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Honouring of obligations and commitments by Moldova

Report

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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Summary

Since the adoption of the last monitoring report in 2005, Moldova has advanced significantly on the path of democratic reforms. To date, Moldova has signed and ratified 63 Council of Europe conventions. In particular, it was among the first member states to sign and ratify the Council of Europe convention on action against trafficking in human beings.

During the past two years the Parliament adopted an impressive number of laws dealing with the country's commitments to the Council of Europe. The Moldovan authorities should now take all necessary steps to make the new legal framework fully operational. Further improvements should also be made to the legislation on the judiciary, the general prosecutor's office, political parties and local self-government.

The recent local elections were generally well administered but some aspects of the electoral process still fall short of European standards for democratic elections and substantial improvements should be made to the election legislation and practice in the preparation of the forthcoming parliamentary election to be organised in 2009.

The negotiations over the settlement of the Transnistrian conflict within the "5+2" format have so far been stalled. No efforts should be spared to resume the search for a solution. The settlement of the Transnistrian conflict must be based on the principle of full respect for Moldova's territorial integrity and sovereignty. Any proposed settlement option should be carefully examined and discussed in-country and with external partners, making full use of the expertise of the European Commission for Democracy through Law (Venice Commission).

Against this background, the Assembly invites the Moldovan authorities to take a number of concrete measures in order to move closer to the fulfilment of all commitments and obligations and open the door for the closing of the monitoring procedure in the foreseeable future. It also addresses a number of recommendations to the Committee of Ministers aiming at intensifying support for democratic reforms in Moldova through various assistance programmes as well as taking a more active role in the settlement of the Transnistrian conflict, in line with the wishes already expressed by the Assembly in its Recommendation 1721 (2005).

A. Draft resolution

1. Moldova has been a member of the Council of Europe since 1995 and is still subject to a monitoring procedure. The country has advanced significantly on the path of democratic reforms during the period that followed the preparation of the last report by the Monitoring Committee and adopted a number of important measures to strengthen its democratic institutions and honour its commitments to the Council of Europe.
2. To date, Moldova has signed and ratified 63 Council of Europe conventions. The Parliamentary Assembly notes with satisfaction the fact that Moldova was one of the first member-states to sign and ratify the Convention of the Council of Europe on action against trafficking in human beings and encourages the authorities to implement its provisions already now.
3. The Assembly appreciates the efforts of the Moldovan authorities to pursue decisive, comprehensive and hopefully irreversible reforms. It welcomes the action taken to improve the functioning of democratic institutions; to increase the independence and efficiency of the judiciary; to ensure freedom and pluralism of mass media; to strengthen local democracy; to improve economic performance and to fight against corruption and trafficking in human beings and organs.
4. The Assembly notes the political stability which was established in Moldova after the 2005 parliamentary elections. Two years during which the majority and the opposition have undertaken key reform projects relating in particular to European integration and enhancement of democratic reforms have confirmed the ability of the main political forces to respond to internal and external challenges.
5. During this period of relative political stability, the Moldovan Parliament, in accordance with the recommendations laid down in Assembly Resolution 1465 (2005), passed a great number of laws, according to an ambitious legislative timetable. The key laws adopted cover important areas of functioning of democratic institutions that fall within the competence of the Council of Europe.
6. The Assembly welcomes the fresh boost the Moldovan authorities gave to economic growth. The last Mission of the International Monetary Fund (March 2007) and the representatives of many countries and international organisations took stock of the positive achievements in terms of economic development and social reforms. The "Paris Club" restructured the Moldovan debt and the foreign partners decided on 12 December 2006 to provide Moldova with a consolidated aid of about 1 billion 200 million USD. The key macroeconomic indicators are on the raising trend: in relation to 2000, the gross domestic product (GDP) has increased by 46.4% with an annual growth rate ranging from 4.0% to 7.8%, the GDP per capita has increased by factor 1.6, and foreign exchange reserves of the Moldovan National Bank have tripled. Given this promising dynamic, the Assembly hopes that the Moldovan authorities will make full use of the economic growth to modernise the country.
7. The implementation of the Action Plan signed between the European Union and Moldova is progressing and has already led to concrete results: an EU Special Representative for Moldova was appointed; an office of the European Commission's Delegation in Moldova was established; the European Union and the United States were included as observers in the negotiations on the Transnistrian conflict; an EU Border Assistance Mission to Moldova and Ukraine (EUBAM) was established in June 2005; Moldova joined the Central European Free Trade Agreement (CEFTA) in 2006.
8. The Assembly takes note with satisfaction of the impressive results of the Parliament's work, including the adoption of a package of laws dealing with the country's commitments to the Council of Europe, such as: the revision of the parliamentary Rules of Procedure in compliance with recommendations of the Council of Europe, the strengthening of independence of judges and the autonomy of the judiciary, the improvement of electoral legislation, the further reform of the security services, the reform of the broadcasting sector and the strengthening of local self-government.
9. The Assembly believes that the creation of a solid and coherent legislative framework is an important step forward on the road of democratic reforms. However, implementation of adopted laws is equally important. The Assembly therefore encourages the Moldovan authorities to take the necessary steps to make the new legal framework operational by adopting all normative acts required for its implementation and by developing the capacity of institutions and staff to apply the new legislation.
10. Moreover, the Assembly notes that some of the laws adopted can be further improved by taking into account the Council of Europe standards and the recommendations of its experts. This applies in particular to the legislation on the judiciary, the general prosecutor's office, political parties and local self-government.

11. The Assembly closely followed the local elections held on 3 and 17 June 2007. It notes that the election was generally considered to be well administered and that the voters were given a real choice. It is concerned, however, by the fact that some aspects of the electoral process still fall short of European standards for democratic elections. In particular, the International Observation Mission identified intimidation and pressure on candidates, lack of pluralism in media coverage of the electoral campaign and inability of the media to provide diverse information. The Assembly also notes an inappropriate application of some election procedures, the undermining of the secrecy of vote, and a complicated procedure of consideration of complaints, which resulted in a delay in publishing the results of the vote. These problems are recurrent in the Moldovan electoral practice and cannot be tolerated in a country of the Council of Europe aspiring to build a pluralist democratic society based on the rule of law.

12. On the other hand, the Assembly notes that these elections have contributed to the increase of political diversity at local level. Coalitions will be formed in many 1st and 2nd level local authorities. The Assembly calls upon the various political forces to work together in a spirit of constructive partnership. Collaboration on joint projects and open debate around new alternatives should be preferred to confrontation and obstructionism.

13. The Assembly deplores the fact that the negotiations on the settlement of the Transnistrian conflict held within the "5+2" format have so far been stalled. It requests the mediators (Russian Federation, Ukraine and OSCE), the parties concerned (Moldova and the separatist region of Transnistria), and the EU and the US as observers to spare no efforts to resume the search for a solution, despite the obstruction by the Tiraspol separatist leadership. The Assembly reiterates the call it already expressed in Recommendation 1721 (2005), namely to recognise and ensure participation of the Council of Europe in the ongoing consultations on a possible settlement of the conflict, as the necessary guarantee that they take account of the fundamental principles defended by the Organisation.

14. The Assembly welcomes the establishment since 2005 of the EU Border Assistance Mission to Moldova and Ukraine (EUBAM). This measure should contribute to the improvement of the fight against corruption and trafficking, the restoring of the rule of law and public order on the border between the two countries and should bring Transnistrian businesses back into the Moldovan legal and economic order.

15. The Assembly reiterates its conviction that the settlement of the Transnistrian conflict must be based on the inviolable principle of full respect for Moldova's territorial integrity and sovereignty. Any proposed settlement option should be carefully examined and discussed with all national and international stakeholders and in particular the majority and opposition politicians of Moldova as well as international mediators and observers. Full use should be made of the available comparative expertise on constitutional law developed in particular by the European Commission for Democracy through Law (Venice Commission).

16. In the light of the above considerations, the Assembly invites the Moldovan authorities, with regard to the functioning of democratic institutions :

16.1. to complete the legislative timetable based on Assembly Resolution 1465 (2005), ensuring that all the legal acts thereof are now passed and that all the recommendations of Council of Europe experts are fully taken into consideration, and in particular :

16.1.1. to adopt the law on Political Parties, taking full account of recommendations by Council of Europe and OSCE experts;

16.1.2. to adopt the law on the Concept of Education, taking into account the recommendations of Council of Europe experts;

16.2. to further strengthen local self-government and, in particular, :

16.2.1. to work with Council of Europe experts to bring the legislation governing local government finance into line with the standards of the European Charter of Local Self-Government (ETS No. 122) by, in particular, increasing local authorities' own revenues, introducing a direct and transparent system of payment of transfers and building an objective, stable, predictable and fair equalisation system;

16.2.2. to work with the local authority associations and the Council of Europe's Centre of Expertise for Local Government Reform to develop knowledge and skills of local elected representatives and staff to implement new legislation by launching innovative capacity-building programmes;

16.2.3. to work with the Council of Europe to harmonise the legislation of the Autonomous Territorial Unit of Gagauzia with the Moldovan Constitution and the national legislation;

16.3. to study the implications of the implementation of new legislation adopted in accordance with the timetable and, where appropriate, launch strategies and/or action plans aiming at ensuring the effective implementation of new legislation, including the adoption of all necessary by-laws and regulations, harmonisation of the existing legislation with newly adopted acts, as well as all other accompanying measures aiming at building the capacity of officials to work with new laws;

16.4. to carefully study and take into account the conclusions of the international observers of the local elections of June 2007 with a view to eliminating all shortcomings with respect to the European standards for democratic elections in order to conduct totally free, fair, and democratic parliamentary elections in 2009.

17. The Assembly also asks the Moldovan authorities, with regard to respect for the principle of the rule of law:

17.1. to further reform the judiciary in order to guarantee its independence and increase the effectiveness and professionalism of the courts, in particular:

17.1.1. to further strengthen the independence of the judges by modifying the system of appointment of judges and increasing the powers of the Superior Council of Magistrates;

17.1.2. to significantly increase the number of judges with a view to ensure that court proceedings respect the reasonable time requirement laid down in Article 6 of the European Convention of Human Rights;

17.1.3. to increase the effectiveness and professionalism of judges by reinforcing their initial and in-service training through the National Institute of Justice;

17.1.4. to implement the Strategy on consolidation of the judicial system and the Action Plan for 2007-2008 in full co-operation with the Council of Europe;

17.1.5. to improve the working environment of the judges by providing courtrooms and court premises and by their technical and material endowment (recording equipment, computers and software, computerised access to databases);

17.2. to further reform the General Prosecutor's Office by revising its extensive powers in line with the standards enshrined in Recommendation (2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and Assembly Recommendation 1604 (2003) on the role of public prosecutor's office in a democratic society governed by the rule of law;

17.3. to monitor the implementation of the Anti-Corruption Strategy and Action Plan and, in particular, introduce effective mechanisms and procedures for fighting corruption in public institutions;

17.4. to continue to implement effective measures aiming at preventing money laundering and countering criminal financing, in line with international standards.

18. The Assembly urges the Moldovan authorities, with regard to the protection of human rights:

18.1. to strengthen all the necessary guarantees to ensure the respect of freedom of expression as defined in Article 10 of the European Convention on Human Rights and in line with the case-law of the European Court of Human Rights, and in particular to ensure proper implementation of the new broadcasting legislation to promote freedom and pluralism of the mass media;

18.2. to continue the reform of the security services; considerably improve conditions of detention to bring them fully in line with European standards and find appropriate solutions to the problem of overcrowding of detention centres;

18.3. to ensure full respect of the fundamental rights of all minorities;

18.4. to develop a multicultural and multi-perspective approach to education, including in the field of languages of national minorities, in particular by adopting the law on the Concept of Education.

19. The Assembly also invites the Moldovan authorities to pursue their actions in favour of strong and sustainable economic growth and ensure that economic achievements are to the benefit of the entire population.

20. The Assembly appreciates the efforts made by the Moldovan authorities in order to assess the degree of implementation of the recommendations made by Council of Europe experts. However, all new draft legislation in areas relating to the commitments to the Council of Europe must be submitted to expertise and discussed with Council of Europe experts prior to adoption.

21. The Assembly encourages the Moldovan authorities to complete the ongoing reforms in order to fully achieve the fulfilment of their commitments to the Council of Europe. This condition is required to close the monitoring procedure and launch a post-monitoring dialogue in the foreseeable future.

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2007) on the honouring of obligations and commitments by Moldova in which it appreciates the serious efforts made by the Republic of Moldova in order to achieve a decisive, comprehensive and irreversible progress in view of implementing democratic standards and practices.
2. The Assembly recommends that the Committee of Ministers, with regard to assistance activities:
 - 2.1. calls on the Moldovan authorities now to complete the ongoing reforms in order to fully achieve the fulfilment of their commitments to the Council of Europe, which is required to close the monitoring procedure and launch a post-monitoring dialogue in the foreseeable future;
 - 2.2. continues and reinforces existing assistance programmes to support Moldova in the implementation of commitments to the Council of Europe, by allocating appropriate financial resources;
 - 2.3. considers launching new targeted assistance programmes in priority reform areas to support the development of concrete plans of actions to increase the independence of the judiciary and efficiency of justice, reform the system of the general prosecutor's office, strengthen the fight against corruption and money laundering, promote freedom and pluralism of mass media, and reinforce local self-government.
3. The Assembly expects the Committee of Ministers, member states of the Council of Europe and the Council of Europe Development Bank to actively co-operate within the framework of the EU's European Neighbourhood Policy, and to support further economic and social reform in Moldova for the benefit of the entire population.
4. The Assembly refers to its various recommendations and resolutions and to the Council of Europe Convention on action against trafficking in human beings. It notes with satisfaction the fact that Moldova was one of the first member-states to sign and ratify this Convention and invites the member states which have not yet signed and ratified it to do so at their earliest possible convenience for it to enter into force. In the meantime, the Assembly asks the Committee of Ministers to urge the member states, in particular those directly concerned, to support Moldova in its action to combat trafficking in human beings and organs.
5. The Assembly further requests the Committee of Ministers to continue to ensure in its contacts at the highest political level with the relevant authorities of the European Union the best possible co-ordination and complementarity between the Council of Europe requirements and those of the EU-Moldova Action Plan, in order to support Moldova's aspirations towards EU integration. The Assembly recalls that Moldova is an integral part of Europe, as is demonstrated by the fact that it is a full member of the Central European Free Trade Agreement (CEFTA) and of the Stability Pact for South-Eastern Europe.
6. The Assembly asks the Committee of Ministers to urge member states to support Moldova in its efforts to find a definitive settlement to the Transnistrian conflict. This frozen conflict politically and economically destabilises and weakens the Republic of Moldova.
7. Referring to its Recommendation 1721 (2005), the Assembly reiterates its request to the Committee of Ministers :
 - 7.1. to become fully involved in the monitoring of the implementation of the commitments undertaken in particular at the 1999 OSCE Summit in Istanbul, as well as in the political assessment of the proposals for settling the Transnistrian conflict put forward by the various parties concerned;
 - 7.2. to ensure respect for the fundamental principles notably territorial integrity and sovereignty, and for standards of the Council of Europe and take them into account in the settlement proposals.

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1. INTRODUCTION

1. Moldova became a member of the Council of Europe on 13 July 1995. Upon accession, it accepted the obligations incumbent on all member states under Article 3 of the Statute: compliance with the principles of pluralist democracy and the rule of law and with the principle of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. At the same time, it entered into a number of specific commitments which it agreed to honour within specified deadlines, and which are listed in Opinion No. 188 (1995) on Moldova's application for membership of the Council of Europe.

2. Pursuant to Order No. 508 (1995), the Committee on Legal Affairs and Human Rights opened the monitoring procedure on 25 January 1996.

3. Since 1997 the Monitoring Committee has been conducting the monitoring procedure in accordance with Resolution 1115 (1997). An initial report on the functioning of democratic institutions in Moldova (Doc. 9418), drafted by the rapporteurs, Mrs Josette Durrieu (France, SOC) and Mr Lauri Vahtre (Estonia, EPP/CD), was presented to the Assembly on 24 April 2002 and led to the adoption of Resolution 1280 (2002) and Recommendation 1554 (2002). The co-rapporteurs presented a second report on the functioning of democratic institutions in Moldova (Doc. 9571) on 26 September 2002, which led to the adoption of Resolution 1303 (2002). Subsequently the co-rapporteurs presented an information report on the implementation of Resolution 1303 (2002) (Doc. 9772) to the Standing Committee at its meeting in Chisinau on 27 May 2003.

4. On 5 November 2003, Mr André Kvakkestad (Norway, EDG) took over from Mr Vahtre as rapporteur. On 4 October 2005, the Assembly adopted Resolution 1465 (2005) and Recommendation 1721 (2005) on the functioning of democratic institutions in Moldova at the end of a debate on the report presented by Mrs Durrieu and Mr Kvakkestad (Doc. 10671).

5. On 25 January 2006, Mr Vareikis (Lithuania, EPP/CD) replaced Mr Kvakkestad as rapporteur. Mrs Durrieu and Mr Vareikis made a fact-finding visit to Moldova, including Transnistria and Odessa in Ukraine from 12 to 16 March 2006 and presented an information note to the Monitoring Committee on 26 June 2006 (AS/Mon(2006)12). The co-rapporteurs carried out another fact-finding visit to Moldova from 12 to 15 November 2006.

6. The co-rapporteurs are grateful to the Parliamentary Delegation of Moldova to the Parliamentary Assembly and in particular its Chairperson, Ms Maria Postoico, as well as to the Secretary of the Delegation, Ms Rodica Iovu, for the excellent organisation of their visits.

7. The co-rapporteurs are also grateful to Mr Vladimir Ristovski, the Special Representative of the Secretary General of the Council of Europe in Moldova, who arranged meetings with the representatives of foreign embassies, NGOs, international organisations and representatives of the Supreme Soviet of the self-proclaimed "Moldovan Republic of Transnistria".

2. GENERAL DEVELOPMENTS SINCE ASSEMBLY RESOLUTION 1465 (2005)

8. In their previous monitoring report and in Resolution 1465 (2005) on the functioning of democratic institutions in Moldova, the co-rapporteurs stressed their deep conviction that the situation of relative stability created after the March 2005 parliamentary elections gave Moldova the opportunity to carry out the democratic reforms that had been needed for the last 10 years. A very encouraging sign, in our view, was the adoption by Parliament on 11 November 2005 of a timetable of legislative reforms taking up almost all the recommendations set out in the Assembly Resolution 1465 (2005) which we consider proof of the authorities' determination to bring their country closer to the standards of the Council of Europe".

9. Co-operation between the ruling Communist Party (CPRM) and part of the right wing opposition, namely the Popular Christian Democratic Party (PPCD), in the framework of a "presidential majority" has maintained a level of political stability and has produced important results. The "10 points"¹ which the PPCD

¹ 1. The reform of the broadcasting legislation and constitution of a new Broadcasting Co-ordination Council; 2. A new law on TeleRadio Moldova; 3. The adoption of a new law on the State Prosecutor; 4. Measures to guarantee the independence of the judiciary; 5. The live broadcasting of Parliamentary sessions; 6. The closure of the government newspapers *Nezavisimaya Moldova* and *Moldova Suverana*; 7. The new law on the Auditor General's Department, guaranteeing transparency in public spending; 8. The amendment of the electoral code, particularly guaranteeing the independence of the Central Electoral Commission; 9. Local democracy reform; 10. Amendments to the laws on security services and human rights.

presented as a condition for its support to the President, concerned some of the most important reforms that the country needed to undertake – have now been partly fulfilled. This unexpected partnership is, in principle, preferable to the political confrontation, which has affected so much the recent history of the country. We will carefully observe developments in the next parliamentary elections.

10. At the meeting of the Monitoring Committee in Skopje (15 May 2007) some of the members of the Moldovan delegation to the PACE asked us to replace the words "presidential majority" with the expression "pro-European majority". However, during our meetings in 2006 all stakeholders urged us to use the term "presidential majority" to qualify the agreement reached between the CPRM and part of the right wing opposition for the election of the President. The shift from "presidential" to "pro-European majority" may mean that the right wing opposition leaders are no longer willing to associate themselves with the figure of the President and wish to develop their own political platform along the lines of European integration. This is already happening at local level, as we will mention later, since the opposition parties in many local authorities have agreed to establish mixed "anti-communist" coalitions in the local election of 3 June 2007. We will closely observe the work of these new coalitions in the preparation of the forthcoming 2009 parliamentary election. For the time being, we will be using the original wording in this report, i.e. "presidential majority" which corresponds to a political agreement between the Communist party and parts of the parliamentary opposition and reflects the situation at the moment of the preparation of this report.

