

**IHf FOCUS:** elections and referenda; local democracy; freedom of expression and media; freedom of association; the judicial system and independence of the judiciary; fair trial and detainees' rights; torture, ill-treatment and police misconduct; conditions in prison and detention facilities; religious intolerance; right to privacy and security of person.

The Communist Party won an overwhelming victory in the February parliamentary elections, which the OSCE Office for Democratic Institutions and Human Rights (ODIHR) considered to meet international standards. This result seemed to reflect public dissatisfaction with the widespread poverty and the high unemployment rates in the country. Following the elections, the Communist Party formed a majority cabinet and Communist Party leader Vladimir Voronin was appointed President.

The new Government pledged to uphold close ties with Romania, but also set out to strengthen ties with Moscow. Accordingly, it was proposed that the Russian language be made an obligatory subject in schools starting from the second class. In addition, the Government ordered that history books be rewritten to depict the history of the Republic of Moldova since its independence, instead of giving the Romanian history. The decision requires that communist style history books be rewritten to depict Moldovans as a separate people. The order led to mass demonstrations and the Government eventually withdrew the order to introduce the Russian language as an obligatory subject.

Although the new Government expressed commitment to the country's obligations under international treaties, its policies left a great deal to be desired. Upon entry into office, the Government made moves to curtail local democracy by depriving the local self-governing bodies of their financial autonomy and by proposing to re-introduce the Soviet-era system of regional and local administration. Similarly, the Government attempted to increase its influence over the judicial branch by revising appointment provisions.

The new Government also failed to take effective measures to promote much needed improvements in judicial process standards and to address the grave problem of arbitrary detention, including detention of persons subjected to physical abuse, persons not able to pay their fines and so-called vagrants. Meanwhile, detention conditions remained unsanitary and degrading for those detained.

President V. Voronin declared that resolving the Trans-Dniestrian problem was a priority for him, and the new Government stated its readiness to grant the region a large degree of autonomy. Separatist authorities rejected the idea, and the negotiations came to a deadlock prior to the "presidential elections" in Trans-Dniester to which the international community refused to send observers. Some progress was nevertheless made. For example, some weapons and ammunition were confiscated. Still, 2,500 Russian troops remained stationed in violation of the 1999 Istanbul OSCE Summit decision on withdrawal.<sup>2</sup>

## **Elections and Referenda**

### *Parliamentary Elections<sup>3</sup>*

Following several unsuccessful attempts by the Parliament to elect a new President, President Petru Lucinschi used his powers under Article 78 of the Constitution to dissolve the Parliament in December 2000. For this reason, early parliamentary elections were held on 25 February 2001.

A total of 27 parties, which represented the whole political spectrum, ran in the elections. However, only three parties received the minimum of 6% of the votes needed to gain representation in the new Parliament:

the Communist Party (50.1%), the Braghis Alliance (13.4%) and the Popular Christian Democratic Party (8.2%). The voter turnout was 67.2%, which indicated public confidence in the democratic process.

The ODIHR concluded that the parliamentary elections, which were the third since independence, were conducted in accordance with international standards. Both authorities and the media respected the regulations guiding the electoral process, and the voting and the count of votes were organised in a proper and transparent manner. The ODIHR only observed minor shortcomings, such as inaccuracy and incompleteness of voter lists and unclear provisions regarding candidates holding public positions.

The results of the elections entitled the Communist Party to 71 out of 101 seats in the Parliament, i.e. an absolute majority of seats. It was therefore an easy task for the Communist Party to have its leader Vladimir Voronin elected new President and to form a new Government, headed by Vasile Tarlev.

### *Trans-Dniester*

The February parliamentary elections were not carried out in Trans-Dniester, but the regional residents were invited to vote in a number of special polling stations set up on the government-controlled right bank of the river Nistru. However, the separatist authorities did their utmost to hinder the population from going to the polling stations and only a small fraction of the regional residents managed to cross the river and exercise their right to vote.<sup>4</sup>

In addition, during the elections, the Communist Party of Trans-Dniester urged the local people to give their vote to the Communist Party on the right bank of the river, as a result of which the separatist authorities declared the Communist Party illegal and initiated legal proceedings against it. The Communist Party, together with other political forces that belonged to the (also illegal) coalition called "Narodovlastie", filed a complaint about the decision to ban their activities.

In December, popular presidential elections were held in the self-proclaimed Trans-Dniestrian republic. These elections were not recognised by any state, and the ODIHR did not send any observers to monitor them.

