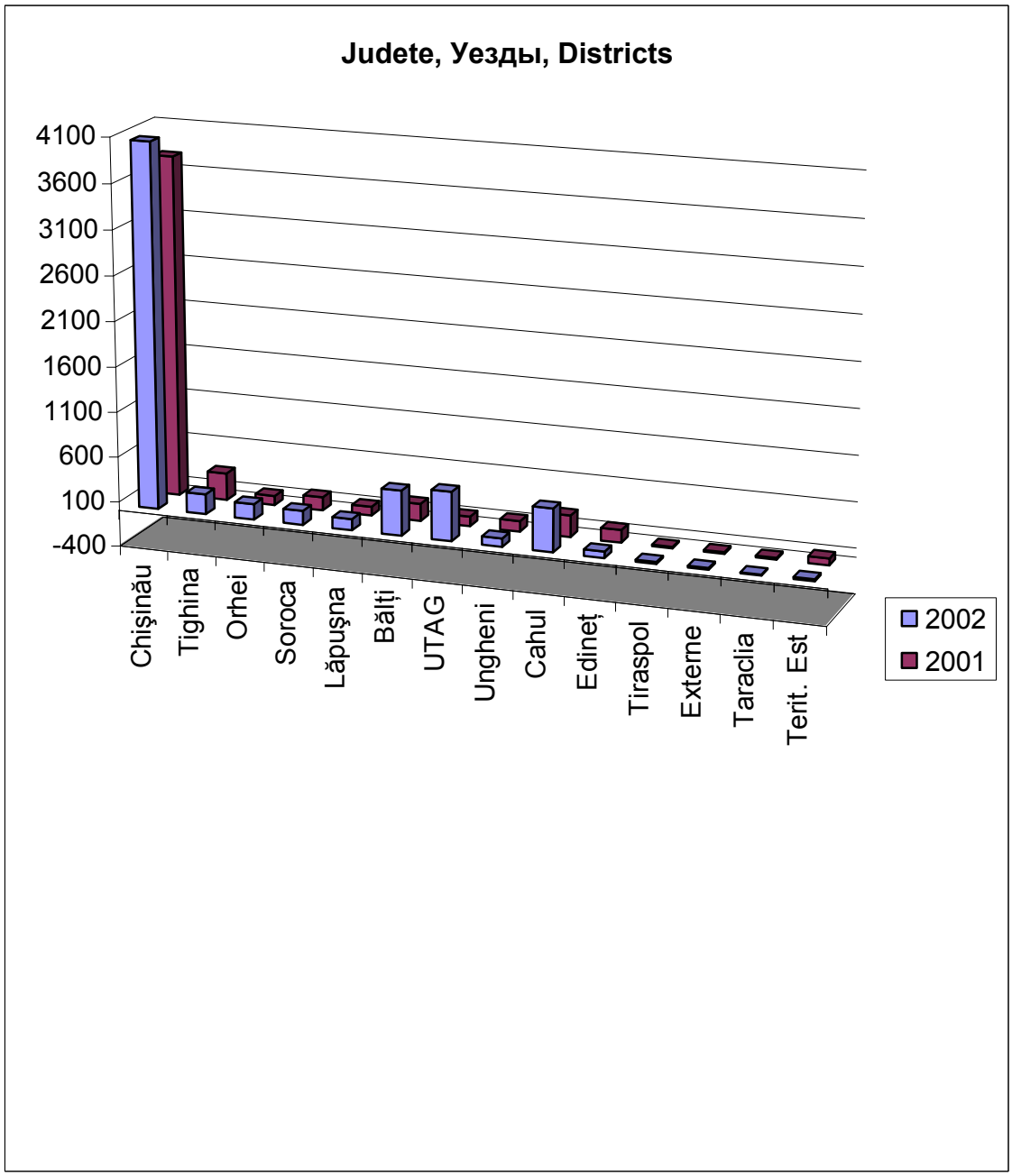
Anexa, Приложение, Annex 6:

Clasificarea adresărilor parvenite din județe
Классификация обращений поступившие из уездов
Classification of complaints from districts

Judeţe Уезды Districts	**Petiţii Обращения Complaints**	**%**	**Semnatari Подписавших Signatories**	**%**	**Audienţa Приём Audience**	**%**	**Total Всего Total**	**%**
Tiraspol	8	0,66	9	0,27	11	0,35	20	0,31
Chişinău	733	60,38	2571	76,77	1467	47,22	4038	61,59
Lăpuşna	24	1,98	31	0,93	93	2,99	124	1,89
Bălţi	83	6,84	108	3,22	388	12,49	496	7,57
Externe	11	0,91	11	0,33	7	0,23	18	0,27
Orhei	50	4,12	90	2,69	81	2,61	171	2,61
Tighina	42	3,46	120	3,58	101	3,25	221	3,37
Edineţ	40	3,29	40	1,19	31	1,00	71	1,08
Ungheni	19	1,57	22	0,66	69	2,22	91	1,39
UTAG	41	3,38	103	3,08	439	14,13	542	8,27
Cahul	81	6,67	104	3,11	374	12,04	478	7,29
Soroca	74	6,10	131	3,91	24	0,77	155	2,36
Taraclia	4	0,33	4	0,12	5	0,16	9	0,14
Terit. Est	4	0,33	5	0,15	17	0,55	22	0,34
Total Всего Total	**1214**	100,00	**3349**	100,00	**3107**	100,00	**6556**	100,00

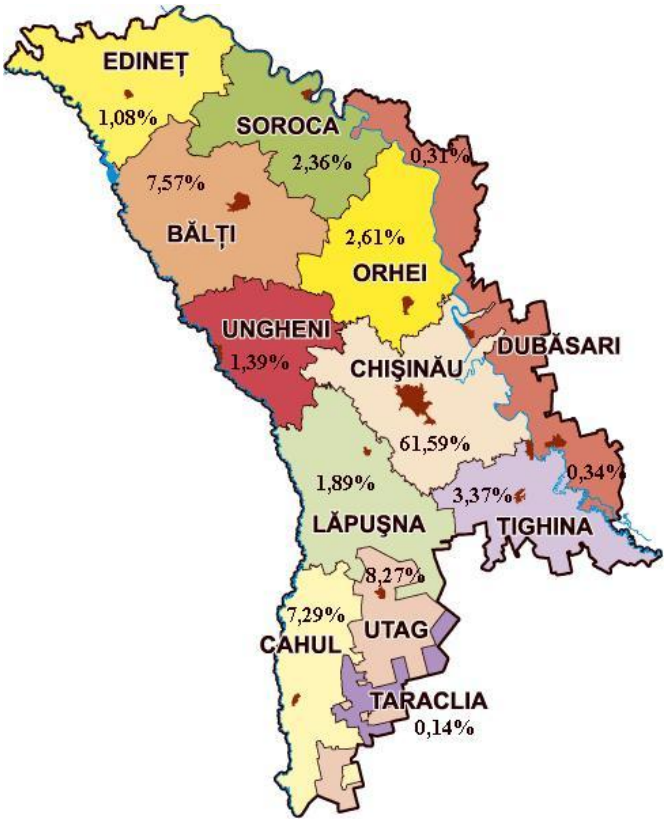
Anexa, Приложение, Annex 7:

Clasificarea comparată a adresărilor din județe
Сравнительная классификация обращений из уездов
Comparative classification of complaints from districts



Anexa, Приложение, Annex 8:

Geografia adresărilor
География обращений
Geography of complaints



De peste hotare, за границей, from abroad – 0,27%
TOTAL, ВСЕГО, TOTAL – 100%