11. The parliamentary opposition exists but has been weakened by the court proceedings initiated against the leader of one of the opposition parties, "Moldova Noastra". As far as the extra-parliamentary opposition is concerned, the leader of the Social Democratic Party (PSDM), well known to the public, is also under criminal investigation. We should also point out an important and recent political reality: the election of Michail Formuzal, independent candidate, as Bashkan (governor) of the Autonomous Territorial Unit of Gagauzia. The candidate of the Communist party lost the election, despite strong support from Chisinau.

12. The political diversity in the present Moldovan parliament has been hampered by the high representation threshold in the Electoral Code for political parties (6%) and alliances (9% for 2-member electoral blocks and 12% for 3 and more member-coalitions). Following persistent criticism by international observers, the threshold has now been brought down to 4% for political parties and 8% for electoral blocks. Thus it is to be expected that the composition of the next parliament will be more diversified and that the political landscape may change.

13. This is even more so as Moldova's European integration has been seriously delayed by the internal and external difficulties that this country has had to face since its independence. But according to the political leaders of all the parties we met, the direction is now clear and irreversible – European integration, implying also full acceptance and application of European "norms" and standards. Moldova, however, is far from its wished EU membership, although it is making important steps in the direction of European Integration. To give but two examples, in December 2006 Moldova joined the Stability Pact and the Central European Free Trade Agreement (CEFTA), which is considered to be an important step on the road to membership in the EU. However, unlike the countries of the western Balkans, which are in relatively advanced stages of pre-accession agreements, Moldova is part of the EU "neighbourhood". An EU-RM Action Plan within the framework of the European Neighbourhood Policy is now in its final year. After its completion, the Moldovan authorities hope to be able to sign an "Association agreement with the EU". According to the EU representatives with whom we had detailed conversations, considerable efforts will be required from the Moldovan authorities to convince their partners that the Action Plan can be achieved. In particular, we note that at the recent meeting of the EU-Moldova Co-operation Council held in Luxemburg (19 June 2007) to take stock of the progress made in the implementation of the Action Plan, the EU representatives stressed that more efforts are required from the Moldovan side to implement key democratic reforms in the field of respect for human rights, freedom of the media, respect for the rule of law, including independence of the judiciary².

14. At the present moment, although the reforms are in full swing their desired degree and scale are not sufficient. The work has not been finished yet.

15. Concerning the adoption of legislation in the field of competence of the Council of Europe, most of the commitments of the legislative timetable have been fulfilled, with a few exceptions (in particular the law on political parties or the law on concept of education). The laws were adopted unanimously or with a large majority. This shows that political stability and consensus about important reform measures relating to commitments vis-à-vis the Council of Europe and European Integration in general have brought their fruits. We would like to encourage the Moldovan authorities to continue moving forward along this line. The delay in

² Press release of the Council of the European Union 11009/07 (Presse 143) of 19 June 2007.

the implementation of the timetable, in itself, is not subject to criticism – the deadlines set out in the legislative timetable were rather overambitious in the first place. Moreover, it is preferable to give priority to quality and substance of draft legislation over expediency. It is however regrettable that some important pieces of draft legislation, as will be demonstrated further below, have not been submitted to the CoE for expertise or have been adopted hastily. As far as the recommendations of the CoE experts are concerned, it is not clear whether they have indeed been taken into account. We would have hoped that before the authorities declare one task of the legislative timetable as fulfilled, they would wish to have the CoE expert "stamp of approval" on the text of the legislation.

16. Creating an appropriate legislative framework is certainly important, but not enough. The political will accompanying its implementation will be the determining factor in breaking with old habits and mentalities. In our opinion, a lot still needs to be done. The democratic political rhetoric should be in a permanent equation with the reality of the situation of the country. This reality also includes widespread corruption, poverty, inefficient public administration, malfunctioning judiciary and, because of this context, a poor investment climate.

17. Moldova continues to operate in a complex international environment. Throughout 2006, its economy has been severely hit by the Russian ban on the import and sale of wines and other viticulture products from Moldova³. 80% of Moldovan wine is exported to the Russian market, bringing in revenue of more than \$313 million. Although the official reason given by the Russian health and social authorities was that the products did not correspond to the Russian sanitary norms, it is widely believed that the measure was an economic sanction against the introduction by Moldova and Ukraine of new customs rules on the Transnistrian segment of their border. The price of gas supplied by the Russian Gazprom has also doubled for the second consecutive year, while prices for the region of Transnistria controlled by the separatist regime have remained unchanged.

18. The situation with respect to export of Moldovan wine to Russia is in the process of being resolved. As a result of several recent bilateral meetings between President Voronin and President Putin an agreement on resuming exports appears to have been reached on 22 June 2007. As a first step, authorisations to export Moldovan wine to Russia were granted to 5 companies⁴; the Rospotrebnadzor, Russian authority responsible for checking the quality of winery products circulating on the Russian market, announced that more companies would be given authorisation to export in future, on the basis of checks, which are currently being carried out. The Moldovan authorities are however opposed to this "selective" approach and claim that all companies should be allowed to export wine to Russia and that any selection should be made by the importers and the customers themselves. Whatever the reasons of both parties are, the fact is that the Moldovan wine is still not imported to Russia and this long-lasting disagreement is causing harm to the Moldovan economy and to the relations between Moldova and Russia, in general. We hope that a reasonable solution will be found soon to allow all Moldovan companies to compete freely on the Russian market.

19. Although the ban on the export of Moldovan wine to Russia has had a severe impact on the Moldovan economy, it has allowed the Moldovan authorities and wine producers to put in place modern and efficient quality control mechanisms. The production and certification mechanisms are now being harmonised with norms and standards accepted in Europe, which will improve the competitiveness of Moldovan producers on the European market.

20. Generally speaking, the economic context appears to be improving. The main macroeconomic indicators are on a rising trend. Gross domestic product (GDP) has increased by 46.4% in relation to 2000, with an annual growth rate ranging from 4.0% to 7.8%. GDP per capita based on the principle of purchasing power parity has increased from \$ 2,100 in 2000 to about \$ 3,400 in 2006 (1.6 times). The foreign exchange reserves of the Moldovan National Bank have increased from \$ 204 million in 2000 to \$ 775.3 million in 2006. Fixed capital investments amounted to MDL 9580.4 million (around 793 million USD) in 2006 as against MDL 1759 million (around 145 million USD) in 2000.

21. Moldova and Ukraine together have given remarkable evidence of their desire to get closer to European standards by introducing the aforementioned customs regime and by allowing and cooperating the European Union Border Assistance Mission (EUBAM) to Moldova and Ukraine. The relations between the two countries however, have been strained to a certain extent after the formation of the new government in

³ This ban affects also Georgia, another country which has declared its desire to follow its own path towards increased European and Euro-Atlantic integration.

⁴ We note however that the 5 companies (3 of them based in Moldova and 2 in Transnistria) which were given export clearance are in fact partially owned by Russian businessmen.

Kyiv. The closure by Ukraine of the only remaining railway border crossing point between the two countries which can handle import and export operations, after the blockage of the Transnistrian railway link, has caused further economic damage to Moldova.

22. Relations with Romania continue, but have not always been easy, they reflect both the weight of their respective history and future in Europe.

23. Little progress has been achieved in the search for a peaceful settlement of the Transnistrian conflict. For a while, at the end of 2004 and throughout 2005, there seemed to be the beginning of a breakthrough: the Ukrainian president presented a new settlement plan; subsequently the Moldovan parliament took some legislative initiatives in the same direction; the settlement negotiation format was enlarged to include the EU and the US as observers in addition to the conflicting parties and the three mediators (Russia, Ukraine and the OSCE). However, none of these settlement initiatives has produced any concrete results and the negotiations have been suspended since the introduction of the new customs regime between Moldova and Ukraine in March 2006. The main reason for the deadlock in the negotiations is the Transnistrian side's refusal to participate, invoking a so-called "economic blockade" as a result of the introduction of the new joint customs regulations on the Transnistrian part of the Moldovan-Ukrainian border. The opening of the EU Border Assistance Mission (EUBAM) and the introduction of new customs regulations are a step forward as regards the transparency of the flow of goods to and from Transnistria. The EUBAM has managed to play an important role as a neutral observer of the border situation, which has allowed it to collect unbiased and reliable information on this problem.

24. Meanwhile, the provocations of the separatist Transnistrian regime have become increasingly daring, the latest one being the so-called "independence referendum" held on 17 September 2006, condemned and not recognised by any international organisation. According to its results, an overwhelming majority of the population of the region voted in favour of joining the Russian Federation⁵. Russia has given no convincing sign of condemnation of this referendum; on the contrary, during his communication to the Parliamentary Assembly of the Council of Europe in October 2006 the Russian Foreign Minister, in his capacity of Chairman-in-office of the Committee of Ministers, made statements, which can hardly be interpreted in any other way than recognition of the referendum. Also, the ties between the leaders of the separatist regions of Transnistria, Abkhazia and South Ossetia are getting increasingly closer, and each time this happens at meetings in Moscow.

25. On the other hand, a major shift in the Moldovan-Russian relations seems to have occurred during the Minsk Summit of Heads of States of the CIS countries on 28 November 2006, where apparently the Presidents of Moldova and Russia Vladimir Voronin and Vladimir Putin reached an agreement to resume the export of Moldovan wine and agricultural products to the Russian market. Both Presidents also agreed that the bilateral relations concerning the price of natural gas for the needs of Moldova would be based on the principles of market economy. On the same event an Agreement for renewal of the railway communication by 15 December 2006 was reached between Moldova, Ukraine and Russia. Finally, there were signs that the negotiations on the settlement of the transnistrian conflict might be resumed.

26. While until recently Moldova was threatening to block Russia's accession to the World Trade Organisation (WTO) in retaliation for the economic sanctions, on 27 December 2006 the two countries signed a Protocol to support the membership of Russia in the WTO.

27. Very little has transpired in the press on what had been the "magic ingredient" of such a radical change. One possible indication could be the fact that after the meeting between the two presidents Moldovan officials have started talking about the possibility of re-examining the "Kozak memorandum": the Russian settlement plan which in 2003 had been rejected at the last moment by the Moldovan authorities and President Voronin; this refusal has embittered the relations between the two countries ever since (see for more details paragraphs 232-235).

28. We understand well that in the absence of a sustainable settlement of the transnistrian conflict it is difficult for the country to develop at the desired pace. However, as we have mentioned on several occasions, the Transnistrian conflict should not systematically serve as Moldova's excuse for not carrying out domestic reforms. Although the percentage of people living below the poverty line, according to official figures, has been brought from 75% in 2001 down to 24% in 2006, this is still an alarmingly high figure of

⁵ It is worth mentioning however that the questions put to referendum were somewhat restrictive (i.e. 1. Do you support the course towards the independence of Transnistria and the subsequent free association with the Russian Federation? and 2. Do you consider it possible to renounce Transnistria's independent status and subsequently become part of the Republic of Moldova?). In fact, the first question contained two sub-questions which could not be answered separately.

persons in difficulty. Of the nation's 4.5 million citizens, unofficial figures estimate that as many as 1 million Moldovan nationals are working abroad, many illegally in Western Europe as well as former USSR and, according to the World Bank, their money transfers represent 27,1% of the GDP. Although these people could potentially provide substantial benefits to the economy (we were assured by the authorities that some of the emigrants are beginning to return and invest in Moldova and that policies for attracting them back in the country are gradually being put in place), a well-functioning economy takes much more than emigrants' incomes on order to thrive.

29. We were told that some interest for investment in the country has recently been shown by major European banks. The authorities are planning to develop the service sector and have increased efforts to combat corruption, to improve the investment climate and to make the National Strategy for Economic Development and Reduction of Poverty a success.

30. It is clear, however, that these efforts are only in their early stages. One encouraging sign that we noticed during our latest meeting with the foreign diplomatic community based in Chisinau was that it is now starting to realise that it needs to pay greater attention and increase its assistance to Moldova if it wants stability in this region.

31. At a donor meeting organised in December 2006 jointly by the European Commission and the World Bank, the partners pledged financial support of around € 1 billion (USD 1 billion 200 million) for the next three years for the implementation of the reform programme and development agenda as set out in the ENP Action Plan and the Economic Growth and Poverty Reduction Strategy. In particular, the European Commission announced that it would more than double its financial assistance to the Republic of Moldova over the next 4 years. Under the new European Neighbourhood and Partnership Instrument (ENPI) € 209 million will be made available over the period 2007-2010 to support the reform process and the implementation of the EU Moldova European Neighbourhood Policy Action Plan. Moldova is also currently negotiating with the EU to adopt a new legal agreement on mutual relations, as well as a new trade agreement that would grant Moldova autonomous trade preferences. On 19 December the Council of the European Union adopted the mandates authorising the EC to negotiate Agreements with Moldova on short-stay visas facilitation and on readmission.

32. Moldova is also assisted by the US Millennium project. The aid provided by the United States of America within the Millennium Challenge Programme is rendered to a very limited number of eligible countries. At present, Moldova joined the other 22 countries that have already fully qualified for and benefit from the assistance provided within this programme. Main eligibility criteria are: strengthening of government effectiveness, economic freedom, investing in people, promoting economic growth, and poverty reduction.

33. Full qualification for such assistance demonstrates that the development is a key pillar in the Moldovan national development strategy that will contribute to establishing strong partnerships and to building a prosperous and democratic society.

34. Regionally, Moldova is participating actively in GUAM, which scored a major success recently by introducing the issue of frozen conflicts on the agenda of the UN General Assembly. A new political institution – a Coordination Council of the Political Parties and Movements from the GUAM countries, aimed at facilitating the transition from an economic-political confrontation linked to the post-soviet area to constructive cooperation among the CIS member states was established on 28 December 2006⁶. Also, in October 2006, the Moldovan Prime Minister signed the Charter on Good Neighbourly Relations, Stability, Security and Cooperation in South Eastern Europe in Bucharest. The Charter is a tentative document of the South-eastern Europe Cooperation Process (SEECP). A SEECP full-fledged membership was granted to Moldova in May 2006.

35. Moldova has also actively participated in NATO projects, although political neutrality remains the guiding principle of its foreign relations.

⁶ We note however that the Moldovan President Voronin was the only GUAM Head of State who did not attend the recent Summit held in Baku on 19 June 2007. Officially, the President was attending the meeting of the EU-Moldova Co-operation Council in Luxemburg. Although European Integration in general and close co-operation with EU are strategic objectives of Moldovan politics, it is difficult to imagine that the participation in a rather technical meeting in Luxemburg obliged the President to miss the summit of Heads of State of a regional organisation which is becoming an increasingly important player on the territory of the former Soviet Union. Some political analysts link the absence of President Voronin from the GUAM Summit with the ongoing talks between President Voronin and Putin on the settlement of the Transnistrian conflict.

3. DEMOCRATIC INSTITUTIONS

3.1. Parliament

3.1.1. *Legislative work*

36. Moldova has largely benefited from Council of Europe assistance programmes, especially those that aim at bringing the legislation of the country in line with European standards. Two-year joint programmes of the European Commission and the Council of Europe started in 2001. The second joint programme (2004-2006) was completed on 15 December 2006 and two new, more specialised joint programmes: on "Increased independence, transparency and efficiency of the justice system" and a Joint Programme against corruption and money laundering will cover the period 2006-2009.

37. A frequent problem encountered in the past and reflected in the previous monitoring reports has been that the authorities sometimes only submitted legislation for expertise after its adoption, thus necessitating endless new amendments in order to bring it closer to European standards. In the previous legislature, with Parliament Decision No. 377 adopted on 18 November 2004, the Ministry of Justice was put in charge of coordinating the follow-up to the recommendations of the CoE legislative appraisals⁷.

38. Since the present parliament was formed in March 2005, the Speaker of Parliament, Mr Lupu, has made it a personal commitment that all new relevant draft laws (legislation within the competence of Council of Europe experts and related to Moldova's commitments to the organisation) would be submitted for expertise between the first and second reading in parliament. However, we understand from CoE experts that this sometimes creates confusion as to the relevant responsibilities of the Parliament and the Ministry of Justice⁸. Also, as this will be demonstrated further below, several important recent pieces of legislation have not been submitted to the CoE for expertise or this has only been done after their adoption. On the other hand, the period of time between the first and second reading of a draft law in Parliament is sometimes very short, especially in the case of sensitive issues and this can hinder not only the timely issuance of expertises but also the proper follow-up to the recommendations of the CoE appraisals.

39. Wherever expertise has been provided, there have been certain improvement as regards the second recurrent problem, whereby the legislators seem to make a rather selective reading of the Council of Europe legal expertise and apply a pick and choose approach to recommendations depending on how politically suitable they are. However, it transpires that the authorities seem to realise their political responsibilities better in terms of creating a modern European legal framework.

40. The parliament is certainly one of institutions, which deserve praise for its intensive work in fulfilling the calendar of legislative reforms. We are aware of the extremely tight deadlines in which amended or new legislation had had to be adopted since the setting up of the new legislature. Notwithstanding this, we would insist that all the laws within the competence of the Council of Europe, which have been adopted without seeking expertise, be sent immediately to the organisation for expert appraisal. It would also be highly recommendable that CoE experts are involved already at the stage of drafting of the laws, as this would ensure from the outset the high quality of the legislative process and will save precious time.

41. We were informed that the Council of Europe expert appraisals were made available to all members of Parliament. We welcome this development.

3.1.2. *General*

42. The parliament has finally fulfilled its commitment to send its draft amendments to the Rules of Procedure for expertise to the Venice Commission. The VC endorsed the comments made by its three Rapporteurs at its October 2006 session and asked them to prepare a consolidated opinion. However, the Moldovan parliament adopted the Law amending its Rules of Procedure on 27 December 2006, without waiting for the VC consolidated version (which represents the opinion of the VC as a whole) and despite the fact that the opposition boycotted the adoption. However, we note that although some recommendations made by the Venice Commission were not followed, by and large the adopted text constitutes an improvement with respect to the previous one. Nevertheless, to improve future collaboration, we would

⁷ In this respect, the Ministry of Justice forwarded to the Council of Europe in February 2007 a detailed report regarding the implementation of Council of Europe recommendations in the adopted legislation. This is a welcome development,

⁸ In addition to reports prepared by the Ministry of Justice, the Parliament forwarded to the Council of Europe several own reports on the implementation of expert recommendations in adopted legislation.

recommend avoiding rushing into the adoption of such important laws without prior in-depth discussions with the Council of Europe experts, which could have helped eliminate the remaining disputed points.

43. We learned that that the parliamentary sessions were broadcast live on television. This practice is not an obligation imposed on the parliament but a sign of openness. Although we are aware of the potential risks of such a decision – namely that many MPs would seek publicity, rather than compromise in parliamentary debates – such broadcasts are an important element in building freedom of expression and creating a climate of transparency.

44. The live broadcasting of the parliamentary sessions stopped in March 2007. Officially it is said that the broadcasting stopped because of lack of funds. Apparently, every broadcaster may sign a contract to resume broadcasting of parliamentary sessions against a fee. The opposition leaders, however, claim that the broadcasting was stopped on the eve of the launching of the campaign for local election (the date of the local election was set on 20 March). There is a proposal aiming at establishing a "parliamentary channel" to broadcast debates in Parliament, but it does not resolve the "funding" problem. As all the political parties favour the idea of resuming broadcasting, we call upon authorities to find mechanisms of resuming the broadcasting of parliamentary sessions.⁹

3.2. Electoral legislation

45. The Election Code of Moldova was adopted in 1997 and amended several times since. The amendments introduced on 22 July, 4 and 17 November 2005 helped eliminate some of the most serious shortcomings that the Assembly had identified while monitoring the March 2005 parliamentary elections and, in particular: the exceptionally high threshold for parties and blocs to enter parliament (6% for individual parties, 9% for coalitions of 2 parties and 12% for coalitions of 3 or more parties). This high threshold favoured the largest parties – in the 2005 elections, the share of votes cast for contestants who failed to clear the thresholds amounted to 16.4%. None of the joint recommendations of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the OSCE/ODIHR, made already in 2001, 2002 and reiterated in the most comprehensive set in June 2004 were implemented by the authorities before the elections. They justified this by claiming that they wanted to avoid accusations of making legislative changes in their own interest before the elections.

46. The adopted amendments to the Electoral Code in the course of 2005 now set only two thresholds: that for single parties has been lowered to 4% and that for coalitions, to 8%. The VC/ODIHR considers this step an improvement, although it does not entirely meet their recommendation for a single threshold for parties and coalitions at 3-4%. The threshold for independent candidates has been kept at 3%, which makes it difficult for them to win a seat in the Parliament.

47. Another improvement is the change in the composition of the Central Electoral Commission and lower level election commissions. The new provision of Article 16 reads as follows: The Central Electoral Commission consists of 9 members with a deliberative vote: 1 member is appointed by the President of Republic of Moldova, 1 by the Government of Republic of Moldova, 7 by the Parliament, including 5 by the opposition parties, according to the percentage of the mandates they hold. The Central Electoral Commission's members may not be members of parties or other socio-political organisations.