Prior to the elections, an amendment to the regional Constitution was enforced in order to enable the President-in-office, Igor Smirnov, to run for a third term. The election process was seriously flawed: the local press was prevented from reporting and commenting on opinions deviating from the views of those in power; those challenging President Smirnov were subjected to harassment; and companies of all sizes were pressed to support his re-election. Following apparent manipulation of the results, the regional authorities reported that the voter turnout had been 64%, and that more than 80% had cast their votes in favour of President Smirnov.<sup>5</sup>

### *Local Self-Government*

After the Communist Party was voted back into power, the system of local democracy came under strong pressure. First, the legislation on local public administration was amended in order to transfer financial powers from the local authorities to prefects appointed by the Government. As a result, the autonomy of the local self-governing bodies was seriously undermined.

Secondly, draft legislation on administrative and territorial organisation provided for the abolishment of the existing 11 regions. These were to be replaced by 31 districts, functioning under close control of the central authorities. In addition, the draft legislation foresaw a new procedure for appointing mayors. The mayors were no longer to be popularly elected, but to be appointed by local assemblies, in a pattern similar to the one in place during the Soviet era. When the draft legislation was prepared, no official consultation of regional and local representatives took place and no public discussion was encouraged. At the time of writing, the draft legislation was due

to be approved by the Parliament in the near future. The Moldovan Helsinki Committee (MHC) noted with concern that the reform was aimed at further restricting local democracy, in variance with the European Charter of Local Self-Government, which the Republic of Moldova had ratified on 16 October 1997.

### Freedom of Expression and Media<sup>6</sup>

As of the end of the year, the draft Penal Code, which was submitted to the Parliament in 2000, had still not been adopted. The draft provides for an even greater restriction of freedom of expression than the current one, by penalizing, *inter alia*, civil disobedience, profanation of state symbols, calumnious advertising, and insult and defamation, in particular of judges, prosecutors, investigators and military servants.

Similarly, the pending draft Code of Administrative Contraventions contains a number of provisions that are problematic in light of the freedom of expression. While the draft law prohibits, *inter alia*, production and dissemination of any written piece glorifying violence, production of pornographic objects (in written or audiovisual form) and "abuse of state symbols and state decorations", the procedural provisions are vague and arbitrary.

According to the draft Code, the police would be granted broad powers to implement the law. On suspicion of a violation of the Code, the police could take so-called assurance measures against the suspect, including detention for up to 24 hours. The police could also impose the sanctions provided for, i.e. a warning, fines or detention for up to 30 days. In most cases, the sanctions could be enforced immediately once the police had obtained the necessary evidence and completed a case protocol. However, if the person affected disagreed or the sanction amounted to detention, the case would have to be examined by a court. All sanctions could be appealed to a court within 10 days. If the case were tak-

en up in court, the detainee had to prove that there were no reasonable grounds motivating the sanction. The authorities would be only obliged to provide legal aid if the suspect explicitly requested it, was under age or handicapped, or his/her interests were in conflict with those of another suspect.

The draft Civil Code, which the Parliament read for a second time in December, also contains a number of provisions that may have a negative impact on the freedom of expression and free circulation of information. In particular, provisions that prohibit dissemination of information violating the honour, dignity or integrity of a person or the right to secrecy of family life are problematic.

The registration of broadcasting companies remained under strict Government control in 2001. In order to register, a broadcasting company had to undergo a complicated authorisation process. In successive stages, a company was requested to apply for and obtain: admission to initiate a registration process from the Ministry of Communication and Informatics (MCI); an emission license from the Council on Audiovisual Matters (CCA); a technical license from the MCI; and authorisation to start broadcasting from the CCA. In addition, there were only a limited number of frequencies available for companies seeking to register.

◆ On 30 November, the Economic Court ordered the closure of *Komersant Moldovi*, a nationwide newspaper, on charges of attempted violation of the state integrity. The charges were brought against the paper after it had published articles under the heading of "Trans-Dniester" in several of its editions. The case was exceptional in two respects. Firstly, it was the first case related to freedom of the media that the Economic Court had examined in almost ten years. During the past decade, such cases have almost exclusively been examined by ordinary courts and dealt with matters of honour and dignity.

### Freedom of Association

Freedom of association was not fully respected in Moldova.