48. According to the latest VC/ODIHR joint opinion adopted on 17-18 March 2006¹⁰, this formula provides for a politically inclusive composition, with 5 out of 9 members appointed by the opposition parties. However, as the Congress observers have pointed out on the occasion of election observations, several of these parties are actually supporting the government. The VC/ODIHR insisted therefore on the implementation of this formula in good faith, so that the composition of electoral commissions as well as the appointments to managerial positions guarantees inclusiveness and impartiality in practice.

49. Finally, a major problem for the election of the Mayor of Chisinau seems to have been solved with the latest amendments of the Electoral Code adopted on 21 July 2006, by lowering the participation

⁹ Recently the radio station "Vocea Basarabiei" announced its intention to broadcast the plenary sessions of the parliament live. We welcome this move and hope that the broadcasting will resume soon, in accordance with the wishes of all political forces.

¹⁰ European Commission For Democracy Through Law (Venice Commission): Joint Opinion by the Venice Commission and OSCE/ODIHR on The Electoral Code of Moldova as Amended on 22 July, 4 And 17 November 2005, ref. CDL-AD(2006)001.

threshold to 25% from 33% and abolishing the requirement for a threshold to validate repeat elections. Four attempts to elect the Mayor of Chisinau failed because of low participation¹¹.

50. However, a significant number of recommendations included in the VC/ODIHR opinion have not yet been addressed and several newly adopted provisions raise concerns.

51. In particular, bearing in mind that the Moldovan electoral system consists of one single constituency covering the whole country, with a proportional distribution of seats, the representation of national minority-based parties in the Parliament – national minorities make up about 20% of Moldova's population – remains very problematic.

52. Further amendments would be needed in order to clarify the decision-making power within the CEC and provide better guaranties for dismissal of CEC members for "serious violations". The provisions for cancellation of candidates' registration should abide by the principle of presumption of innocence; the provisions regarding the right to campaign and right to free speech and expression are still unclear or too restrictive. More transparency is needed in the publication of the polling stations' results, etc.¹²

3.3. Local democracy

53. The strengthening of local democracy has been identified in the monitoring reports of the Assembly as one of the priority areas where the Moldovan authorities have to make great efforts, both in terms of legislative framework and in terms of practices. Assembly Resolution 1465 (2005) on the functioning of democratic institutions in Moldova asked the authorities to "bring legislation and practice in the field of local democracy in line with the European Charter on Local Self-Government", which Moldova ratified back in 1997.

54. The most serious problems, as identified in the Assembly reports as well as by our colleagues from the Congress of Local and Regional Authorities (the Congress), (see in particular Recommendation 179 (2005) on local democracy in Moldova) and the Council of Europe legal experts, as well as in the Action Plan 2004 for the strengthening of local democracy are:

- the absence of a clear division of responsibilities between the central and local authorities and their frequent overlap, as well as the lack of clarity about the scope of local government own functions; not only does this affect the quality of public service provision but it also leads to a situation whereby the central government, rather than supervising the implementation of responsibilities transferred to local authorities, supervises instead the local authorities per se. The local authorities also suffer from a clear lack of administrative autonomy;
- the discrepancy between legislative provisions and their implementation; numerous cases of interference by the central authorities in local authority affairs ;
- the lack of financial autonomy of the local territorial units, as well as the opacity of the system of transfer of funds to the two levels of local administration. In fact, the district redistributes the funds, often on the basis of political sympathies, which becomes a form of pressure by the State and of the District presidents;
- the unclear role of the Chairman of the district. The Council of Europe insists on the re-introduction of the function of a State representative;
- the huge number of units of second (32 districts/rayons) and first level (about 901 communities), necessitating a territorial reform.

55. Secondly, we were dismayed by the dismissal of the Mayor of Comrat by the Gagauz People's Assembly in March 2004. PACE insisted in its Resolution 1465 (2005) that the authorities denounce the principle of such a dismissal."

56. In this context, we were informed by the Speaker of the Parliament that there were discrepancies between the legislation of Gagauzia and the national legislation and that some provisions of the Gagauzian

¹¹ The Mayor of Chisinau was regularly elected as a result of the second round of the local election held on 17 June.

¹² On a positive note, however we note a substantial improvement in the work of the Central Election Commission during the recent local election held on 3 and 17 June 2007.

special law even contradicted the Moldovan Constitution¹³. Concerning the dismissal of the mayor of Comrat, as was also pointed out by the Congress, this is a case of "arbitrary implementation in Gagauzia of contradictory provisions on the legal status of local elected representatives, and in particular the procedure for dismissing them".

57. This situation is clearly unacceptable and it is important to establish the coherence of the legal system of the Republic of Moldova throughout its national territory.

3.3.1. New ministry

58. The Ministry of Local Public Administration was created in 2006. Mr Vitalie Vrabie, former member of the Congress, became the Minister and was also appointed as Deputy Prime Minister. He informed us that the Ministry would work in three main directions: 1) it would serve as an intermediary between the different levels of government and would provide assistance and dissemination of good practices; 2) it would exert administrative control of the acts of the territorial units; 3) it would stimulate regional development.

59. We were informed that on 16 July 2007 Mr Valentin Guznac, former deputy mayor of the municipality of Bălți, was appointed new Minister of Local Public Administration, while Mr Vrabie was appointed Minister of Defence. We hope that Minister Guznac will continue the well established co-operation with the Council of Europe on a number of important reform projects. In particular, the Council of Europe experts stand at the disposal of the Ministry for the development of a strategy of the implementation of the new law on administrative decentralisation. A letter in this respect was recently communicated to Minister Guznac, according to our information.

3.3.2. Legislation

60. The adoption of a new, coherent legislative framework for the functioning of local authorities has been long overdue. Previous draft laws submitted by the government (on the Status of the Municipality of Chisinau and on Associations of the Local Authorities) were severely criticised by Council of Europe and withdrawn. In March 2003 Moldova amended its legislation on local self-government by adopting a new Law on local public administration, whereas subsequent changes to the national legislation – the Law on the status of local elected representatives and the Law on local public finance – were adopted in 2003 without submitting the final versions to the Council of Europe for opinion.

61. The reform of the local self-government has become one of the priorities of the new legislature; a special parliamentary Ad hoc Working Group elaborated a package of laws aiming at an overall reform of this crucial sector.

62. On 28 December 2006 the Parliament adopted the draft laws on "local public administration", on "administrative decentralisation" and on "local public finance". After the first reading in July 2006 the drafts had been sent for appraisal to the CoE but because of further amendments proposed by the Moldovan authorities, the CoE was only able to send the consolidated expert report by mid-December.

63. Two of the adopted laws are organic laws: the Law on Administrative decentralisation is entirely new and defines the principles of a decentralised state. The other is a new version of the Law on Local Public Administration replacing that of 2003. The third one only brings limited changes in the present system.

64. **The draft law on local public administration** is seen by the CoE as a positive step forward, although some criticisms can be made. The draft law clarifies and supplements the concept of local autonomy by specifying and defining the elements indispensable for its implementation. It asserts the legal status of the mayor and of the 2nd tier local public authorities. The Mayor is clearly defined as the head of the local public administration. This should help eliminate a confusing situation, which had occurred in the past, whereby a mayor is suspended from his post for a long period, without being able to work and receive income.

¹³ We note that over the past couple of years intensive work is being carried out to bring the Gagauzian legislation in compliance with the national law. According to the Moldovan authorities, the members of the Gagauzian People's Assembly are being trained by the staff of the Moldovan Parliament and round tables aiming at discussing inconsistencies in legislation are being organised, in co-operation with the European Centre for Minority Issues. An opinion of the Venice Commission on amendments to the Constitution of Moldova relating to the status of Gagauzia (CDL-AD (2002) 20) pointed at a number of discrepancies between the national legislation and Gagauzian legislation. As a follow-up to the opinion, a group of experts was established to look into the problems identified by the Venice Commission. We expect that the group of experts and the Venice Commission will come up together with practical solutions which would bring the Gagauzian legislation in full compliance with the national legal order.

65. The law would also help eliminate the divergences with the Gagauzian special Status, by ensuring the uniform implementation of local autonomy principles throughout Moldova. The draft foresees that there are no relations of subordination between the central and local authorities, including between those of the 1st and 2nd tier.

66. **The draft law on administrative decentralisation** establishes a list of compulsory activities that the local public authorities are to manage obligatorily, directly or through public services. CoE experts assess positively the general thrust of the law which is to address the delicate and complicated issue of the distribution of competences. However, they object to the basic classification retained and consider that the provisions on local government competences as they stand do not meet the requirements of the Charter of Local Self-Government and may lead to drawbacks in local government operation. The approach chosen in order to palliate the excessive fragmentation of the national territory is also contestable. The draft law establishes a new notion of administrative capability: a unit is considered as "capable" if the administrative expenses do not exceed 30 per cent of the total sum of its own incomes. The CoE experts see this criterion erroneous; they have urged the Moldovan parliament to abandon it and consider instead the drafting of a separate comprehensive law on territorial reform, in line with the standards enshrined in the Charter on Local Self Government.

67. Regrettably, one of the crucial aspects of local self-government, financial autonomy, has not been addressed satisfactorily in the **draft Law on Local Finance**. It only achieves a very limited progress and no CoE recommendations have been taken into account. The most upsetting fact is the financial dependence of the 1st tier, local communities' administration, on the rayon's administration (2nd tier).

68. We were informed however that a working group bringing together the representatives of the Ministry of Finance and the Council of Europe experts was recently established to draft a new law on local public finance. The new draft law is intended to eliminate at least two major drawbacks of the existing financial arrangements for local government: it will introduce the direct payment of grants to the 1st level local authorities, thus eliminating the rayons from the transfer chain, and suggest a new formula-based allocation of equalisation grants to local authorities, thus making the financial arrangements more transparent, stable and fair, in line with the Council of Europe standards. The allocation of some additional own fiscal revenues to local authorities is also anticipated through the transfer of the property tax. We welcome these developments. We note however that the introduction of these new arrangements will require the adaptation of the whole financial system to the new formula. The local financial officers will also need training and capacity building in using the new system for the elaboration of their financial plans. Therefore, transition must be carefully thought over and phased in time. The effectiveness of the new system will greatly depend on the availability of precise and up to date data as well as the ability of central and local finance officers to apply the new rules. We therefore call on the Ministry of Finance to elaborate, together with the Council of Europe, a strategy on the implementation of the new law, in parallel with the actual drafting.

69. We understand that a **draft Law on Regional Development** has been drafted by the newly established Ministry of Local Public Administration and has passed the first reading in Parliament on 15 December 2006. It establishes 6 regions as follows: North, Centre, South, UTA Gagauzia, Municipality of Chisinau and Transnistria. Apparently this draft is aimed at stimulating local economic development. It must be submitted to the CoE for expert appraisal.

70. We would like to insist on the fact that a strong, economically developed country can only exist if the local authorities have administrative and financial autonomy, enshrined in legislation and guaranteed in practice.

3.3.3. Chisinau

71. The Moldovan capital Chisinau has found itself in a most peculiar situation: it had no properly elected mayor for a long time, following four election attempts which failed for lack of a quorum. This left the capital of Moldova more exposed to the interests of the authorities than to those of the citizens. This abnormal situation lasted until the local elections of June 2007. In its report on the local by-elections in Moldova on 27 November and 11 December 2005, the Congress proposed revising the Electoral Code to abolish the quorum requirement. This was done on 21 July 2006 (see paragraph 46)¹⁴.

72. The parliament has elaborated some changes to the Law on the Status of the Municipality of Chisinau. The draft amendments were submitted to the Council of Europe for expertise. On 29 May 2007 the

¹⁴ We note that a new mayor of Chisinau was elected as a result of the 3 June local election (see below section 3.3.3).

Council of Europe forwarded the expert appraisal of the new draft law on the status of Chisinau to the Moldovan authorities. The experts' comments were further discussed with the drafting team on 3 July and the Council of Europe is now expecting a revised version of the draft law for a follow-up assessment.

3.3.4. Associations of Local Authorities

73. The institutional dialogue between the central and local authorities represents another important element of local democracy. Since the local elections in 2003, the Association of Mayors and of Local Communities, established by the government has been the main structure in place. We understand that strong pressure had been put at the time on local elected representatives to join in. The other main alternative structure – the National League of the Mayors' Associations, chaired by the former mayor of Chisinau Serafim Urechean, had been weakened by the legal proceedings launched against its leader. Thirdly, there are still local elected representatives who have opted to remain independent and outside these two "competing" structures.

74. Institutionally, the Congress is mostly linked with the "pro-governmental" association but would like to also associate other representatives. Therefore, the Council of Europe experts and secretariat have launched the idea of the creation of a Discussion Forum between the different associations of elected local representatives. We believe that this would be a necessary and much welcome development and are expecting the authorities' comments on this issue.

3.3.5 Gagauzia

75. This Autonomous Territorial Unit has recently become the focus of international attention because of the elections for the Bashkan (governor) which here held on 3 December and 17 December (second round) 2006. The situation there was being closely monitored by Russia, Turkey and Greece, Romania and Bulgaria, but also by the separatist regime of Transnistria. These elections were an important test for the local elections in the Republic of Moldova in 2007.

76. The election of the new Governor, former mayor of Ceadr-Lunga, marks the beginning of a new period for this region. For many years the elections in Gagauzia were won by the Communist Party. It was generally considered that the former Bashkan was getting important support from the central authorities. Gagauzia became one of the few regions where the communists lost their majority (to the benefit of a pro-Russian Electoral Bloc "Patria-Rodina-Ravnopravie") as a result of the last parliamentary elections in March 2005. However, Rodina-Ravnopravie failed to win enough ballots nationally in order to gain seats in the Parliament.

77. Four candidates were registered by the GEC. Although they all ran formally as independents, the incumbent Bashkan Gheorghe Tabunshik was clearly linked to the Party of Communists, while Mr Formuzal was allegedly backed by the People's Republican Party. The leader of this party, Nicolae Andronic, is one of the fiercest critics of President Voronin in the extra-parliamentary opposition. The party is generally referred to as a conservative political force, attached to traditional values but some analysts believe that it is linked to Russia. The Moldovan Deputy Prosecutor General Alexander Stoyanoglo, who was born in Gagauzia, is believed to represent a younger generation in the Communist Party. Finally, the candidate who came second in the elections was the Mayor of Comrat Nikolai Dudoglo.

78. Valery Ianioglo, the representative of "Patria-Rodina" (the party which scored the best in Gagauzia during the 2005 national parliamentary elections), was denied registration by the CEC. The official reason was that a substantial number of signatures were invalid. During our meeting with the CEC we could not receive a convincing explanation of this decision which would exclude underlying political motives. Mr Ianioglu has contested the decision in court and lent his support to Mr Formuzal. Another candidate, the businessman Dmitry Cimpoiies failed to obtain the necessary number of 5,000 signatures.

79. A delegation of the Congress of Local and Regional Authorities of the Council of Europe monitored the two rounds of the election. Despite some improvements in election administration as compared to the previous Bashkan elections, it concluded that both the campaign and the voting day were not completely up to international electoral standards. The main problems were the inconsistency between the Gagauzian and Moldovan electoral legislation, the lack of impartiality of the CEC and the lower level commissions and the inconsistency and confusion surrounding the registration of candidates. Another serious problem, noted by the Congress and confirmed in all our meetings with candidates, with the exception of the incumbent Bashkan, was the lack of equal access to the media, in particular to television time and the use of

administrative resources during the campaign and the absence of candidates' accountability for printed publicity material¹⁵.

80. The importance of the Gagauzian elections goes far beyond their role as a litmus paper for the local elections. More generally, they were a test of the ability of the central authorities to develop a strong and successful autonomy within its national borders¹⁶. Several issues are at stake. Firstly, from the point of view of the existing legislation and administration, almost all candidates that we met believed that the Law on the special status of Gagauzia was in principle good but that it was not working properly. The competences granted by the autonomy status were far from being used to their full potential, especially with regard to local finances. The region relied on state subsidies and, not surprisingly, the distribution of state funds was being decided on the basis of political sympathies. This state of affairs has not done anything in order to bring prosperity to the region, on the contrary: despite some improvements in the utilities infrastructure (building of new gas and water pipelines) and the reopening of some local enterprises which closed down during the economic crisis of the nineties, our short visit there left us with an impression of poverty and underdevelopment. Yet our interlocutors believed that the region could sustain itself financially if it was given the possibility to use its autonomy to the full.

81. In the second place, but just as important, are the political repercussions of this situation. The elections showed serious disillusionment with the ability of the central authorities to solve the Gagauzian problems. It is difficult to understand in this context the position of President Voronin, who clearly showed his support for the incumbent Bashkan and reportedly even conditioned further financial support for the region from Chisinau on the "right choice" of voters. Although all candidates that we met supported the territorial integrity of Moldova and the future of Gagauzia within it, during our meeting with Mr Formuzal he pointed out that Gagauzia was giving a negative example to Transnistria. Mr Ianoglo also hinted at the "right to self-determination" if Moldova was not in a position to convince part of its population that it was the best home for it. He also added that the results of the so-called "independence referendum" in Transnistria could not be ignored, in so far as they were a clear indication that problems had to be solved by negotiations and dialogue. Practically all our interlocutors in Gagauzia referred to European integration as something good but abstract and to closer relations with Russia as something real and necessary.

82. We hope that the Moldovan authorities fully realise how important it is now to establish a constructive working relationship with the new leadership in Gagauzia and how urgent it is to address the needs of the region in a modern and democratic way.

3.3.6. Local elections of 3 and 17 June 2007

83. Local elections were held on 3 and 17 June 2007. The election was monitored by an International Election Observation Mission which included the representatives of the Council of Europe's Congress and OSCE – ODIHR. The mission noted that the voters were given a real choice and that the elections were generally well administered. Other aspects of the electoral process, however, fell short of some international commitments on democratic elections. In particular, the Mission identified cases of intimidation and pressure on candidates, lack of pluralism in media coverage of the electoral campaign and inability of the media to provide diverse information, inappropriate application of election procedures including the undermining of the secrecy of vote, complicated procedure of consideration of complaints, which resulted in a delay in publishing the results of the vote.

84. Although some improvements were detected in the work of the Central Election Commission (which adopted a wide range of decisions and regulations to complete and clarify the existing legislative provisions and worked in a transparent manner by opening its meetings to the public and media and publishing its decisions on the website), the Mission noted that it lacked power to impose sanctions in cases of violations due to the lack of enforcement measures in the legislation and that its decisions on the complaints were not always well substantiated from the factual and legal view point. Equally, the work of the Audio-Visual Coordinating Council (CCA) was disrupted between the two rounds of the election by an investigation by the

¹⁵ Recommendation 213 (2007) on the election of the Bashkan (Governor) of Gagauzia (Moldova) (observed on 3 and 17 December 2006) of the Congress of Local and Regional Authorities of the Council of Europe.

¹⁶ "These elections are an important opportunity to demonstrate to all throughout Moldova and to the international community that the Republic of Moldova respects and enforces the principles of autonomy, democracy, human rights, and the rule of law". "We support these efforts as a crucial step toward strengthening Moldovan democratic institutions and Gagauz regional autonomy within a democratic, sovereign, and territorially whole Republic of Moldova" – Joint Statement on the First and Second Rounds of Bashkan elections in the Autonomous Territorial Unit of Gagauzia within the Republic of Moldova, CHISINAU, 7 December 2006, by the Ambassadors of Bulgaria, the Czech Republic, France, Germany, Lithuania, Poland, Romania, Great Britain, the USA, the representatives of the European Commission, General Secretary of the Council of Europe and the OSCE Mission to Moldova.

Centre for Combating Economic Crimes and Corruption into allegations of bribe-taking by some members of the CCA. Two of the arrested CCA members publicly claimed that their detention might have been linked to the warnings issued by the CCA to some broadcasters for biased coverage of the campaign.

85. We note with particular concern that voters in Corjova, a Moldovan-administered commune on the left bank of the Nistru/Dniestr river, were deprived of their right to vote by Transnistrian militia, who used force to prevent the opening of the polling station there. This regretful consequence of the frozen conflict in Transnistria is clearly unacceptable, but we understand that the Moldovan authorities may not be in a position to rectify this situation until after a sustainable settlement of the conflict is found.

86. All these and similar problems are recurrent in the Moldovan electoral system and practice. We regret that more than 10 years after accession to the Council of Europe some of these rather technical but fundamental issues relating to the electoral process have not been resolved (e.g. the procedure of stamping of the ballot papers not fully guaranteeing the secrecy of vote, inaccuracy of electoral lists etc.). We call upon the Moldovan authorities to intensify efforts in the preparation of the forthcoming parliamentary election (scheduled to be held in 2009) to eliminate all remaining problems and organise genuinely free and fair elections.

87. The results of the election show an interesting dynamic: the CPRM won 37.5% of mayoral positions nationwide, while other parties scored 47.5% overall (and 15% of posts were won by independent candidates). At the level of district councils the CPRM scored about 41% of votes cast and at the level of village and communal councils their score was around 40%. Already after the first round of the election, the main opposition parties declared their intention to form anti-communist blocks to prevent the CPRM from winning the majority in local authorities. An interesting phenomenon happened in the municipality of Chisinau, where despite strong public support by the leaders of the Communist Party of Moldova the Communist candidate Veaceslav Iordan lost the election against the candidate of the Liberal Party Dorin Chirtoaca. As the Liberal Party scored just about 2% nationwide in the election, the victory of Dorin Chirtoaca in Chisinau is seen by many political analysts as an exception resulting from a well organised and grassroots-oriented campaign.

88. The election results have shown that the CPRM is by and large losing voters' support, despite a rather aggressive campaign in the media and clear support to Communist candidates by national leaders¹⁷. The opposition parties claim that this election marks the end of Communist rule in Moldova; the CPRM from its side argues that the weakening of the position of the Communist party at the local level was due to a number of necessary but unpopular measures the authorities took in the social and economic sphere. We do not want to enter into speculations about the possible explanations of the weakening of the position of the CPRM at local level (it is well known that local elections are influenced by different factors sometimes relating more to the personality of candidates rather than their political platforms), neither do we want to take a stand on the electoral complaints lodged by the electoral contestants until the courts have taken their decisions.

89. We gained the impression however, that the political climate in the country is changing. Current political elite (majority and opposition) needs to come up with new ideas, programs and concrete projects aiming at completing democratic reforms and moving closer towards European integration. The citizens have high expectations (the voter turnout was of 52 percent on 3 June, which is rather high for local elections which are traditionally attended by less citizens than national elections) and it is the duty of the majority and of the opposition to propose clear new alternatives for the country's future at the forthcoming national election in 2009.

90. The new political reality in most of the local authorities of the country requires the creation of mixed coalitions, where all political parties should co-operate in the spirit of constructive partnership and consensus. In fact, the local authorities may become excellent arenas for confidence building between different political stakeholders and experimentation on joint projects in the interests of local communities. The change in the majority should not lead to confrontation and blockade. Dialogue and co-operation are the key to preserving political stability and moving ahead with the long-awaited reforms.

¹⁷ Roughly speaking, it appears that the CPRM lost about 10% of voters' support in these elections, representing approximately 200 000 votes cast.

4. RULE OF LAW

4.1. Judiciary

4.1.1. Judicial reform

91. Some of the most important commitments that Moldova undertook when it joined the Council of Europe concerned the way justice is delivered in the country. In particular, it had to transform the role and functions of the Prosecutor's Office, to adopt an entirely revised new Criminal Code and Code of Criminal Procedure and to modify Article 116, paragraph 2, of the Constitution in a way which would ensure the independence of the judiciary. The Assembly Resolution 1280 (2002) on the functioning of democratic institutions in Moldova also urged the authorities to speed up legal and judicial reform.

92. Formally, these commitments have been fulfilled, although with delay. The Constitution was amended on 21 November 2002. A new Criminal Code was adopted on 18 April 2002 and amended on 29 May 2003 in compliance with CoE recommendations. A new Code of Criminal Procedure was adopted in March 2003. A new Law on the Prosecutor General's Office is in force since 18 April 2003. A major reform of the judicial system, initiated in 2002 and implemented by law in May 2003, replaced the old court structure with a three-level system.

93. Like in our previous report, we still believe that the reform of the judiciary remains one of the priority areas where further reforms are needed. Most of the recommendations of Resolution 1465 (2005) on the functioning of democratic institutions in Moldova remain valid and, in particular: to guarantee the independence of the judiciary and increase the effectiveness and professionalism of the courts; improve the enforcement of judicial decisions, revise the extensive competences of the General Prosecutor's Office and undertake institutional reform. We are also concerned about the need to improve the working environment of the judiciary, by improving the training and working methods and by eliminating corruption within the system.

94. Some significant legislative steps have been made in the course of the last year. But we realise that the reform of the judiciary is a long process and legislative changes are only the tip of the iceberg, since the change of behaviour, attitudes and practices is just as important and this cannot happen overnight.

95. We are positively impressed by the spirit of cooperation shown by the new Minister of Justice and hope that his in-depth knowledge of the Council of Europe (prior to occupying his new function he was Moldova's government representative at the European Court of Human Rights) will help speed up the process of reforming the judiciary.

96. In the course of 2005 and 2006 the parliament twice adopted laws amending a number of legislative acts. On 22 July 2005 the parliament adopted amendments and additions to the law on judicial organisation, the law on the High Court of Justice, the law on the status of judges and the law on the Supreme Council of Magistrates (SCM). The objective was to improve the organisation of the judiciary and guarantee its autonomy as well as to increase the independence of the judges. Arrangements for the appointment of judges and the presidents and vice-presidents of ordinary and appeal courts were also revised. Also, following a positive opinion of the Council of Europe, Parliament has finally passed the draft law on the National Institute of Justice (NIJ). This was one of the key projects on which the Council of Europe was working with Moldova and should go a long way towards improving the professionalism of judges.

97. On 21 July 2006 the Parliament adopted Law N°247-XVI modifying and amending the following legislative acts:

- the law on judicial organisation;
- the law on the status of judges;
- the law on Supreme Council of Magistrates
- the law on the college of qualification and attestation of judges;
- the law on the disciplinary board and the responsibility of judges.

98. The aim of this new legislative package is mainly to bring the existing legislation on the judicial organisation and status of judges into line with the new Law on NIJ and also with the latest CoE recommendations. According to the authorities, the package also aims at reducing the number of cases before the European Court of Human Rights.

99. However, a controversy arose with the President, who refused to promulgate the law, objecting to the attribution of new competencies to a special Department of Judicial Administration, which was to be

created within the Superior Council of Magistrates. The Department was to ensure the organisational, material and financial activity of the courts as well as to supervise it. These competencies are now within the remit of the Ministry of Justice and the President argued that for financial reasons they should remain there, also because the Justice Ministry was already well equipped logistically and legally for this kind of activity. He also claimed that the SCM was already playing an important role, since the funding of the functioning of the courts was approved by parliament on the proposal of the SCM. The Parliament therefore adopted a new version on 20 October abolishing the creation of this Department.

100. According to the Minister of Justice, the amendments to the **Law on judicial organisation** mainly aim at preventing corruption in the justice system by introducing the principle of random distribution of court cases; the transparency of the court hearings should equally be improved since they will be recorded either on tape or by shorthand; magistrates will be required to respect professional ethics and confidentiality of information. Finally, by virtue of the law the judicial police has been transferred from the Interior Ministry to the Ministry of Justice.

101. The amendments to the law on **the status of judges** introduce the requirement that in the future judges will be appointed on the condition they have graduated from the National Institute of Justice. However, the NIJ can allocate up to 20% of the vacancies for the three upcoming years to other professions – members of parliament, prosecutors, notaries, lawyers, court clerks etc., provided they have passed a capacity exam before the Collegium of Qualification and have at least a 5-year relevant working experience. The question of their independence, though, remains open. The condition of minimal age of 30 in order to be appointed as a judge has also been abolished, as well as the condition of working experience in the judiciary field. The notion of conflict of interest has been introduced with regard to the appointment of judges. Finally, a special judge will be responsible for informing the public through the media.

102. In our meetings with NGOs, they drew our attention to, in their eyes a worrying provision in the law introducing patrimonial responsibility of judges linked to their activity. They also expressed serious concerns about the still existing widespread corruption within the system and the political favours that judges provide in exchange for money.

103. The law on the **Superior Council of Magistrates (SCM)** gives the SCM competencies in the field of the carrier of judges, their initial and further training and administration of judicial bodies. Its Chairman can no longer be one of the three ex officio members: the Chairman of the Supreme Court of Justice, the Minister of Justice and the General Prosecutor.

104. Regrettably, all these amendments have not been submitted to prior CoE assessment. Subsequent expertise of the amendments by the Council of Europe experts revealed that key experts' recommendations were not taken on board. For instance, the experts' concerns about the appointment of judges by the President of the Republic upon advice of the Superior Council of Magistrates (SCM) and the merely advisory role of the SCM still remain valid. The Moldovan authorities explained that the suggested changes could not be made because of the need to amend the Constitution which requires a long and complex procedure. In this respect, we wish to reiterate once again that the building of a strong, independent and efficient judiciary requires the adoption of a comprehensive reform strategy. All remaining problems should be tackled together (including the revision of some constitutional provisions). A piecemeal approach to reforming the judiciary will not do any good. We therefore welcome the adoption on 19 July 2007 of the Strategy on consolidation of the judicial system and a relevant Action Plan for 2007-2008. The Strategy was drafted in consultation with the Council of Europe experts and represents, in principle, sound and comprehensive policy paper of the Government on judicial reforms. However, some of the objectives of the Action Plan on the implementation of the Strategy were drafted in a rather vague manner. Moreover, the effective implementation of the Action Plan requires a very good co-ordination between all stakeholders, whose specific tasks are sometimes not clearly defined. We call upon the Moldovan authorities to fully co-operate with the experts of the EC/CoE Joint Programme of Co-operation with the Republic of Moldova 2006-2009 which was designed to support the implementation of the Strategy and of the Action Plan in order to carry out effectively the activities foreseen in the Action Plan.

105. The justice system in Moldova continues to be heavily affected by the lack of resources. The Minister of Justice informed us of a draft law which would introduce amendments to certain legislative acts regarding the funding of the judicial system, so that its independence can be enhanced by financial autonomy. A fixed amount of 1% of the state budget would be granted to courts as from 2010 (the current funding is less than half of that, 0.45%; in a step-by step manner it will increase to 0.8% in 2008 and 0.9% in 2009). We would like to see a clear commitment from the government that this percentage would be indeed respected in practice, as a minimum, since according to the Minister of Justice, at least 1.5% or even 2% of the state budget would be necessary for the proper functioning of the courts.

106. An effort has also been made to increase the salaries of judges, but they still remain too low by any European standard. The salary of a chairman of a court of first instance is less than 200 Euros, of the Court of Appeal – about 240 Euros and of a member of the Supreme Court after 1 January about 385 Euros before tax.

4.1.2. Training

107. **The Law on the National Institute of Justice** was adopted on 08 June 2006 and entered into force on 07 July 2006. NIJ will be in charge of the initial training of judges and prosecutors and of in-service professional training as well as that of court clerks and bailiffs.

108. The adopted law corresponds to most of CoE experts' recommendations. However, there is concern about how long it will take for the new system to become operational. The law stipulates that the first round of initial training of candidates to the positions of judges and prosecutors shall start as of 1 September 2007. As these training courses last 18 months, theoretically the first graduates of the NIJ could be appointed to the position of judge and prosecutor not earlier than March 2009 and only if the NIJ is ready to start the first training course in September 2007.

109. The progress achieved by now with regard to the implementation of the law appears to be slow. Although the management structures – the Council of the Institute and Executive Director have been appointed, the stumbling block for the start up of the preparatory activities with regard to the training programs is the lack of corresponding premises for the NIJ. The government has examined a few options, but no decision has been taken so far, mainly because the offered options did not fit the necessities and status of the NIJ.

110. According to the OSCE, it is also unclear how the competencies will be divided with the existing Centre for Judicial Training at the General Prosecutor's office.

4.1.3. The Bar

111. Following recommendations from the CoE, the Parliament adopted **amendments to the Law on Bar Association** (see Law LP215-XVI of 13.07.06, MO126-130/ 11.08.06 art.61). According to the authorities, these amendments fully ensure the independence and self-governance of the lawyers' institution, by giving greater prerogatives to the Bar Association, ensuring no meddling in the exercise of the profession by state organs, as well as by specifying the status of lawyers, the modalities for admission, suspension and cessation of activity and the competence of the self-governing bodies.

112. Notwithstanding acceptance of most important recommendations from CoE, the enacted amendments present some shortcomings and drawbacks. For example, former prosecutors and judges shall be granted free access to the license to practice law (meaning exclusion of such accession conditions as internship and qualification examination). This solution is not in line with CoE recommendations. The Chairman of the Bar Association as well as other members of the Council of the Bar and its Commission for Ethics and Discipline also claim that the biggest problems the Bar has with regard to corruption, lack of professionalism and disrespect for ethical standards are generated by their peers who are former prosecutors, judges and police employees. They also say that experienced lawyers, on the other hand, do not have such preferential treatment for becoming a judge or a prosecutor.

113. The implementation of the new version of the Law on Bar Association will require a substantial effort from the Bar's Council and the two Commissions (Licensing and Ethics). Assistance from the state and the international community will be needed in order to strengthen the legal profession.

4.1.4. Enforcement of courts decisions, including by the European Court on Human Rights

114. The proportion of un-enforced court decisions remains very high¹⁸ on the one hand and on the other the poor financing of the enforcement system generates a high turnover among the bailiffs and destabilises the profession. The Department for Enforcement needs assistance in developing technical regulations for the proper implementation of the Enforcement Code and developing a proper training curriculum for bailiffs.

¹⁸ As of 5 June 2007, out of 68 judgements against Moldova adopted by the European Court of Human Rights since 2004, 19 judgements confirm the violation of article 6.1 of the ECHR with respect to the non-execution or delays in the execution of final judgements.

115. A new **Enforcement Code** entered into force in 2004, and a new **Law on the system of (coercive) enforcement** was adopted on 06 July 2006

116. According to the Minister of Justice, a draft Strategy of development of the enforcement system 2007-2010 will lower the procedural fees and improve the performance of the enforcement bodies. The institution of declaration of insolvability of physical persons, of the declaration on oath of the goods and financial means, will be introduced in the national legislation.

117. There are thirty-four cases currently pending before the Committee of Ministers for the execution control, including two cases where the examination has already ended and which are awaiting a Final Resolution. Several cases present similar issues which can be summed up as follows:

- Failure to respect the right to a fair trial due to non-execution of domestic judicial decisions and due to overturning of final judgments
- Poor conditions of the pre-trial detention facilities
- Ill-treatment in police custody and lack of effective investigation
- Legality of the detention (insufficient grounds for the detention and failure to ensure a prompt examination of the lawfulness of the detention)
- Prisoners correspondence and contacts
- Freedom of religion, expression and association.

118. Concerning this last issue, on 28 March 2006 the Committee of Ministers of the Council of Europe adopted an Interim Resolution urging the Moldovan authorities to finalise rapidly the ongoing work with a view to enacting new legislation regulating the registration and functioning of religious denominations. Such legislation is necessary in order to effectively prevent new violations of the ECHR similar to the ones found in the case of Metropolitan Church of Bessarabia and Others v. Moldova. The new law on religious denominations entered into force on 17 August 2007. It will be sent to the Council of Europe for a new expert appraisal.

4.1.5. Legal aid

119. A **draft Law on Legal Aid** was adopted by Parliament in the first reading on 02 June 2006. Its aim is to guarantee equal access to justice and to eliminate financial barriers for such access. This law is related to one of the areas of major interest and competence of the CoE and an expert appraisal by the CoE was recently prepared within the framework of EC/CoE Joint Programme of Co-operation with the Republic of Moldova 2006-2009. The law was finally adopted by the Parliament on 26 July 2007, but the final version has not been published yet. We expect the Moldovan authorities to forward the final version of the law to the Council of Europe for a final assessment in the light of the recommendations of the experts.

4.1.6. Prosecutors' Office

120. Minor amendments have been adopted to the **Law on Public Prosecutors' Office**, but no serious action has been taken in order to improve its performance. In fact, most of the amendments were of a technical nature and did not address the key concerns of the Council of Europe experts regarding in particular the very extensive supervisory powers of the *Prokuratura*. We note that the European Court of Human Rights condemned Moldova 14 times for the violation of article 6.1 of the ECHR on the grounds of overturning of final judgements at the request of the Public Prosecutor's Office. This is an alarming statistic which points at the urgent need to review the powers of the Prosecutor's Office. We were informed that a working group bringing together Moldovan and Council of Europe experts was established in July 2007 to draft a completely new law on the General Prosecutor's Office. We particularly welcome the approach adopted by the working group, which is to draft a completely new law on the basis of a concept paper jointly prepared by the Council of Europe and Moldovan experts. We hope that the Moldovan experts will fully cooperate with their interlocutors from the Council of Europe to produce a new law complying with Council of Europe standards enshrined in particular in Recommendation (2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and Assembly Recommendation 1604 (2003) on the role of public prosecutor's office in a democratic society governed by the rule of law.

4.1.7. Independence of the justice system

121. Meanwhile the issue of independence of the justice system, both political and in terms of corruption, continues to be a major problem in its everyday functioning. A few high-profile cases some of which are still pending before the courts could easily be interpreted as politics interfering with justice.

122. For example, the criminal proceedings against **Serafim Urechean**, leader of the main opposition alliance Moldova Noastra and former mayor of Chisinau, and other municipal officers: he was charged by the General Prosecutor for exceeding his authority while he was Mayor of Chisinau in purchasing 40 ambulances for the Municipal Emergency Hospital. In October 2005 the newly elected Parliament deprived Mr Urechean of his parliamentary immunity so that he could be brought before the court.

123. **The Pasat case**: former Defence Minister (1997-1999) and head of the Intelligence and Security Service of the Republic of Moldova (1999-2002) Valeriu Pasat, who subsequently became adviser to Anatoly Chubais, the Chairman of RAO EES (United Electricity Networks of Russia), was accused of selling 21 MiG-29 jet fighters to the United States when he was Defence Minister on terms which allegedly caused a loss to the state budget of \$53 million (the other potential buyer was allegedly Iran). He was also accused of selling Uragan artillery systems and munitions at a reduced price to a Slovakian company in 1997, at an alleged cost to the state budget of the order of \$1.8 million. On 16 January 2006 he was sentenced by a court of first instance to a 10-year prison sentence "for exceeding service attributions resulting in grave consequences".

124. Following widespread international concern about the fairness of the trial, the Appeal Court agreed to hear the evidence given by the two American officials responsible for buying the MiG-29s. The refusal of the first instance court to hear their testimonies was considered as one of the flaws in the proceedings. As a result, on 16 October 2006, the Appeal Court acquitted Mr Pasat of the charges related to the sale of MiG-29 fighter planes to the USA (accusations under article 185 of the old Criminal Code (exceeding of authority or of official powers) because of the lack of constituent elements of a crime. However, the Court maintained the conviction of Mr Pasat on accusations under article 329, paragraph 2 of the new Criminal Code (professional negligence) for the sale of surplus military equipment to Slovakia, but reduced his overall sentence of ten years imprisonment to five years.

125. Since Mr Pasat started serving his prison sentence, he has been continuously complaining of inappropriate medical care. His detention conditions have been subject to intense scrutiny by independent international experts, as well as by European politicians.

126. Mr Pasat's lawyers challenged the new sentence too and simultaneously lodged a new application asking for Mr Pasat to be released under the Amnesty Law. However, the court of first instance considered on 19 December that this decision was not within its competence and passed it on to the Supreme Court¹⁹.

127. In our previous monitoring report we had raised concerns about criminal proceedings initiated against **Mr Mihai Formuzal**, mayor of Cidar Lunga and candidate for Bashkan of Gagauzia. On 24 October, following an appeal by the President, the Ceadir-Lunga Court decided to postpone the proceedings until the end of the election process. It is unusual in a functioning democracy that the delivery of justice is conditioned by political directives. This can only further raise suspicions that the legal proceedings were also initiated against a political background.

128. **Eduard Muşuc**, who meanwhile became Chairman of the extra-parliamentary Social Democratic Party (PSDM), was arrested on 28 September 2006 by the Centre for Combating Corruption and Economic Crime on accusations of having made in 2002 an illegal profit of € 120 000 through a "criminal scheme", involving the company of his father Ion Muşuc. Through this he allegedly misappropriated about two million MDL (approx. € 120,000) in the sale and purchase of a building. The Muşucs consider that the criminal action is part of efforts to discredit them as potential leaders of the extra-parliamentary opposition²⁰.

4.2. Fight against corruption and organised crime, including human and organ trafficking

4.2.1. Fight against corruption

129. In 2006, Moldova ranked better than its neighbours according to the estimates of the Corruption Perception Index (CPI) and was placed 14 positions higher on the CPI list of over a hundred nations of the world. Several Moldovan experts and NGOs consider, however, that this ranking does not reflect the reality.

¹⁹ We note that Valeriu Pasat was set free by the Court of Appeals in the courtroom on 9 July 2007. His release was a surprise for most of the observers and political analysts, as was his arrest in 2005.