◆ On 14 March, the Supreme Court upheld an October 2000 decision by the Court of Appeal obliging the Government to register the Bureau of Legal Advice on Individual Rights. This ruling followed a lengthy process. In early 2000, the Ministry of Justice had refused to register the organisation because its charter allegedly violated the legislation of the country, and in May 2000, the Court of Appeal confirmed this decision, arguing, *inter alia*, that the constituent form of the organisation did not enable it to realize its aim, i.e. to act to protect human rights.<sup>7</sup> However, in July 2000, the Supreme Court annulled the decision and sent it back to the Court of Appeal, which revised its previous decision recognizing the right of the Bureau to register. As of the end of the year the Government was yet to take measures to comply with the ruling.

◆ Throughout the year, the CARP organization, which is part of the Unification Church ("Moonies"), and the Association for Family Planning complained that they were subjected to pressure from the authorities, including to police raids. At the end of the year, the Ministry of Justice also initiated legal proceedings against the two non-profit associations in an attempt to force them to close down. Formally, the Ministry of Justice claimed that the associations had violated their statutes and that their activities had caused complaints from citizens.

### Trans-Dniester

◆ On 12 May, the Tiraspol City Court banned the activities of the Partia Narodovlastia. The stated reason was that the political movement had supported the Communist Party during the February parliamentary elections.

### Judicial System and Independence of the Judiciary

The new Government stressed the need for improvements in the functioning of the judicial system, and Ion Morei, Minister of Justice, advocated a reform aimed at reducing the number of courts and appeal levels. However, as of the end of the year, an official proposal was yet to be made.

The lack of financial independence of the judicial system remained an area of concern. While the Supreme Court exercised control over its own budget, all other 84 courts of the country remained financially subordinated to the Ministry of Justice. Meanwhile, the funds allocated to the courts were clearly insufficient and the judges underpaid. The total budget for the judiciary amounted to about 21,2 million Lei (1,9 million Euro) and the average monthly salary of a judge was the equivalent of 100 Euro.

As a result of a revision of the Law on the Judiciary and the Law on the Status of the Judge, the procedure for appointing court presidents and vice-presidents changed. According to the new provisions, both presidents and vice-presidents were to be appointed by the President upon a proposal from the Supreme Council of Magistrates. In a rewording that gave rise to serious concern, Article 11(4) of the Law on the Status of the Judge also stated that the President could reject a candidate who was proposed by the Supreme Council of Magistrates.

In another worrisome development, Article 12 (6) of the Law on the Status of the Judge was amended in order to prohibit a judge from swearing the judge oath for a number of reasons, including expression of his/her opinion on current political matters in the press or in TV and radio programmes.

### Appointment of Candidates to the European Court of Human Rights

In October, the mandate of the Moldovan judge at the European Court of Human

Rights, Tudor Pantiru, expired. A process to appoint candidates for a new term was initiated at the end of 2000, when a special committee was established and charged with the matter. Following the February parliamentary elections, the composition of the committee changed, which apparently influenced the nomination process.

An application deadline was set for May, by which date a total of 26 candidates had filed applications. A few weeks later, after a commission session lasting several hours, three candidates were nominated: Ion Corolevschi, judge at the Court of Appeals, Stanislav Pavlovschi, deputy head of the Investigation Section within the Prosecutor-General's Office, and Sliva Pogolsa, Director at the Training Centre for Judicial Officials.

According to the MHC, these appointments were politically biased and poorly justified, and did not meet the criteria laid down by Article 21 of the European Convention on Human Rights or the European Council Recommendation 1429/1999. In particular, the candidates did not have "...experience in the field of human rights, either as practitioners or as activists in non-governmental organisations working in this area..." and did not "... possess the qualifications required for appointment to high judicial office" and were not "jurisconsults of recognized competence...". The previous judge, Tudor Pantiru, was also among the candidates, but Foreign Minister Nicolae Cernomaz categorically opposed his appointment.

### **Fair Trial and Detainees' Rights**

There was no noticeable improvement in trial standards from the previous year, and arbitrary arrests remained a grave concern.

According to the legislation in force, the police could arrest a person for a maximum of three hours in order to establish his/her identity. However, police officers often used this possibility as a means of obtaining information needed for formal

charges. Typically, suspects were arrested and interrogated without having been informed of their rights, including the right to remain silent. It was also common practice that suspects were interrogated under the guise of them being heard as witnesses, and threatened with sanctions for untruthful statements. Later, the same persons were heard as suspects on the basis of the information they had given.

Sometimes the police arrested and detained persons for more than three hours without invoking any formal grounds. In most cases, these arrests were not officially registered. Reportedly, detainees were also subjected to psychological pressure and physical abuse when interrogated.

During trial, due process rights were not properly respected and the proceedings could not always be considered impartial and fair. From time to time, defendants were not granted access to case files. Moreover, in serious violation of international due process standards, defendants were sometimes not allowed to be present in the courtroom in order to defend their interests in person or through a legal counsel of their own choice.

The ineffective execution of decisions was also a matter that gave rise to concern. According to MHC, many rulings obliging local authorities to restore property confiscated during the Soviet era were not enforced, while as many as 60% of all rulings in civil cases remained unimplemented. The failure to execute decisions was partly due to inactivity or corruption on the part of the responsible authorities, but mainly due to a lack of adequate implementing mechanisms.

◆ In the Zaiat case, the defendant neither received an invitation to court hearings in a case dealing with restitution of bank deposits nor was he informed about the date of the ruling and its contents. As a result, he could not appeal the court decision.

◆ In a case against a defendant named Hvalina, the judge intimidated the witness-

sess threatening convict them instead of the defendant. In both the Zaiat and the Hvalina cases, the defendants were denied access to court files. The cases were pending at the time of writing.

◆ Also in the Paris, Raiu, Calincov and Maistruc cases, the defendants did not receive any official invitation to the court hearings. Unaware of the date of the hearings, they could not be present in the courtroom to oversee their defence. All the defendants were either fined or sentenced to short periods of detention. Since the defendants Paris and Maistruc were not able to pay their fines within the set time limit, the court transformed their sentences into detention. In addition, they were ordered to pay 5,40 lei for each day spent in the isolation facility.

### **Torture, Ill-treatment and Police Misconduct**

During the year, the MHC received an increasing number of complaints regarding abuses perpetrated by police officers. Following arbitrary arrests, detainees were subjected to threats and/or physical violence, including beatings, electric shocks and hanging. Typically, the arrests were registered only after several hours spent in police custody and interrogation. This made it very difficult for the victims to prove that they had been abused while in police custody, even though they had their injuries certified by a doctor upon their release.

A person may be held for 72 hours on the basis of a decision taken by a superior investigative officer. After this period, a judge had to decide on detention of additional 30 days. As the first 72-hour detention was not based on a judge's warrant, those released after 72 hours had no right to file an application for compensation for illegal detention.

◆ On 31 March 2000 two students from the Police Academy arrested A. Paduret in his home without invoking any legal

ground for the arrest. They brought him to the nearest police station, where, accompanied by police officers, they interrogated and beat him. No arrest protocol was issued. When released Mr Paduret contacted the public prosecutor who saw the injuries on his body and had him undergo a medical examination to document them. In May 2001 both former students (now police officers) were charged with illegal use of official powers and violent acts against a civilian – but not with torture and inhuman treatment as filed by the victims. The case was pending at the time of writing.

◆ On 11 April 2000 four police officers picked up D. Andrei in the street and interrogated and ill-treated him in a nearby building under construction. Following the ill-treatment, they took him to the nearest police station, where he was formally charged and placed in administrative detention on the following day. A court ordered later further 30 days in detention. The court hearings were postponed several times until on 21 August 2001 a 20-minute hearing took place and he was found guilty. However, the public prosecutor fully disregarded his complaints regarding the torture he had been subjected to.

### **Conditions in Prison and Detention Facilities**

As of late 2001, 3,394 persons were held in pre-trial detention. While 452 of these were still having their cases investigated by the prosecuting authorities, the cases of 1,632 were pending in a court of first instance, and 1,310 were awaiting a decision by a higher level court on appeal.

The overall number of prisoners increased compared to the previous year, and amounted to 7,380 at the end of the year. This figure included 239 women and 106 minors, who were detained in the Lipcani colony. According to the MHC, the rising number of prisoners reflected strict sanctioning policies.

A majority of the prisoners were held in unsanitary conditions that constituted a serious risk to their health. The official minimum norm for the space to be granted to each prisoner was 2m<sup>2</sup>. This was a satisfactory norm *per se*, but in practice it was often violated. Most cells were dirty, poorly ventilated and without windows, while the food was scarce and access to medical care was limited.

### *Administrative Detention*

In November, the MHC published a report on administrative detention, based on information obtained through complaints and fact-finding missions to the isolation facility for preventive detention (SIZO) in Chisinau. The report dealt with two types of administrative detention. The first type was comprised of cases in which persons unable to pay fines had their penalties transformed into detention. Often uninformed about the fact that a court decision had been made to this end, the affected persons were arrested and detained for up to thirty days under these practices. The second type consisted of cases where the police detained persons who they had subjected to physical abuse in an attempt to prevent the traces of their brutality from being documented. The affected persons were typically detained on the basis of a court decision declaring them guilty of an administrative offence (e.g. resisting police officers forcefully), and held in detention for five or ten days.