²⁰ According to the Moldovan authorities, Ion Muşuc (Eduard Muşuc's father), the former Deputy Minister of Telecommunications who is currently hiding in Transnistria from the Moldovan authorities, used the Social Democratic Party of Moldova to provide political cover for the illegal and dubious affairs he was involved in.

130. In Resolution 1465 (2005) the Assembly asked the Moldovan authorities to ensure the successful implementation of the Anti-Corruption Strategy and Action Plan adopted in November 2004 with the expert support of the CoE. On 21 December 2006 the Parliament adopted the Action Plan 2007-2009 for enforcement of the National Strategy for Fight against Corruption.

131. The institutional mechanism for the fight against corruption consists of Coordination Council headed by the President, a Monitoring Group comprising the main stakeholders, including civil society and the business community, and the Centre for Combating Economic Crime and Corruption (CCCEC) as the Secretariat. Our previous report referred to CoE experts' concerns about the independence, transparency and accountability of the CCCEC. Also, the competencies of the different institutions involved in the fight against corruption – the Ministry of Internal Affairs, the General Prosecutor's Office and the CCCEC – were not clearly defined, both in legislation and in practice, which often led to overlaps and reduced efficiency.

132. Two years on, on the basis of the experience gained in supporting the national anti-corruption strategy, the CoE experts assess the results as mixed. In their opinion the effectiveness of the institutional mechanism is undermined by the heavy structure of the monitoring group, composed by about 50 representatives from different institutions, and by the lack of transparency in the relations and exchange of information between the Coordination Council and the monitoring group.

133. An NGO met by our delegation, which expertises anti-corruption legislation, also revealed that different institutions apply the same legal provisions differently or take arbitrary decisions whenever there are gaps in the legislation.

134. We have received assurances by the authorities that these inconsistencies between the different institutions have now been removed by the recently introduced amendments to the Code of criminal procedure (Law N° 264-XVI of 28 July 2006), which defines their respective competencies in a clear way. We hope that the legislative amendments will be sent for appraisal to the CoE experts.

135. Further improvements were introduced by a draft law amending certain legislative acts (N°332-XVI of 10 November 2006) which introduced the obligation that all the existing legislation and all new draft legislation should be subjected to anti-corruption expertise. Currently no draft law shall be adopted by the Parliament without prior anti-corruption expertise. The authorities assert that this will help avoid certain legal provisions that might generate corruption. Overall, the finalisation of the legislative frame concerning the political sphere of corruption has been delayed. Several other draft laws are in preparation, such as the Code of Conduct of civil servants, the draft law on participation and transparency in the decision-making of public authorities and a draft law on the conflict of interest.

136. We continue to support our recommendation that the CCCEC, being the best equipped institution for the fight against corruption and the most specialised in these offences, should be given the possibility to fulfil its leading role.

137. Moldova is seriously assisted by the CoE in its endeavour to fight corruption, which would make it hardly understandable if no quick progress is made²¹. The CoE Group of States Against Corruption (GRECO) has just adopted its second evaluation report on Moldova²². It acknowledges the efforts of the country in carrying out reforms in the field of administrative organisation and legislation. At the same time, the report stresses that much remains still to be done and addresses a full set of very specific recommendations. We expect that the authorities will follow them in a strict and efficient manner.

138. We also note that the Parliament has not adopted yet the law on the prevention of corruption in public institutions. This law, appraised by Council of Europe experts, aims at introducing internal mechanisms and procedures to analyse the risks of corruption in the functioning of public bodies. We hope the Parliament will promptly adopt this law, taking into account the recommendations of the Council of Europe experts.

²¹ A project that is worth mentioning is the MOLICO project which started in August 2006 (Project against Corruption, Money Laundering and the Financing of Terrorism in the Republic of Moldova). It draws on the success of the PACO Moldova anti-corruption project in 2005, co-funded by the European Commission. An agreement for a follow-up project was signed in July 2006 between the Council of Europe, the European Commission and the Swedish International Development Cooperation Agency (Sida). The MOLICO project will have a duration of three years and a budget of € 3.5 million and its aim will be to ensure the implementation of Moldova's anti-corruption strategy and to strengthen the anti-money laundering/counter-terrorist financing (AML/CTF) system of Moldova in accordance with international standards and good practices as well as Moneyval recommendations.

²² Second Evaluation Round, Evaluation Report on Moldova, adopted by GRECO at its 30th Plenary Meeting (Strasbourg, 9-13 October 2006), *Greco Eval II Rep (2006) 1E*.

139. Finally, we were informed that the Parliament adopted on 27 April 2007 law n°111 "on modifications and amendments to certain legal acts" which changed the Fiscal Code with a view to create the basis for "legalising" capital from abroad and introducing a "fiscal amnesty" for revenues brought back to Moldova. The adoption of this law came with a package of measures proposed by President Voronin aiming at legalising capital illegally removed from Moldova and should in principle be welcomed, as such reforms were already implemented in several European countries. However, prominent international experts on money laundering considered that the implementation modalities of this law could have been better spelled out. This was apparently the reason why Moldova could not join the so-called Egmont Group, a well known international informal network of Financial Intelligence Units (FIUs) which brings together already 106 institutions from different countries all over the world. The Moldovan authorities forwarded the law to the Council of Europe for expertise and MONEYVAL²³ experts are expected to produce an appraisal report soon. We hope the Moldovan authorities will comply with the recommendations of the experts.

140. We also hope that the relevant legislation on political parties will be adopted as soon as possible. A draft law on political parties was submitted to the Venice Commission for expertise. It stipulates that, besides donations and due, the parties will also benefit from 0.05% of the state budget incomes. One half of the sum will be distributed to the parties proportionally to the number of mandates obtained in the next parliamentary elections. The other half of the sum will be distributed to the parties according to the number of votes obtained in the local general elections. The parties cannot be financed from abroad, by state-owned enterprises and from anonymous and confidential donations. The explanatory note to the draft law says that the amendments were formulated after studying the legislation of a number of states such as Estonia, Latvia, Lithuania, Romania, Germany etc. as well as recommendations made by the Parliamentary Assembly of the Council of Europe. While in general the Venice Commission considered that the draft law would be an important step forward and represents a comprehensive document offering an opportunity to create transparency and accountability in the financing of political parties, it falls short of a number of European standards, in particular, as regards the provision of article 11.2 of the ECHR concerning the restrictions which may be placed on the exercise of the freedom of assembly and association. Namely, the Venice Commission considered that the "double" minimum membership threshold (5,000 members nationwide and at least 150 members in half of the rayons of Moldova) is potentially restrictive and would be disproportionate and not necessary in a democratic society. The compulsory submission of updated lists of members to the Ministry of Justice before every upcoming election would also place an unreasonable burden on political parties and would be disproportionate and not necessary in a democratic society. Finally, the experts made some technical remarks concerning some unclear provisions about the assets of political parties and exemptions from payment of taxes and duties.

141. In the closing speech of the summer parliamentary session, the Speaker of the Parliament stated that the draft law on political parties would be further revised in the light of the Venice Commission's expertise and that it would be adopted in October 2007, during the Autumn – Winter session of the Parliament²⁴. We hope that in the meantime the drafting team will take on board all recommendations of the Venice Commission and bring the draft law into line with the European standards.

4.2.2. Fight against human trafficking

142. Moldova regrettably remains one of the European countries which are most frequently associated with trafficking in human beings and which has the highest number of trafficked victims. According to the Moldovan office of the International Organisation for Migration (IOM), more than 1,300 women and minors have been returned home through IOM's counter-trafficking reintegration programme, which is only a fraction of the numbers of those still trafficked abroad.

143. Internationally, the country has demonstrated strong will to tackle the problem, by ratifying all the relevant legal instruments. The UN Convention on trans-border criminality and its additional protocols were ratified in the course of 2005. On 19.05.2006 Moldova became the first country to ratify the CoE Convention on Action against Trafficking in Human Beings.

²³ The Committee of Experts on the Evaluation of Anti-Money Laundering Measures - MONEYVAL (formerly PC-R-EV) was established in 1997 to *inter alia* evaluate the performance of member states of the Council of Europe in complying with the relevant international anti-money laundering and countering terrorist financing standards, and, where appropriate, make recommendations to the evaluated countries, with a view to improving the efficiency of their anti-money laundering and countering terrorist financing measures and to furthering international co-operation.

²⁴ <http://parlament.moldova.md/news/27.07.2007/>, see chapter 3.

144. Serious efforts have also been made in the field of domestic legislation. On 20 October 2005 the parliament adopted the Law on preventing and combating trafficking in human beings (N° 241-XVI). The National Plan to Prevent and Combat Trafficking in Human Beings was approved by the Government in August 2005. By decision of the national Committee to Combat Trafficking in Human Beings, a unified system for monitoring the implementation of the relevant National Plan was created as of 10 February 2006. The criminal code has been also amended.

145. However, the legal basis is only one component of the fight against human trafficking. This fight can only be efficient in so far as the different structures involved in it – law enforcement bodies, justice system, social assistance etc. – are acting efficiently. From this point of view, much remains to be done. Human trafficking is also intrinsically linked to the general social-economic state of a country: the low living standards for the great majority of the Moldovan population will certainly continue to generate this most appalling and unacceptable form of "business".

146. We acknowledge the assertions of the authorities that the problem is further enhanced by the situation in Transnistria, which has been the main route of traffic and over which they have no control. Still, we believe that this should not serve as an excuse for not doing everything within their power, which certainly involves also a great degree of political will.

147. Several NGOs, involved mostly in prevention and assistance, including in Transnistria, are doing a remarkable job. In their opinion, the situation with human trafficking has at least been brought to a stage where it is not deteriorating any further; but, they reckon, it is still early to talk about stabilisation. The legislative framework is now really well advanced, but its application, in their view, remains limited. One serious problem in practice remains the protection of the victims who give testimony in courts.

148. According to one of the most active NGOs in this field, La Strada, in addition to the traditional trafficking of women with the aim of prostitution, new trends have appeared over the last three years: trafficking of mostly men with the aim of recruiting them as illegal workers; trafficking of children with the aim of begging and banditism; or family trafficking of mothers with children. New destination countries and new ways of crossing the border have emerged. The methods of guarding the victims have also become increasingly intricate and difficult to detect, such as the use of psychological pressure.

149. We were assured that the collaboration between the law enforcement institutions and the Ministry of Foreign Affairs has been enhanced so that repatriation of the victims can be facilitated through information collected by the embassies and consular services. Also, according to the IOM, mechanisms for the collection and exchange of information between governmental agencies and NGOs have been launched. Co-operation and information exchange between Moldovan authorities and their counterparts in countries of transit and destination have been improved. A framework for legal assistance to victims of trafficking has started.

150. Efforts have to continue in order to develop a comprehensive and reliable database of trafficked persons, to develop professional training for police, prosecutors and the judiciary and to further focus on prevention.

151. One positive initiative, which deserves international support, is the activity of the Chisinau Rehabilitation Centre for Trafficked Persons, created by the Moldovan office of the IOM together with the Chisinau local authorities. The Centre is often the first contact point in Moldova for trafficked persons returning home. It is open to trafficked persons and their children, unaccompanied minors, and individuals at risk of trafficking. The Centre, which has been operational since 2001, provides temporary shelter in a safe and welcoming environment; during their stay, residents can benefit from a range of "in-house" services: medical, psychological, social, legal, educational and recreational. A reintegration plan is usually developed by the returnee with the support of the Centre's staff, including referrals to numerous governmental and non-governmental agencies working at the localities of origin throughout Moldova or to institutions that provide long-term assistance. The Centre can be contacted either directly by individuals in need of its services, or by officials and agencies (e.g. police, border guards social workers, NGOs, Embassies, etc) in direct contact with the victimised or "at risk" individual. Such referrals can take place at any stage of the trafficking.

152. According to information that we have received from the Moldovan authorities, due the high number of human trafficking cases (nearly 400 per year), at least two additional centres should be created in the regions, but the Government does not have the necessary financial resources. We would strongly support assistance from the CoE member countries.

153. Another scourge that Moldova has sadly become notorious for is the traffic of human organs. During our last visit we could not collect information about progress made in this area and therefore asked the authorities to provide it upon reception of the present preliminary draft report²⁵.

5. HUMAN RIGHTS

5.1. Death penalty

154. Moldova abolished the death penalty in 1995. The last execution took place in 1991. On 29 June 2006 the Moldovan parliament voted unanimously to delete from the constitution Clause 3 of Article 24 which provided for the death penalty in exceptional cases, thus abolishing the death penalty in law. This was approved by the President on 10 July 2006. This also allowed the ratification, on 18 October 2006, of Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

155. On 20 September Moldova ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

5.2. Freedom of expression and the functioning of the media

156. The media remain one of the sectors, which still need to go a long way in order to meet European standards. Reforming the legislation is certainly important, but not enough; more than anywhere else, reforms in the media sector are a matter of political culture and attitude. They also require a high degree of professionalism. Neither of these are yet present in Moldova to an extent which would allow the media to perform their essential function in a democratic society, that of a public watchdog.

157. It has to be acknowledged that in 2006 Moldova ranked the best amongst the CIS countries in terms of media freedom – in the 85th position out of 168 countries according to Reporters Sans Frontières (Reporters Without Borders). This achievement should encourage the authorities to further allow freedom and transparency, to the same degree as those of the countries which Moldova is trying to match in its strive for further European integration.

158. We note with concern however that in the recent report on freedom of the press worldwide issued by Freedom House, a well known NGO working for democracy and freedom around the world, Moldova was qualified as a country where the press is not free. The coverage of the electoral campaign during the June 2007 local election appears to confirm this statement: to give but two examples, the CCA monitoring of public broadcasters Radio Moldova and TV Moldova 1 throughout the campaign concluded that the information which was provided to the public was incomplete and partial; the two national newspapers *Moldova Suverana* and *Nezavisimaya Moldova*, which had received substantial subsidies from the state budget at the end of 2006, did not provide impartial information and clearly favoured the candidate of the Communist party for the post of the Mayor of Chisinau. Generally, the biased coverage of the campaign in the media was confirmed by "Coalition 2007", a group of NGOs which did an independent monitoring of the campaign in the media. In an attempt to apply properly the new broadcasting legislation, the CCA sanctioned Radio Moldova and TV Moldova 1 prior to the election by issuing public notifications. The policy of the two national major broadcasters did not change though and the CCA was not able to monitor the media coverage of the campaign in-between the two rounds of the election because some of the members of the Council allegedly were warned and intimidated, especially in the context of an investigation launched against some members of the CCA by the Centre for Combating Economic Crime and Corruption.

5.2.1. Reform of the legislation on broadcasting media

159. One of the greatest legislative achievements of 2006 is the adoption of a new Audiovisual Code, replacing regulations on broadcasting media, including the public service broadcaster TeleRadio Moldova (TRM) and the local public broadcasting which were all in dire need of reform. The audiovisual reform was one of the 10 points which the Christian-Democrat opposition requested from the Communist party in order

²⁵ We were informed later on by the Moldovan authorities that since the Centre against Human Trafficking was set up in the Ministry of the Interior, action to identify criminal offences linked to trafficking has been stepped up. In 2006, 468 criminal offences linked to trafficking in persons were identified and 39 trafficking networks dismantled. At present there is no evidence of trafficking in human beings with a view to organ removal. In 2006 only one such case was discovered, in which criminal proceedings are now pending. At the same time, the competent authorities place special emphasis on international co-operation. Fifteen bilateral agreements on combating organised crime have been signed with countries such as the United Kingdom, Turkey, Italy, Ukraine, Israel, the Czech Republic and Bulgaria.

to lend it its support. Although the adoption of the new legislation was one of the priorities in the legislative timetable of the parliament, the enactment of the new law had fallen well behind schedule. The controversies and delays show well how sensitive the issue remains for the ruling class.

160. A draft elaborated by the Presidential coalition PCRM-PPCD which was posted on the parliament's web site on 28 March 2006 received a very critical appraisal by the OSCE and Council of Europe experts. They were concerned, in particular, by the possibility of the government, or the governmental alliance, to exert undue influence and control over the Coordination Council of the Audiovisual (CCA) and through it over all broadcasters, the Internet and especially TRM. The alignment with European standards was considered as incomplete and sometimes erroneous.

161. The Audiovisual Code was finally adopted on 27 July (the opposition voted against it) and entered into force on 18 August 2006. It covers all aspects of broadcasting, namely the general regulation of the audiovisual sector, the public service broadcaster TeleRadio Moldova, and the regional public service broadcasting. The adopted version has taken into account some criticisms and contains some improvements compared to the draft. It has, for instance, included also the regulation of the regional public service broadcasting (Art. 65). However, according to CoE experts, it still has a number of drawbacks; furthermore, it is too general and leaves room for interpretation and manoeuvring, which helps the authorities to keep control over the audiovisual sector. The law is also contested by several media NGOs, especially with regard to the regulations for the local public broadcasting, which, in their opinion, can lead to centralisation of the editorial policy and establishment of censorship, as well as to the limitation of media pluralism and diversity.

162. The recent designation of the 9 members of the Co-ordination Council of the Audiovisual (CCA) under the new Code, did not go without controversy either: media professionals and NGOs alike criticised the procedure for lack of transparency and for applying political, rather than merit principles (all the members are formally proposed by the civil society). Of the nine appointed CCA members, five were openly supported by the PCRM, three by the PPCD and one by the Democratic Party (PD). At the same time, well-known specialists in the field of broadcasting, proposed by respected media NGOs were not considered.

163. We met with the newly elected Chairman of the CCA Mr Corneliu Mihalache, former editor of the Communist youth newspaper Puls. He assured us that the CCA would work in the spirit of neutrality, unbiasedness and professionalism. We cannot but encourage such endeavour²⁶.

5.2.2. Public service broadcaster TeleRadio Moldova

164. The restructuring of the state channel TeleRadio Moldova (TRM) into a national public service broadcaster has been a difficult and sometimes dramatic exercise, as well as a major source of concern, as this was narrated in our previous reports. Its operation can hardly be qualified as one of a genuine public service, rather than state broadcaster. Paradoxically, while parliamentary debates are now broadcast live on TRM, allowing the public to follow the views of all the political formations represented there (although PCRM MPs suggested at the end of 2006 the suspension of these broadcasts), opposition representatives in parliament continue to complain of discrimination in access to current affairs programmes on TRM²⁷. Media professionals, on their side, continue to complain about hidden censorship and the need to apply self-censorship.

165. The authorities must accept their share of responsibility and reaffirm the institution's presumed editorial independence. What is needed is clear political determination to remedy this state of affairs and a strong message to TRM that censorship and self-censorship are a thing of the past.

166. In this respect, the designation of the Supervisory Board of TRM is of crucial importance. Under the new Audiovisual Code, the designation is made by the CCA. The composition of the Board was voted by Parliament on 28 December 2006; it appears that similarly to the procedure followed for the CCA members, political considerations prevailed. If this is indeed the case, TRM would have missed a remarkable opportunity to enhance its independence.

²⁶ We note that Corneliu Mihalache was dismissed from the post of Chair of the CCA by a «vote of no confidence» of 5 of the 9 members of the Council on 31 July 2007. Mr Vlad Turcanu was elected new chair of the CCA. Mr Mihalache intends to appeal against the decision in court.

²⁷ This was true at the moment of the preparation of the first draft of the report, but as we noted earlier, the live broadcasting of parliamentary sessions was suspended in March 2007.

5.2.3. Media Pluralism

167. Many press defence associations have alerted us about the latest developments concerning the local radio station Antena C and the local TV station Euro TV, founded by the Chisinau Municipal Council. Both are considered as serious and generally balanced sources of information. The news bulletins of Euro TV were mentioned by the OSCE observation of the March 2005 elections as "most balanced coverage of the airtime dedicated to politics". In their capacity of public service broadcasters, under the new Audiovisual Code Antena C and Euro TV have to be re-organised. Unfortunately the law does not specify the mechanism for such reorganisation, leaving room for possible abuse.

168. The interpretation of the "reorganisation" clause by the municipal authorities in the case of the two media outlets was to privatise them²⁸. Hence on 14 December, the Chisinau Municipal Council decided to put Antena C and Euro TV Chisinau up for tender and to dismiss the directors of both institutions. Journalists at both stations organised a protest against this decision on 15 December, qualifying it as illegal and unjustified. Late that evening, police entered Antena-C's building and forcibly evacuated the radio station's staff because of a presumed bomb threat²⁹.

169. The broadcasting signal of Antena C was interrupted on 16 December, strangely coinciding with a live radio debate about the problems that the station was encountering in the process of its privatisation. The official excuse for the cut was an alleged technical problem at the radio relay.

170. In a recent joint statement on the reform of the Moldovan broadcasting sector, the OSCE Mission and ten embassies and international missions accredited in Moldova urged all those involved in the reorganisation process of Antena C and Euro-TV to find a solution that would ensure the continued functioning of both broadcasters, drawing on their experienced staff. We fully subscribe to their conclusion that the reorganisation process should neither result in a reduction of pluralism in the country's media landscape nor should it deprive citizens of access to comprehensive and impartial information and public services, such as, for example, debates on local politics. In bringing these two entities in line with the new legislation, the guiding principle should be to ensure the continuity of the two public service broadcasters representing alternative sources of information, in order to guarantee media pluralism and diversity. The reorganisation process should be done in a transparent way, in consultation with the concerned media outlets.

171. Several parallels have been drawn with 2004 when similar methods were used during the reorganisation of TRM.

172. We understand that the Parliament in its reply to Mr Vasile Ursu, a.i. Mayor of Chisinau of 26 December 2006 recommended that the Municipal Council change the decision on transformation of the local public media because it was in collision with the Civil Code. Media professionals at the Court of Appeal also challenged the Municipal decision on 4 January 2006.

173. We would like to ask the authorities about information concerning the ownership of the newspapers *Moldova Suverana* and *Nezavisimaia Moldova*. Although, officially, they are no longer owned by the Government, according to media NGOs they still have the same editorial policy and receive preferential treatment.

174. Finally, we are concerned about possible pressure on another important source of alternative information, Pro TV Chisinau. This is a private TV station broadcasting locally produced news and talks shows and retransmitting the programmes of the Romanian Pro TV. Its sales director, Ghenadie Braghis, was arrested on 7 September 2006 on suspicion of demanding a bribe of 1,000 USD from a private Moldovan transport company, allegedly in exchange for a prime time commercial on PRO TV Chisinau. Apparently during his detention Mr Braghis was denied access to a lawyer and a search was performed in the TV station's office. According to the South East Europe Media Organisation (SEEMO) Braghis' arrest may be related to the critical reporting of the TV station, including the activity of the police. In a statement, the Moldovan OSCE mission expressed concerns about "the possible repercussions on freedom of the media stemming from this case" and called on the authorities "to refrain from any actions which could be interpreted as applying pressure on an independent media outlet to affect its editorial policy".

²⁸ We note that the MPs representing the "Our Moldova Alliance" appealed to the Constitutional Court with respect to the issue of privatisation of local broadcasters. The appeal was registered but has not been examined yet to our knowledge.

²⁹ However, the OSCE mission in Chisinau reported that neither ambulances, bomb detection units nor any other special precautionary measures which one might expect in the case of a bomb alarm had been seen on the spot.

5.2.4. Defamation

175. In our previous report we commended Moldova for abolishing criminal defamation in 2004 (abrogation of Article 170 of the Penal Code in May 2004).

176. According to a comprehensive analysis by the NGO Article 19 of defamation practices and regulations in Moldova³⁰, existing problems include the failure to differentiate between fact and opinion; an inadequate degree of independence of the judiciary; disproportionate fines in civil defamation cases; and the use of defamation provisions by powerful individuals to intimidate the media and thereby prevent criticism.

177. We also insisted introducing into the Civil Code upper limits for fines concerning moral damage in civil defamation. President Voronin had made a commitment for a legislative initiative in this respect after his re-election in March 2005.

178. Art. 16 of the Civil Code was amended on 28 July 2006. It defines defamation as the dissemination of false and harmful information. The plaintiff bears the burden of proof that the information was disseminated while the defendant must show the truth of the information. In cases in which it is not possible to identify the person who disseminated the defamatory information, the plaintiff may apply to a court for a public declaration that the information was untruthful.

179. The amendment failed to go as far as establishing a ceiling for compensation for moral damage; the fines for defamation will be established by the judicial instances on the basis of a number of evaluation criteria of the moral damage. Local experts and media professionals judge these criteria as vague and ambiguous, leaving room for possible abuses. It would be advisable that the amendments are submitted to the CoE for expertise³¹.

180. According to Article 19, what is even more essential in defamation cases is that the defendant is found liable only for genuine cases of defamation – that is, when he or she disseminated a statement which unjustifiably harmed somebody's reputation. The genuine purpose and demonstrable effect of a defamation law should always be to protect deserved reputations and not to protect public figures from embarrassment, disparagement or invasion of their privacy. The proportionality rule should also be strictly applied: the penalties imposed should always be proportional to the damage caused. Moreover, courts should prioritise non-pecuniary remedies over economic penalties. Alternative remedies, such as the right of reply and refutation, can often adequately repair the claimant's reputation while causing much less of a 'chilling effect' on the media.

5.3. Law enforcement

181. On 21 September 2006, the Government approved the Strategy of Integrated Information System for Law Enforcement Bodies. This strategy envisages to unify the database of all law enforcement bodies, to form a joint information space in order to increase their interaction, to use collected information more extensively in preventing transgressions.

182. On 26 October, the Parliament declined a proposal by a group of parliamentarians from the Party of Social Democracy to set up a special commission for considering cases of abuse of powers on the part of law enforcement bodies and citizens' complaints of violating their fundamental rights. One of the draft resolution's authors Dumitru Braghis said that mass media have published lately many reports on violations of human rights on the part of law enforcement bodies related, in particular, to interception of telephone talks, perusal of correspondence and even electronic messages.

183. It is worth noting that the General Prosecutor Office (GPO) has signalled an increase in the number of reported cases of torture committed by police officers. According to a press release issued by the General Prosecutor's Office on 29 September, during the first eight months of 2006 the GPO initiated criminal proceedings against 105 police officers for torture and excess of force associated with violent acts. In 2005, the number of such cases was 118. Currently 88 torture cases are under investigation, and 28 sentences in torture cases have been issued during 2006. The number of sentences issued in torture cases in 2005 was 41.

³⁰ ARTICLE 19 GLOBAL CAMPAIGN FOR FREE EXPRESSION: Defamation Law and Practice in Belarus, Moldova and Ukraine <http://www.article19.org/pdfs/publications/the-right-to-criticise.pdf>

³¹ According to the Moldovan authorities, a working group was established to finalise the draft law on freedom of expression. We expect this body to work in full co-operation with the Council of Europe experts.

184. On 19 April 2006, the Government approved the Code of Ethics for the Police drafted with the CoE's assistance. The new Code was published in December 2006. It should support its appropriate implementation in the every day work of the police officers in relations to the citizens.

5.4. Detention

185. The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its latest visit to Moldova from 21 to 25 November 2005. It involved talks with the Moldovan authorities concerning concrete measures taken by them to implement the recommendations made by the Committee in the past. The CPT's representatives also examined recent developments on the spot concerning prisons and the police. The report drawn up after the November 2005 visit has not yet been published.

186. The most recent published CPT report on Moldova concerns the periodic visit in September 2004. One of the major concerns expressed by the CPT in its report is the continuing problem of ill-treatment of persons in police custody, despite an encouraging change for the better. The CPT has recommended, in this respect, a better system for signalling and investigating cases of police ill-treatment and a code of conduct for interrogations. It had also insisted that a doctor's examination and the presence of a lawyer be guaranteed from the outset of deprivation of liberty. The CPT has qualified the conditions in temporary detention centres of the Ministry of Interior as "catastrophic" and in many respects akin to inhuman or degrading treatment. In addition, the CPT has expressed concern about the prison culture, which generates violence amongst prisoners.

187. Some of the most severe problems experienced in temporary detention centres – overcrowding, lack of appropriate health care, inadequate occupational activities – are linked to the extremely poor material conditions in which the penitentiary system operates. This is also blocking the transfer of these centres from the Ministry of Interior to the Ministry of Justice. Such a transfer is a necessary precondition for the creation of a modern democratic penitentiary system; however, it would be deprived of much sense if it only represents a change of "umbrella" while the present unacceptable conditions remain the same.

188. The latest public information on detention conditions in Moldova is the one available in the summary on the country in the Amnesty International 2006 Annual Report³²: "Torture and ill-treatment in police custody were widespread. Poor conditions of detention and ill-treatment in pre-trial detention facilities continued to be reported". The NGOs that we met also reported on alarming conditions in psychiatric hospitals, which, in their opinion, were even worse than those in prisons.

189. However, we were informed by the Moldovan authorities that the Prosecutor General's Office permanently and closely monitors violations of the citizens' fundamental rights in the form of ill-treatment by police officers or other State officials and makes efforts to redress this situation. In particular, prosecutors conduct daily checks on the lawfulness of persons' custody in detention facilities, carrying out unannounced inspections in order to reinstate injured persons and call guilty officials to account. In this context, in 2006, the Prosecutor General's Office drew up the guide to the procedure for prosecuting cases relating to misuse of office and abuse of authority, and the guide to issues relating to the detention and arrest of persons. We hope these measures will help improve the situation.

190. Moldova is one of the three countries, which have been selected for a pilot project on facilitating the implementation in practice of the CPT's recommendations, which is expected to identify concrete areas and proposals for outside assistance. Moldova also has an Action Plan for the implementation of its Concept for reforming the penitentiary system but, similarly, the funding is totally inadequate.

191. The CPT has also carried out three visits to the Transnistrian region of the Republic of Moldova, the latest one being from 15 to 20 March 2006. At present, only the report concerning the first visit to Transnistria, in November 2002, has been made public. A continuing concern during these visits has been the situation of prisoners suffering from tuberculosis.

192. Following signals from the CPT, our delegation visited Colony (Prison) N°8 in Bender. This prison is part of the prison system of the Republic of Moldova but is located in an area under the control of the Transnistrian region. Since 10 July 2003, this establishment has been cut off from running water and electricity supplies by decision of the Bender municipal authorities. Further, since 2005, the prison has been disconnected from the sewage disposal system. Some 120 prisoners are still there, living in conditions difficult to imagine in the 21st century Europe.

³² <http://web.amnesty.org/report2006/mda-summary-eng>.

193. Our delegation was very well received by the prison administration and was granted full access to the colony. As the director explained, the official reason given by the Bender authorities for cutting off all the vital supplies had been the presence of a tuberculosis hospital on the grounds of the colony and the health hazard that it allegedly represented for the inhabitants of nearby areas. The hospital, however, has now been transferred to another prison; the building has been disinfected and is empty. No prisoners suffering from tuberculosis are being kept in the colony.

194. All the rooms are heated with wood or charcoal stoves. Electricity is provided for 3 hours a day, between 8 and 11 pm (4 hours on week-ends), produced by a power generator. Water is supplied by cisterns from territory under Moldovan control. The prisoners have a warm bath in a heated area once a week. Warm food can also be cooked in a huge cauldron heated with wood. The quality of the food is very poor and prisoners rely heavily on supplies from their relatives. The medical service looks very poorly supplied with medicines and equipment. The library is also very modest. Still, most rooms look relatively cosy and there is also a living area for family gatherings. It seemed to us that much more should be done in order to usefully occupy the prisoners, with better sports facilities for instance, but mostly with better possibilities for studying and preparing themselves for life outside the prison.

195. Our impression was that the efforts of the prison management to guarantee at least some decent living conditions in these impossible circumstances deserve appreciation. It is clear, however, that the issue is a political one and this was confirmed by President Voronin during our meeting with him. The prison is one of the very few remaining sites under Moldovan administration on Transnistrian ground. The director of the prison told us that he had good working relations with the Transnistrian administration in Bender who had even conceded that they were losing important revenues due to the fact that water supply to the prison was cut off; however, they had also made it clear that the issue was not within their competence but was being decided at the level of "president" Smirnov. It is understandable that the Moldovan authorities do not like to close the prison; although no new prisoners are sent there, the intention is to keep it functioning until the last inmates serve their sentence (for some of them this is up to 25 years). However, the political motivations are not a reason to keep inmates there as some kind of hostages. If the prison is to continue to operate without water, electricity and sewage, every effort should be made to guarantee conditions worthy of a penitentiary system in a democratic state.

5.5. Minorities

196. The Republic of Moldova defines itself as a democratic state which respects ethnic, cultural, religious and linguistic diversity as one of its basic principles.

197. According to the population census of October 2004, out of the 3 383 332 inhabitants of the Republic of Moldova Ukrainians represented 8.3%, Russians 5.9%, Gagauz 4.4%, Romanians 2.2%, Bulgarians 1.9% and other ethnic groups (Roma, Byelorussians, Jews, Poles, Armenians, Germans and undeclared) totalised 1%. The census did not include information from the region of Transnistria.

198. The Framework Convention for the Protection of National Minorities was ratified by Moldova in 1996; the European Charter for Regional or Minority Languages has not been ratified yet. The specific legal framework consists mainly of the Law on the Rights of the Persons Belonging to National Minorities and the Legal Status of Their Organisations, adopted in 2001, as well as a 2004 National Policy Concept. There are also special governmental Decisions about some measures to support the development of Ukrainian, Russian, Jewish and Bulgarian national cultures, as well as about measures to protect the Roma. By law of 1994 Gagauzia enjoys a special legal status and official languages there are Moldovan, Gagauz and Russian. In 2005 the Moldovan Parliament adopted the Law on General Provisions for a Special Legal Status of Transnistria defining official languages as Moldovan, Ukrainian and Russian. The specialised executive body of the state dealing with national minority issues is the Department of Interethnic Relations.

199. The most comprehensive recent set of CoE conclusions and recommendations about the state of protection of national minorities can be found in the second Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities adopted in December 2004³³ - the relevant comments by the Government of the Republic of Moldova were submitted in May 2005. Accordingly, on 7 December 2005 the Committee of Ministers adopted Resolution ResCMN (2005)8 on the implementation of

³³ Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Moldova adopted on 9 December 2004, ref. ACFC/INF/OP/II(2004)004, [http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_\(monitoring\)/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/2_second_cycle/2nd_OP_Moldova.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_(monitoring)/2_monitoring_mechanism/4_opinions_of_the_advisory_committee/1_country_specific_opinions/2_second_cycle/2nd_OP_Moldova.asp#TopOfPage)

the Framework Convention. The resolution praised the country for paying due attention to the protection of national minorities and for achieving a higher level of tolerance and mutual understanding. Specific positive points were: the improvement and extension of the relevant legal framework; the fact that the minorities had been consulted and involved in this process; the practical efforts to support national minorities in the fields of culture and education.

200. However, the frozen conflict in Transnistria remained a serious concern. Besides that, the resolution raised concerns about the implementation of the guarantees provided by legislation on the protection of national minorities, namely because of insufficient monitoring of the situation by the authorities, inadequate resources and, in some cases, a lack of political will, particularly at local level. The action taken to support preservation and promotion of the cultures, languages and traditions of national minorities, especially in schools, the media and in relations with administrative authorities were qualified as falling short of expectations of representatives of national minorities. The participation of persons belonging to national minorities in public affairs was also deemed insufficient. The situation of the Roma was a cause of particular concern. A series of recommendations were addressed to the authorities in that respect.

201. There has been constructive cooperation between the Moldovan authorities and the Advisory Committee, expressed, for instance, in the organisation of a new follow-up seminar on the monitoring of the Framework Convention in May 2006 and the translation of the relevant documents of the second cycle of monitoring in five local languages.

202. The Director of the Department for Interethnic Relations provided us with detailed information about measures that have been taken at every level in order to meet the CoE requirements. In the field of culture, for instance, although cultural institutions do not function according to an ethnic principle, there are institutions such as libraries, drama theatres and other artistic groups that promote the culture of specific ethnic minorities. Since 2000, an Ethnic Festival is organised annually alongside different festivals of national traditions. Concerning the media, TeleRadio Moldova provides some broadcasts in minority languages. However, the right of persons belonging to national minorities to be represented in executive power structures, especially in the juridical structures, remains far from being proportionate, mostly due to the fact that these persons do not master sufficiently the state language. The department for interethnic relations has also registered cases whereby persons who appeal to public institutions verbally and in written form in Russian have received replies in Moldovan or vice versa. The Department acknowledges that this "non-compliance with the provisions of linguistic legislation" is a violation of human rights. Although those persons have qualified such cases as racial discrimination, the Department asserts that they have neither been aimed at, nor have resulted in violation of fundamental rights and freedoms.

203. We paid particular attention to the language issue. The official state language, Moldovan (according to Article 13 of the Constitution) is used in all areas of life whereas Russian, according to the existing legislation, is the language for interethnic communication. In practice, Russian is spoken by the majority of the Moldovan population and by the representatives of the national minorities; for a great number of them, Russian is their mother tongue. This means that a substantial part of the population, which belongs to national minorities, does not know the state language sufficiently.

204. This is a situation which in our view is unacceptable in the long term if the Moldovan state is to reaffirm its own identity. The authorities are aware of the need to increase and improve the learning of Moldovan at schools, but they lack adequate means in order to satisfy all the demands for schoolbooks and teacher training.

205. The State ensures the right to choose the language of education and training at all levels and stages of education. During the 2005-2006 school year there were 1129 schools that teach in Moldovan and 280 schools that teach in Russian. There are 54 schools with Ukrainian, 52 with Gagauzian, 35 with Bulgarian language etc. In 21 experimental classes 411 pupils study school subjects in Ukrainian and in 7 classes 86 pupils study subjects in Bulgarian. Other languages are taught at Sunday schools established by the respective ethnic-cultural organisations. However, we were told that most parents, for instance in Gagauzia, prefer the minority language to be a separate subject rather than the language of instruction, which is Russian. In primary schools teaching in a minority language, efforts have been made to increase the number of hours of teaching of Moldovan language and also to introduce the teaching of certain subjects, such as history, in Moldovan.

206. For the moment, the authorities rule out the possibility of changing the status of Russian language from compulsory to optional, like the other foreign languages taught at school. This is, of course, the choice of a sovereign state but we continue to wonder, like in the previous monitoring report, whether such a situation does not harm the learning of other European and world languages, especially at a moment when

Moldova has declared European integration as a priority. This is particularly relevant for national minorities, for which, for instance English or French, would only come in the fourth place after Russian, their own language and Moldovan. The Minister of Education assured us that the demand for foreign languages has soared in recent years, with English leading the list of preferences. There are not enough qualified teachers to meet this demand; in fact, most foreign language teachers are specialised in French, which is the first foreign language taught in most of the provinces.

5.6. Rights of sexual minorities

207. The main Moldovan Lesbian and Gay organisation, the GenderDoc-M Information Centre, continues to complain of multiple violations of the right to freedom of assembly in a public place, police malpractice, failure by government ministries to observe the basics of fair and non-discriminatory government, and oppressive use of legal processes. Both the May 2005 and May 2006 pride demonstrations were prohibited by the Chisinau City Hall. On 18 October 2006 the Supreme Court upheld the ban. The association claims that all the reasons for the negative decision could have been easily solved if there had been dialogue with the authorities. The All Different/All Equal youth march and the Amnesty International demonstrations against the death penalty were also prohibited, according to GenderDoc-M because of their participation in these events.

208. We note that on 20 December 2006 the Supreme Court of Moldova overruled its previous decision and declared that the refusal by the authorities of the City hall of Chisinau to grant authorisation for the organisation of the gay and lesbian solidarity march to GenderDoc-M Information Centre was illegal. In particular, the Court affirmed that the refusal was unjustified and disproportional in the light of the European standards of freedom of association, as protected by Article 11(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, the Chisinau authorities banned once again the organisation of some events planned within the framework of the 2007 LGBT Pride festival "Rainbow over Nistru River". To protest against the decision of City administration, GenderDoc-M Information Centre organised a demonstration in front of the City hall. The manifestation went calmly without violence and was protected by the police. The other activities foreseen within the framework of the Festival were also organised as planned. We deplore the fact that after a final ruling by the Supreme Court of Moldova the Chisinau authorities continue to violate the law and deprive the representatives of the LGBT community of their right to freedom of assembly. Such situation cannot be tolerated in a democratic state governed by the rule of law. We expect the Moldovan authorities to take all necessary measures to put an end to this practice.

209. GenderDoc-M has also sent us a copy of a questionnaire received recently from the Deputy Prosecutor General to "territorial and specialised public prosecutors" "for monitoring the legality of the registration and work of NGOs whose activities are directed toward organising and carrying out public assemblies, meetings and other acts of protest". The questionnaire talks of the need to "identify persons liable to destabilise the political situation and instigate hatred within society" and recommends, in accordance with the law, to take measures to stop or suspend assemblies where leaders or participants make statements or declarations (amongst other things) defaming the state.

210. In another sign of apparent reluctance of the authorities to tackle any issue related to the rights of sexual minorities, the only recommendation of Assembly Resolution 1465 (2005) which was not reflected in the legislative timetable adopted by the Moldovan parliament was the one concerning this particular issue.

5.7. Education and history teaching

211. According to the Minister of Education, the Moldovan authorities are proud with the fact that, thanks to the support also from the CoE, they are ahead of most CIS countries in so far as they have managed to create and introduce Moldovan-proper school books and curricula.

212. Since 2005 Moldova has been a member of the Bologna process and a great amount of work is planned in order to bring the higher education programmes in line with European standards. Moldova is one of the five countries participating in the Kyiv Initiative, a regional Programme of transversal co-operation in culture and heritage, which was officially launched in Bucharest (Romania) on 15 December 2006.

213. A new draft Concept on Education has been tabled for adoption by the government but the parliament has sent it back for amendments and additions. A new comprehensive law on education is also in

preparation, as the present law dates back to 1995 and it is no longer adapted to the new situation, despite several amendments³⁴.

214. History teaching has been a controversial issue since the Moldovan state gained its independence. The debate on how to achieve a balance in teaching local, national and world history in schools is ongoing; the educational authorities have been trying to introduce a multi-perspective approach.

215. A three year pedagogical experiment was organised by the Ministry of Education, Youth and Sport of Moldova on the use of an integrated course on history for secondary and upper-secondary schools. It replaces the separate courses on national and world's history (Some of the schoolbooks on national history were called "History of Romanians"). In 35 per cent of the schools this integrated course was taught in parallel with the usual history courses. Since 1 September 2006, the course has been introduced in all national schools, including in schools for national minorities.

216. The Moldovan authorities believe that the introduction of the new history textbooks should contribute to the process of integration of Moldova into the European educational space. The issue though remains highly sensitive and controversial. On 6 November 2006, for instance, according to information in the press, the Association of Historians picketed the Ministry of Education and Youth in sign of protest against the integrated course on history. The historians view the textbooks as ideologically-tainted, far from reality, anti-scientific and anti-national. The core of the problem, in their view, is that the course presents Moldovans and Romanians as two different nations. The parliamentary factions of the Moldova Noastra Alliance and the Christian Democratic Popular Party have also requested the withdrawal of the books. We were informed that there were no alternative manuals to those introduced on 1 September 2006.

217. The way in which a country regards its history speaks volumes about the way in which it looks into its future. From this perspective, we should think that it is up to the country to reach national consensus and reconciliation on that issue. Nevertheless, it might be useful if the authorities agreed to make public the two expert opinions on the history textbooks that were produced at their own request by the Georg Eckert Institute for International Textbook Research (Germany) on behalf of the Council of Europe. The opinion was recently discussed at a seminar on 'The use of multi-perspectivity in teaching history' that was held in Chisinau on 14-15 July 2006. One important conclusion that emerged from the meeting is that teachers would need serious in-service training for the new course.

6. TRANSNISTRIA

218. In the course of 2006 we visited Transnistria twice, on 14 March and on 14 November (the second visit was carried out only by the co-rapporteur Mr Vareikis). Our purpose was multi-fold; it aimed at verifying some of the key components of the possible settlement of the conflict, in conformity with the CoE mandate in the area of democracy and human rights.

219. On behalf of the "authorities", in March were received by the Speaker of the Supreme Soviet of the self-proclaimed republic, Mr Shevchuk, in post following the 2005 elections. The second time the delegation met chairpersons of different parliamentary groups (see programme).

220. In the first place, we wanted to find out whether there was any chance of a breakthrough in the stalemate concerning the enforcement of the EctHR's decision in the case of Ilaşcu and others v. Moldova and the Russian Federation. We therefore insisted that the Transnistrian "authorities" allow us to visit the remaining detainees in the Ilaşcu case, Andrei Ivanţoc and Tudor Petrov-Popa, in prison. In spite of four resolutions of the Committee of Ministers of the Council of Europe, and although a second application by the two prisoners is currently being examined by the EctHR, no progress was noted. We deplore the fact that this visit was denied to us. The reasons given can hardly be taken seriously – the first time, Mr Shevchuk said that he was not in charge of the prisons and did not know in which prison exactly the two members of the Ilaşcu group were being held. The second time the excuse was that we had not addressed the right authority. Only after the second visit did we receive a letter from the "Foreign Ministry" informing us that the "Justice Ministry" would be ready to cooperate. We decided to take their word and communicated two possible dates on which we would be ready to go again to Tiraspol³⁵.

³⁴ According to the Speaker of the Parliament, the new Education Code currently being discussed by the Parliament will be adopted during the autumn – winter session of the Parliament. <http://parlament.moldova.md/news/27.07.2007/>

³⁵ Andrei Ivanţoc and Tudor Petrov-Popa were set free on 2 and 4 June 2007 respectively. Although we welcome their release, we regret that they had to serve their sentence in full, despite the decision of the EctHR in the case of Ilaşcu and others v. Moldova and the Russian Federation.

221. An equally important purpose of our visits was to find out what was the potential and the possible driving forces for the democratisation of the region after the 2005 "parliamentary" elections and the 2006 "independence referendum", both not recognised by the international community. The results of our meetings are reported in Chapter 6.3.

222. We wanted also to verify the recurrent allegations by the international community and the foreign press that Transnistria is a weapons production centre and a hub for all sorts of trafficking. The results of this enquiry are narrated in detail in Chapter 6.2.

223. Finally, we were interested to find out whether any progress had been achieved in the fulfilment of the Russian commitment to withdraw the Russian army and weapons stationed in Transnistria. We therefore requested to visit the Russian army ammunitions depots, in particular at Cobasna. We were denied permission to make this visit in spite of the assistance it would appear that the Chairman of the Russian delegation to the Parliamentary Assembly wished to give us during the first visit. The Russian Ministry of Defence, to which the request was made, insisted on receiving a special official request for such a visit from the Moldovan Parliament, which was organising our visit but had had no real authority in Transnistria since 1992. The Russian Ambassador in Chisinau was no more successful in unblocking the situation. He claimed that Russia had honoured the commitments resulting from the OSCE's Istanbul conference in 1999 specifying that all heavy armament had been withdrawn from Transnistria, and that all that remained were personnel carriers for the transport of military personnel. We were also refused permission to visit firms in the military-industrial complex. We received no assistance at all from the Russian delegation for the organisation of our second visit.

224. This refusal on the part of the Transnistrian "authorities" is even more regrettable as a day before our delegation's second visit, a group of more than 30 OSCE Ambassadors could visit Colbasna. It qualified the situation in the ammunition depot as dangerous.

6.1. Search for a settlement

225. Following the Orange Revolution in Ukraine at the end of 2004 and the parliamentary elections in Moldova in 2005, new initiatives emerged, instilling new life into the negotiation process. The plan presented by Ukrainian President Viktor Yushchenko was at the origin of this new impetus³⁶. The co-rapporteurs went to Kyiv in September 2005 to study the details of the plan and measure its real political scope. The Ukrainian idea of encouraging the democratisation of Transnistria, then holding free general elections in line with European standards under the aegis of the OSCE was interesting. Nevertheless, even at the time, we advocated greatest caution since the idea could have the effect of giving legitimacy to Smirnov's regime.

226. Moldova's response to the Ukrainian plan, expressed in a declaration and two appeals by the Moldovan Parliament on 10 June 2005, was generally positive, even if the parliament regretted that the plan did not take into account certain crucial elements such as the evacuation of Russian troops, demilitarisation, the principles and terms of the democratisation of the region and the institution of transparent and lawful supervision of the Transnistrian section of the border between Ukraine and Moldova. The Moldovan Parliament decided then to give its own interpretation of a peace settlement and accordingly passed a law on 22 July concerning the main provisions of the special legal status of Transnistria. These provisions were rather controversial in the eyes of the other parties involved, who feared that addressing the question of the status first will only complicate the negotiations and the process.

227. Russia also presented a contribution, reiterating the broad lines of the 2003 "Kozak plan". This plan essentially involved establishing a system combining elements of federation and autonomy, with two equal entities, Transnistria and Gagauzia. Moldova proper becomes a specific federal state³⁷. The Kozak plan was

³⁶ The plan seeks mainly to achieve a lasting settlement by establishing democracy in Transnistria, in particular by:

- establishing the requisite conditions for the development of democracy, civil society and a multi-party system in Transnistria;
- holding free and democratic elections to the Supreme Soviet of Transnistria under the supervision of the European Union, the OSCE, the Council of Europe, Russia, the United States and other democratic countries, including Ukraine;
- changing the current peacekeeping operation arrangements for an international mission composed of military and civilian observers under the aegis of the OSCE, and increasing the number of Ukrainian military observers in the region;
- the Transnistrian authorities allowing an international inspection team, with the participation of Ukrainian experts, into the military/industrial enterprises in the Transnistrian zone;
- organising an OSCE mission in Ukraine in the short term to supervise the movement of goods and people on the border between Ukraine and Moldova.

³⁷ According to the plan, Transnistria would have its own institutions: legislative (parliament), executive (President and government) and judicial. The "right bank", however, would depend only on the federal institutions: the federal President,

rejected at the last moment by President Voronin in 2003 since certain elements introduced by the Russian part at the last moment turned out to be unacceptable for Moldova.

228. Since then Russia has stopped withdrawing troops, weapons and military equipment from Transnistria, which it had agreed to do in the context of the decisions reached at the OSCE summit in Istanbul in 1999. This was also one of the commitments Russia took on when it joined the Council of Europe³⁸, reaffirmed by the Assembly in its Resolution 1455 (2005) on the honouring of obligations and commitments by the Russian Federation³⁹. According to the Chairman-in-Office of the OSCE, the Belgian Minister of Foreign Affairs Karel De Gucht, quoted in the media, the OSCE apparently has €10 million available in its budget to help Russia withdraw its forces and the withdrawal could be completed in three months. It is therefore a question of political determination. The OSCE's ministerial meeting on 4-5 December 2006 failed to adopt a declaration on Moldova. It also failed, for the fourth time in a row, to agree on a final declaration because Russia opposed the reference in the text to its commitments under the Istanbul agreement. The ratification of the Agreement on Adaptation of the Treaty on Conventional Armed Forces in Europe is also taking time because of Russia's refusal to withdraw its weapons. A number of states parties confirmed their intention to ratify the agreement as soon as Russia honoured its Istanbul commitments. Russia is apparently unwilling to proceed with a complete withdrawal from Transnistria as long as no settlement of the conflict has been reached.

229. Romania had also announced that it would be proposing its own settlement plan.

230. Meanwhile, the European Union has appointed a Special Representative to Moldova, Dutch diplomat Adriaan Jacobovits de Szeged, former representative of the Netherlands Chairmanship of the OSCE for the Moldovan question, who has meanwhile been replaced by a Hungarian diplomat, Mr Kalman Mizsei. At the same time, following a joint appeal by the Presidents of Moldova and Ukraine, on 30 November 2005 the European Union arranged a border assistance Mission (EUBAM) to the two countries to contribute to their efforts to combat "trafficking in weapons, contraband, organised crime and corruption".

231. In October 2005 negotiations in connection with the "Standing Conference on political questions in the context of the process of negotiations on the Transnistrian conflict" resumed in an enlarged format, the European Union and the United States having joined the "group of 5" (Moldova, the separatist region of Transnistria, the Russian Federation, Ukraine and the OSCE⁴⁰) as observers. Four "five plus two" meetings were held between October 2005 and February 2006. The February session failed because the Moldovan Minister of Reintegration, Mr Sova, left the negotiating table in protest; in March it was the Transnistrian side that pulled out because of the situation in the Transnistrian segment of the border between Moldova and Ukraine. Since then, the parties have not been able to resume the negotiations in the "5+2" format, although since the autumn of 2006 the mediators and the observers have managed to hold separate meetings with each of the parties in the conflict.

232. Even if the Moldovan side says it is ready to resume negotiations, the Tiraspol regime refuses to participate until a protocol is signed which would allow it to run its own foreign economic affairs (or, de facto, return customs regulations for Transnistrian export goods at the Moldovan-Ukrainian border to the *status quo ante* (i.e. before the March 2006 implementation of the Joint Declaration of the Moldovan and Ukrainian Prime Ministers).

233. After the meeting between President Voronin and President Putin in November 2006 it was announced that the negotiations would resume. Indeed, since the beginning of 2007 the Deputy Head of the Security Council of the Russian Federation Yuriy Zubakov travelled on several occasions to Moldova to meet with President Voronin. Presidents Voronin and Putin also held several bilateral meetings (in St Petersburg on 10 June 2007, in the margins of the Informal Summit of Head of State of CIS countries, in Novo-Ogarevo on 22 June 2007, on 30 June 2007, in the margins of an informal meeting of Heads of States of CIS countries in Rostov-on-Don). Very little official information is available about the issues discussed during these meetings. There were however indications in the press that President Voronin had brought together several politicians in April 2007 to present them with new proposals and possible ways of finding a

although elected mainly by right-bank voters, is meant to be neutral; the federal government, at the political and administrative level, would include representatives of Transnistria and Gagauzia. Also, the government would depend on the second federal chamber, the Senate, where these two entities would have at least half the seats.

³⁸ Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe.

³⁹ Paragraph 14i. "with regard to the withdrawal of the remaining Russian military forces and their equipment from the territory of Moldova, carry out this withdrawal, which should have been completed by October 1997, without any further delay".

⁴⁰ For further details see the report the co-rapporteurs presented to the Assembly in October 2005, Doc. 10671.

settlement to the Transnistrian conflict already introduced to the Russian authorities. These proposals would allegedly consist in organising simultaneously pre-term general elections in Moldova on both banks of the Nistru river in late 2007, reserving some 18-19 mandates in the Moldovan Parliament for representatives from Transnistria, granting certain important posts in the Government of Moldova to the representatives of Transnistria, guaranteeing Moldova's neutrality status, closing down of the peace-keeping operation and removal of Russian troops from Transnistria together with firm institutional and political guarantees of the status of Transnistria (including the right of secession if Moldova were to lose its sovereignty).

234. In a recent meeting with the international community (held on 28 June and attended by Ambassadors of EU member-states, Russia, the United States, the European Commission, the Council of Europe and the OSCE) President Voronin did not provide many details on the ongoing talks, just mentioning that Moldova was supporting negotiations in the "five plus two" format and that along with the settlement of the conflict in Transnistria several other issues were discussed between the Presidents of Moldova and Russia, in particular, the re-opening of the Russian market for Moldovan agricultural products, new Russian investments in Moldova and the resumption of the export of Moldovan wine to Russia.

235. The lack of precise official information about possible talks between the Moldovan and Russian Presidents on the Transnistria conflict settlement remains nevertheless a matter of concern for some national political forces. The opposition MPs proposed on 7 June 2007 to invite the Minister of Foreign Affairs and European Integration Andrei Stratan to speak at the Parliament to inform the members about possible negotiations. The proposal was rejected by the majority MPs.

236. All these pieces of information from various sources indicate, when put together, that bilateral discussions about a possible settlement for the Transnistrian conflict are indeed being carried out at the level of the Presidents of Moldova and Russia. These discussions and exchanges of views between the two Heads of State should be welcomed, in principle. We consider however that any formal talks on the settlement of the conflict in Transnistria should be carried out in the internationally agreed "five plus two" format and in consultation with all stakeholders. It is true that the settlement of the Transnistrian conflict has been put off for too long. A quick and, possibly, easy bilateral settlement does not however seem to be an appropriate solution. The possible consequences of different settlement options on the institutional and legal framework of Moldova should be carefully assessed. The involvement of the Venice Commission in the analysis of the corresponding legal instruments appears to be highly appropriate and we expect the Moldovan authorities to request the Commission's advice in this matter in due course.

6.2. Economic situation

237. On 30 December 2005 the Prime Ministers of Moldova and Ukraine, Vasile Tarlev and Yuriy Yekhanurov, signed a joint declaration introducing new customs regulations on the border between Moldova and Ukraine. As of 3 March 2006, when the new regulations came into force (after a few technical delays) Ukraine no longer authorised the import and transit of goods from the Transnistrian region if they were not permanently or temporarily registered in Chisinau and accompanied by all the requisite customs documents, visas and stamps, as well as certificates of origin. These new customs regulations are the practical implementation of the bilateral Customs Protocol of May 2003. On 2 November 2006 the validity of the Government Decision Nr. 815 of 2005 on regulation of the transit of the goods from Transnistria, which represent subject of foreign trade was extended for another year.

238. Meanwhile, the Moldovan Government established a free and simplified registration mechanism for Transnistrian enterprises. Furthermore, on 10 March, the Moldovan Parliament passed a law exonerating Transnistrian economic agents from customs duties on imported raw materials. Under the law, any export duties paid by properly registered enterprises are placed in a special account opened by the Moldovan customs authorities and refunded to the local authorities in the Transnistrian region.

239. A similar registration system had already functioned from May 2003 to July 2004 without any major difficulties. The main difference this time round is the political context: first and foremost, Ukraine's determination to apply new rules at the border with Moldova, the presence of the EUBAM and the commitment and attention of the European Union and the United States. The introduction of the new system consequently unleashed a wave of hysteria in Transnistria, which called it an "economic blockade", tantamount to a political attempt to destabilise the regime and settle the conflict by coercion rather than at the negotiating table. "President" Smirnov also accused Ukraine of no longer being a guarantor state and a mediator but a party to the conflict.

240. At the time of our March visit, the situation at the border was very tense. The two main border posts in the Transnistrian sector – Goianul Nou/Platonovo and Pervomaisk/Cuciurgan – were practically blocked.

On one side lorries from Transnistria without proper Moldovan customs papers no longer had the right to enter Ukraine. On the other side the Transnistrian "authorities" staged their own blockade, stopping all transit of goods by train or lorry in either direction between Moldova and Ukraine through territory under Transnistrian control. They also blocked passenger trains. Local associations had formed picket lines at border crossings in the Transnistrian sector in protest against the new export regulations.

241. The Transnistrian "authorities" also brandished the threat of a "humanitarian catastrophe". It is rather regrettable that Russia adopted a similar stance. The Russian Duma likened the new customs rules to "economic sanctions" and even provided some "humanitarian assistance".

242. Russia wields the same arguments as the Transnistrian side against the customs regulations. Both refer to the 1997 Memorandum on the Bases for Normalisation of Relations between the Republic of Moldova and Transnistria, which gives Transnistria the right unilaterally to establish and maintain international contacts of an economic, scientific technological and cultural nature. Moldova, for its part, rightly maintains that the possibilities given to Transnistrian enterprises do not dispense them from the obligation to conduct their commercial activities in compliance with international law and the bilateral agreements between Moldova and Ukraine. During Igor Smirnov's visit to Moscow on 23 May 2006, he and Russia's Deputy Prime Minister Alexander Zhukov signed a socio-economic agreement protocol, whereby Russia undertakes to ensure that the 1997 memorandum is upheld. The Tiraspol regime accordingly classified this document as an instrument that made it possible to end the "economic blockade" and continues to insist that the principles embodied in it should replace the customs system currently in place.

243. More than half a year after the introduction of the new customs regime, it is clear that there has been no humanitarian catastrophe. The Transnistrian currency has remained stable and there have been no shortages of foodstuffs in the shops. Furthermore despite reports of pressure that had been put on Transnistrian companies by the regime in order not to register, by the time of our second visit around 250 Transnistrian companies had registered in Chisinau, which practically covers all the import-export potential of the Transnistrian region.

244. The losses incurred both by Moldova and Ukraine have been much more substantial. Both countries deserve high praise for their determination, with EU assistance, to introduce law and order at one of the shakiest borders in Europe. Transnistria's economic agents have everything to gain from the possibility of working in an internationally recognised legal framework and benefiting from all the preferential arrangements Moldova enjoys (unless their activities are illegal, of course). It is naturally important that all the rights of Transnistrian enterprises are protected.

245. We were strongly impressed by our meeting with the EUBAM experts at the Cuciurgan border post. Their presence and support were clearly contributing a great deal to the learning of good European practices for inspecting customs documents, the contents of goods consignments and the passage of people across the border. We fully support the decisions to extend the duration of this mission. Another positive development is the Agreement for exchange of information on movement of goods and people across the shared border of the respective countries that was reached at the trilateral meeting of 21 November 2006 in Brussels on the cooperation of Moldova and Ukraine with the EU about EUBAM.

246. It is difficult to provide actual proof of the alleged trafficking in various items: weapons, drugs and human beings. Both the EUBAM experts and the Ukrainian authorities we met in Odessa had concrete information on isolated cases. At this stage, however, complete estimations are impossible for several reasons: until the new customs regulations were brought in, everything transported into or out of Transnistria travelled freely as no internationally recognised official documents were necessary. In addition to the 7 border posts between Moldova and Ukraine there is more than 70 km of a "green" borderline where it is easy to cross because of the lack of proper detection equipment and the corruption that has existed at the borders. Thorough searches are virtually impossible (how, for example, does one find a stock of light weapons hidden on a train carrying coal?). To detect more subtle forms of trafficking, such as trafficking in human beings, border guards need know-how and the delegation of powers to the lower echelons, things which are only now beginning to be put in place.

247. According to international observers, however, the lack of border controls was such that all forms of trafficking were theoretically possible. There is also indirect evidence: apparently, since the joint operation organised by EUBAM and the Ukrainian authorities the price of bribes to smuggle goods across the border has increased between 5- and 10-fold.

248. Regretfully, in recent times Ukraine, although sticking to its commitments with regard to the customs regulations, has shown a much more controversial attitude towards Moldova in the dispute regarding the

railway bridge at Mogiliev-Podolski border crossing. This bridge had been the main remaining Moldovan-Ukrainian railway border-crossing point following the closure of the Transnistrian railway sector in March 2006. It is also the only one which could perform import and export operations of excise goods between the two countries. The Ukrainian Railway Administration (URA) closed the bridge, officially for repair work. As a consequence, Moldova was unable to export wines to, and import fuel from, its main trade partners in the East. Moreover, Moldova had to pay more than 1 million Swiss Francs (SFR) in compensation under its international railway agreements to foreign railway companies and enterprises whose cargoes were affected by the blockade by the Tiraspol authorities of the Transnistrian railway segment, as a sign of retaliation for the imposition of the new customs regime between Moldova and Ukraine. On 7 September 2006 the Moldovan and Ukrainian railways agreed to open this segment for cargo transits but Moldova has so far refused to open it also for passenger trains since the Tiraspol is seizing Moldovan Railways assets.

249. To make matters even worse, in October 2006 the Russian Railways announced that it would stop one of the three Moldovan trains running between Chisinau and Moscow, allegedly because of technical problems caused by the longer route the train takes in order to bypass the Transnistrian section.

250. The railway traffic communication, including over the territory of Ukraine, was normalised on 15 December 2006 following the agreement reached between Moldova, Ukraine and Russia at the Minsk CIS Summit on 28 November 2006.

6.3. Political situation

251. On 11 December 2005 the Tiraspol regime held elections to the Supreme Soviet (the "parliament" of the self-proclaimed republic). They were not observed by the OSCE, but some 150 foreign observers were present, allegedly in their private capacity or sent by the Commonwealth of Independent States Election Monitoring Organisation (CIS-EMO).

252. 27 out of 43 members were re-elected and 16 new members were elected, including the son of "President" Oleg Smirnov and the wife of the State Security "minister", Galina Antiufeyeva. For the first time the pro-"presidential" group Respublika (Republic) lost the absolute majority to a movement apparently more favourably disposed towards reform, as its name – Obnovlenie (Renewal) – suggests. This movement won 23 out of 43 seats and enjoys the broad support of Transnistria's larger economic enterprises and entities, in particular the Sherrif conglomerate. At the beginning of June the movement became a political party. The new speaker of the Soviet is the leader of Obnovlenie, 37-year-old Yevgeniy Shevchuk, a former Sherrif executive and hitherto deputy speaker of the Supreme Soviet. He has been at the origin of some legislative reform initiatives aimed at strengthening the Soviet's position vis-à-vis the "President".

253. The latest such example was the rejection in September 2006 by a majority of the Supreme Soviet of a draft law initiated by "president" Smirnov "on the agencies of state security". The deputies criticised the draft law for not containing the principle of parliamentary control over the security "ministry". Mr Shevchuk announced that a parliamentary committee would prepare, for the first time in its history, a report on the work of the "ministry for state security". The "ministry" is one of the main tools for maintaining the power of the current regime.

254. It cannot be said, though, that the present configuration of the Supreme Soviet is a sign of a major political turnaround that will bring democracy to Transnistria. However, as we established when we spoke to Mr Shevchuk, a new generation might well want to end the present isolation, primarily for economic reasons. Many Transnistrian firms have good economic potential and are finding it increasingly difficult to develop without proper legitimacy within a state. Mr Shevchuk clearly defined the aspirations of the circles he represents: freedom of movement in Europe and access to the European markets. Regrettably, the poor economic situation in Moldova prevents for the moment the country from taking advantage of this move and creating aspirations within the Transnistrian business and respective political establishment towards closer links.

255. Furthermore, there is no real well-organised political opposition to speak of in Transnistria, even if we did meet activists critical of the regime. Civil society is weak, which is only to be expected in a system dominated by the "state" security forces. The same applies to the press and its independence. Two interesting meetings we had with NGOs in Tiraspol left us with the ambiguous feeling that, although we had seen young people full of intelligence and keen to draw closer to Europe, these same people told us that the young people of their generation were de-motivated and politically passive because direct contact with democratic realities was all too rare. Most of them wanted to leave. Russia is the favourite destination, followed by Ukraine.

256. On 7 March 2006 "president" Smirnov issued a decree prohibiting NGOs from receiving foreign financial support, even via international organisations like the OSCE (in Transnistrian parlance "foreign" also includes Moldova). Mr Shevchuk conceded during our discussion that Mr Smirnov had been "ill advised" and said that he would be reviewing the terms of the ban so that it did not affect humanitarian NGOs. The decree was indeed subsequently amended and the ban now applies only to NGOs whose activities are political. Be that as it may, the powers that be in Tiraspol seemed intent on stifling all freedom of thought, particularly in the run-up to the "presidential" elections in 2006.

257. The NGOs that we met told us of the difficult conditions in which they have to operate and how much they had to watch out about presenting their activities as non-political if they wanted to carry them out. Most of them concentrate their activities in helping young people to get better involved in professional and civic life. They for instance encourage civic initiatives and partnerships between civil society, business and local authorities. They also provide legal, professional, psychological and even health advice, the latter in order to prevent the spread of drug addiction and AIDS. Some are also active in the field of combating human trafficking.

258. It is very important that the Council of Europe identifies NGOs which it can assist in their democratisation efforts. A welcome development is the conference that the CoE, responding to the Moldovan authorities previous requests, organised in Chisinau on 15 December 2006 "On the state of civil society in Transnistria: what chance for democratisation?" with the participation of international organisations, experts and Transnistrian NGOs.

259. A few other political parties emerged ahead of the "presidential" elections held in Transnistria at the end of 2006. One of them, for instance is the People's Democratic Party Proryv (Breakthrough), formed on the basis of a youth organisation founded in 2005. The most visible thing this party has done so far was to organise demonstrations against Moldova, the United States and the OSCE. The pro-"presidential" group Respublika has also become a political party. This political landscape might be a sign of a certain movement forward but, as yet, does nothing to match political pluralism in a democratic society.

260. On 17 September, the Tiraspol regime held a referendum on Transnistria's future external political orientation, despite statements by the OSCE, the Council of Europe, the EU, the U.S. and Ukraine that the referendum and its results would not be recognised. Two questions were put to the Transnistrian voters – whether they support the independence of Transnistria and its future free will accession to the Russian Federation, and whether they support giving up Transnistrian independence and joining Moldova.

261. According to the officially announced results, 78.6 percent of registered voters participated in the referendum out of which 97.2 percent voted in favour and 1.9 percent against Transnistria's independence and future accession to the Russian Federation. 94.9 percent voted against giving up Transnistrian independence and joining Moldova, with only 3.3 percent in favour. Local independent observers and the Moldovan authorities consider these results, and especially the participation figures, as severely overblown and certainly falsified, given the political apathy of the population.

262. The campaign cannot be considered as free and fair by any international standards. According to independent observers, it included heavy pressure on voters to vote in favour of the first question, assorted by reminders of the 1992 armed conflict and the so-called "Moldovan aggression" against Transnistria and with praises of all the social benefits of an accession to Russia. The pro-Moldovan lobby was silenced with threats of criminal prosecution. The Transnistrian chief negotiator, Valeriy Litskai, during the campaign claimed that several major industrial enterprises of the region financed the campaign for Transnistria's independence and future accession to the Russian Federation. He also stated that the newly established political movements that pushed the pro-Russian line on the referendum did so on political "orders" from Moscow.

263. In the aftermath of the referendum, Transnistrian leader Smirnov announced plans to amend the Transnistrian "constitution" and to bring the region's economic, financial, tax, customs, social and education legislation even closer to the Russian legislation. He further stressed that he would pursue the full implementation of a cooperation protocol signed by him and the Russian Deputy Prime Minister Zhukov in May and that he had ordered the Transnistrian "republican bank" to consider the question of Transnistria joining the Russian rouble zone.

264. The Speaker of the Supreme Soviet also addressed a letter to the President of the Parliamentary Assembly asking him to "consider the possibility of initiating the recognition of the Pridnestrovskaja Moldoavskaja Respublika as a sovereign and independent state". The letter was a result of an appeal adopted on 11 October 2006 by the Transnistrian Supreme Soviet to the Russian State Duma, the Ukrainian

Verkhovna Rada, the National Assembly of Belarus, Parliaments of other CIS countries, the Parliamentary Assembly of the Council of Europe, the European Commission and the OSCE. During our delegation's visit to the Supreme Soviet on 14 November, our interlocutors expressed their wish that Transnistria be granted observer status with PACE.

265. Similar appeals cannot be qualified in any other way than as sheer provocation. The Tiraspol regime authorities know very well that the Council of Europe and the entire family of democratically minded states under its roof upholds the principle of territorial integrity and sovereignty of the Republic of Moldova and that there is no possible compromise in this regard.

266. On 10 December 2006 Igor Smirnov, who has been heading Transnistria continuously since 1991, was re-elected in the "presidential" elections in Transnistria for a fourth 5-year term of office. According to the Transnistrian election administration he was supported by 82.4% of the voters, with a 63.7% turnout. Like during the so-called referendum, pressure on voters was again reported. Mr Smirnov was officially nominated by the "Patriotic Party of Transnistria" chaired by his son and by working collectives of major industrial companies in the region. The other candidates were Nadezhda Bondarenko, nominated by the Communist party of Transnistria, editor-in-chief of the party's newspaper "Pravda Pridnestrovya", a member of the Transnistrian Supreme Soviet Peter Tomaily and Andrei Safonov, editor-in-chief of the New Gazette, considered as the most significant opposition figure in the region. Mr Safonov was initially disqualified by the election commission, allegedly for invalid signatures in his support, but this decision was later overturned by the Tiraspol city court. However, he was only allowed to take part in the elections at the end of November, which prevented him from organising a proper campaign.

267. The Speaker of the Supreme Soviet, Mr Shevchuk, who would have been the most serious contender of Mr Smirnov, did not run. It is widely believed that this was done under pressure from Moscow but it is also possible that his decision was made for tactical reasons.

6.4. Latin-script schools

268. We have been following the situation of the six educational institutions in Transnistria that teach Moldovan/Romanian in the Latin script, in accordance with the curriculum of the Moldovan Education Ministry.

269. The building of the Moldovan Lyceum Evrica located in the city of Ribnitsa remains confiscated for more than two years now by the city administration. It was built by the Government in Chisinau and was nearly finished when the Transnistrian militia took it by force and then confiscated it during the height of a school crisis in the summer of 2004. While the unoccupied building is beginning to crumble, the pupils of the lyceum have to attend classes on the premises of a kindergarten owned by the local steel plant and temporarily rented by the Moldovan Ministry of Education. No agreement has been reached for the rent of the plot of land on which the building is located.

270. Although the schools have now received permanent registration, negotiations continue with a mixed success on the other contested issues such as curricula, licence and accreditation.

271. In November 2006, the European Court of Human Rights accepted for an urgent examination the claims filed by 3 of the schools. They are accusing the Governments of Moldova and the Russian Federation of violating their right to education and right to work in conditions of non-discrimination.

7. FURTHER STEPS IN THE MONITORING PROCEDURE

272. According to the standard monitoring procedure, after the examination of the preliminary draft report by the Monitoring Committee, the Moldovan parliamentary delegation can provide comments within three months.

273. The comments by the Moldovan delegation were provided by end of April and discussed in the Committee on 15 May 2007. At that meeting the Committee decided to adjourn the discussion of the report until after the local election of 3 June 2007 and instructed the rapporteurs to update the report, taking into account the comments by the Moldovan delegation, and prepare a draft resolution for consideration in the Committee meeting to be held on 12 September 2007. The Assembly will then debate the draft resolution in plenary during the October 2007 Part session.

274. The present report is a revised and updated version of the preliminary draft report. It has incorporated the comments by the Moldovan delegation as well as the answers to specific questions we had put forward in our preliminary draft report.

275. In conclusion, we would like to note that ten years after the beginning of the monitoring procedure, this report underlines the difficulties that the country is still going through. We sincerely hope that the progress noted will continue in 2007 and 2008 by pursuing and concluding the reforms necessary for the full honouring of commitments.

276. All the political factions of Moldova and its leaders at all levels should provide the indispensable stability, political maturity, the choice of political direction, reforms and their necessary implementation on a permanent basis.

277. The international community and, particularly, Europe of which Moldova is an integral part, should be both supporting and demanding while accompanying these requirements and objectives. Besides, the international community should also be involved more efficiently in resolving the frozen conflict in Transnistria, which could compromise the independence and sovereignty of Moldova, including its economic balance. The years 2007 and 2008 will be important and perhaps decisive ones for this country. We have every confidence in the Moldovan people.

APPENDIX

Parliamentary Assembly
Assemblée parlementaire



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**COMMITTEE ON THE HONOURING OF OBLIGATIONS AND COMMITMENTS
BY MEMBER STATES OF THE COUNCIL OF EUROPE (MONITORING
COMMITTEE)**

**Programme of the fact-finding visit to
MOLDOVA**

12-15 November 2006

Members of the delegation:

Co-rapporteurs: Mrs Josette DURRIEU (France, SOC)
Mr Egidijus VAREIKIS (Lithuania, EPP/CD)

Secretariat: Mrs Bonnie THEOPHILOVA-PERMAUL, Co-Secretary, Monitoring Committee of the PACE

Members of the delegation:

Co-rapporteurs: Mrs Josette DURRIEU (France, SOC)
Mr Egidijus VAREIKIS (Lithuania, EPP/CD)

Secretariat: Mrs Bonnie THEOPHILOVA-PERMAUL, Co-Secretary, Monitoring Committee of the PACE

Sunday, 12 November

(Meetings organised by the Office of the Special Representative of the Secretary General to Moldova)

- 17.20-17.50 Meeting with Brigadier General Ferenc BANFI, Head of the EU Border Assistance Mission on the Moldovan-Ukrainian border
- 18.00-19.30 Meeting with Ambassador Cesare DE MONTIS, EC Head of Delegation, Mr Gottfried HANNE, Deputy Head of OSCE Mission and Mr Thomas BARANOVAS, Adviser to the Special Representative of the EU in Moldova
- 20.00-22.00 Dinner hosted by Mr Vladimir RISTOVSKI, Special Representative of the Secretary General of the Council of Europe, with the participation of the Ambassadors of Bulgaria, France, Romania, Turkey, Ukraine, United Kingdom, the EC Head of Delegation and the Adviser to the Special Representative of the EU in Moldova

Monday, 13 November

- 08.00-08.50 Meeting with des ONG
- 09.00-09.30 Meeting with Mr Marian LUPU, Speaker of the Parliament of Moldova
- 09.40-10.45 Meeting with:
- Mr Vitalie PÎRLOG, Minister of Justice
 - Mr Valeriu BALABAN, Prosecutor General
 - Ms Valeria ȘTERBET, President of the Supreme Court of Justice
- 10.55-12.15 Meeting with:

- Mr Gheorghe PAPUC, Minister of the Interior
 - Mr Valentin MEJINSCHI, Director of the Center for Combating Organized Crime and Corruption
- 11.15-12.15 Continuation of the meeting with the participation of NGOs competent in the fight against crime, trafficking in human beings and corruption
- 12.30-13.30 Meeting with Mr Vitalie VRABIE, Minister of the Local Public Administration
- 13.40-14.50 Working lunch with Heads of parliamentary fractions
- Ms Eugenia OSTAPCIUC – Party of Communists of the Republic of Moldova (PCRM)
 - Mr Veaceslav UNTILA – «Alliance Moldova Nostra» (*Our Moldova*) (AMN)
 - Mr Vlad CUBREACOV – Christian Democratic Popular Party (PPCD)
 - Mr Dumitru DIACOV – Democrat Party (PD)
- 15.00-16.30 Meeting with Mr Ilie TELEȘCU, Director General of Radio, Teleradio Moldova (TRM) and with the Head of the TeleRadio Observers' Council
- 15.30-16.30 Continuation of the meeting with the participation of NGOs competent in the field of media
- 16.45-18.00 Meeting with Mr Andrei STRATAN, Minister of Foreign Affairs and European Integration and Mr Vasile ȘOVA, Minister of Reintegration
- 18.30-19.30 Meeting with Mr Vasile TARLEV, Prime Minister of the Republic of Moldova
- 20.00 Dinner hosted by Mr Marian LUPU, Speaker of the Parliament of Moldova

Tuesday, 14 November

Transnistria

(programme organised by the office of the SRSG in Moldova)

Meeting with representatives of the Supreme Soviet of the self-proclaimed Republic of Transnistria (members of the Committee for Foreign Policy and International Relations, Committee on the relations with the Republic of Moldova, Committee on the relations with Ukraine, Committee for the relations with the Russian Federation)

Meeting with NGOs and political activists

Visit to the prison No. 8 of Tighina (Bender)

Comrat

Meeting with Mr Alexandr STOIANOGLU, Deputy Prosecutor General, candidate to the position of Başcan

Meeting with Mr Mihail FORMUZAL, Mayor of Ciadir-Lunga, candidate to the position of Başcan

Wednesday, 15 November

Comrat

- 08.00-08.25 Meeting with Mr Nicolai DUDOGLU, candidate to the position of Başcan
- 08.30-08.55 Meeting with Mr YANIOGLO, candidate to the position of Başcan
- 09.20-10.15 Meeting with Mr Gheorghii TABUNŞCIC, Başcan of Gagaouzia and Mr Stepan IASIR, Head of the People's Assembly
- 10.20-10.45 Meeting with the Central Electoral Commission

Chisinau

- 13.00-14.00 Meeting with Mr Vladimir VORONIN, President of the Republic of Moldova
- 14.10-14.40 Press conference
- 15.00-16.10 Working lunch with the parliamentary delegation to the PACE
- 16.20-17.00 Meeting with Ms Olga GONCIAROVA, Head of the Office for Interethnic Relations
- 17.10-17.50 Meeting with Mr Victor ŢVIRCUN, Minister of Education and Youth
- 18.00-18.40 Meeting with Mr Gheorghe AMIHALACHIOAE, Chairman of the Moldovan Bar Association
- 19.30 Dinner hosted by Mr Iurie ROŞCA, Vice-Chair of Parliament

Reporting committee: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Reference to committee: Resolution 1115 (1997)

Draft resolution and draft recommendation unanimously adopted by the committee on 12 September 2007

Members of the committee: Mr Eduard **Lintner** (Chairperson), Mrs Hanne **Severinsen** (1st Vice-Chairperson), Mrs Meritxell Batet Lamaña (2nd Vice-Chairperson), Mr Tigran Torosyan (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro Agramunt, Mr Birgir Ármannsson, Mr Jaume Bartumeu Cassany, Mr József Berényi, Mr Aleksandër Biberaj, Mrs Gülsün Bilgehan, Mr Luc **Van den Brande**, Mr Patrick Breen, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Valeriu Cosarciuc, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mr John Dupraz, Mrs Josette **Durrieu**, Mr Mátyás Eörsi, Mr Per-Kristian Foss, Mr György **Frunđa**, Mrs Urszula Gacek, Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Marcel **Glesener**, Mr Charles **Goerens**, Mr Andreas Gross, Mr Michael Hagberg, Ms Gultakin **Hajiyeva**, Mr Michael **Hancock**, Mr Andres **Herkel**, Mr Serhiy **Holovaty**, Mr Kastriot Islami, Mr Miloš **Jeftić**, Mrs Evguenia **Jivkova**, Mr Erik **Jurgens**, Mr Ali Rashid Khalil, Mr Konstantin Kosachev, Mr Andros Kyprianou, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony **Lloyd**, Mr Pietro **Marcenaro**, Mr Mikhail Margelov, Mr Bernard **Marquet**, Mr Frano Matušić, Mr Miloš Melčák, Mrs Assunta Meloni, Mrs Nadezhda Mikhailova, Mr Neven **Mimica**, Mr Paschal **Mooney**, Mr João Bosco **Mota Amaral**, Mr Zsolt Németh, Mr İbrahim Özal, Mr Theodoros Pangalos, Mr Leo Platvoet, Ms Maria **Postoico**, Mr Christos **Pourgourides**, Mr Andrea Rigoni, Mr Dario **Rivolta**, Mr Armen **Rustamyan**, Mr Oliver **Sambevski**, Mr Kimmo **Sasi**, Mr Samad Seyidov, Mr Vitaliy Shybko, Mr Leonid **Slutsky**, Mrs Elene Tevdoradze, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Biruté Vėsaitė, Mr Oldřich Vojříř, Mr David **Wilshire**, Mr Tadeusz Wita, Mrs Renate Wohlwend, Mr Boris Zala, Mr Andrej **Zernovski**, Mr Emanuelis Zingeris

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats, Mr Karpenko