In all cases of administrative detention reviewed by the MHC, the detainees were denied access to a lawyer as well as the right to submit an appeal. The MHC analysed the cases in light of European Convention on Human Rights jurisprudence, and formulated a number of recommendations to the relevant authorities.

### *Detention of Vagrants*

According to Moldovan legislation, vagabonds, beggars and persons without

identification documents could be detained for up to 30 days. The definitions of those considered to belong to these categories were vague, and their detention was not justified by any clear and reasonable objective, such as an intention to provide for rehabilitation.

The detention procedures were also highly arbitrary. In line with the prevailing practices, the police first arrested persons and only then prepared and submitted a report to the prosecutor, who issued a detention warrant. In violation of both Moldovan and international law, the persons affected were often detained several days before the warrant was issued, were rarely informed of the reasons for their detention and were generally not granted any real opportunity to raise objections for being deprived of their freedom.

Most persons detained as vagrants were held in the Chisinau Vagrancy Centre. As in other similar places, the conditions in this centre were miserable, while the detention regime favoured abuse of power and treated the detainees in a humiliating and degrading manner.

◆ On 17 May, Ali E., a Turkish citizen and driver for the company “Gazajoglu” on the route Istanbul-Chisinau, was arrested in an apartment in the Ciocana district of Chisinau. The apartment belonged to a close female friend of Mr E., with whom he claimed that he used to stay while in Chisinau. Reportedly, the police first requested to see Mr E’s identification documents. However, although he produced both his passport and other documents certifying his identity and occupation, he was taken to the Chisinau Vagrancy Centre. The next day, the prosecutor imposed a sanction of 30 days of detention on him for violating the country’s visa regime. Mr E’s female friend and his lawyer were able to visit him during his detention, but the MHC was not granted access to the case files.

## Religious Intolerance

The Government continued its policy to deny recognition to the Bessarabian Orthodox Church, which was founded prior to the Soviet era, officially citing, *inter alia*, unresolved property claims. In reality, the problem is both religiously and politically motivated: the Moldovan Orthodox Church is subordinated to the Moscow Patriarchate, while the Bessarabian Orthodox Church is subordinated to the Bucharest Patriarchate of the Romanian Orthodox Church.

Upon accession to the Council of Europe, Moldova committed itself to resolving the conflict between the two churches. Eventually, with no solution in sight, the Bessarabian Church lodged a complaint about the Government's refusal to register it to the European Court of Human Rights. The Court issued its judgment on 13 December, stating that the Government had violated the human right of freedom of religious belief (Article 9 of the European Convention on Human Rights) and the right to effective remedy (Article 13). The Government filed a request that the case be referred to the Grand Chamber but this was rejected.

◆ On 12 February, the Court of Appeal issued a decision regarding the legal status of the Spiritual Council of Muslims. The Council had filed a complaint with the Court after been denied registration by the State Service on Religious Affairs on two occasions.<sup>9</sup> The decision called upon the Government of Moldova to respond to the complaint of the Spiritual Council of Muslims, but did not state any terms for an appropriate response or react to the other claims. The case was pending at the Supreme Court at the end of the year. In order to urge an outcome in line with international standards, the MHC submitted materials to the Court of Appeal as well as the Supreme Court, outlining the relevant European Court of Human Rights jurisprudence.

◆ In November, the legal status of the True Orthodox Church was scheduled for examination in the Supreme Court in November, but the hearing was postponed and the following month it was announced that the proceedings had been suspended for an indefinite period of time. The reasons for this decision remained unclear. The Supreme Court was to examine the case upon appeal from the Government, which had been obliged by an earlier Court of Appeal decision to register the church and pay compensation in the amount of 15,000 Lei (approximately 1,200 Euro). The True Orthodox Church had been denied registration twice since 1999.

## Trans-Dniester

In the Trans-Dniester region, minority religious communities faced difficulties in holding public assemblies. In addition, minority Protestant groups meeting in private homes were told that they had no permission to assemble there.

◆ Despite several attempts, Jehovah's Witnesses continued to be denied registration.

◆ The Methodist Church and the Baptist community were also denied registration and harassed during religious services.

## Right to Privacy and Security of Person

### Anti-Terrorism Measures

On 12 October, the Parliament adopted a Law on Combatting of Terrorism. The law granted broad powers to a number of authorities, including the Government, the Intelligence Service, border guards, public prosecutors and local authorities, for the sake of combating terrorism.

Article 7 of the law empowered the Intelligence Service to take necessary measures against political activities aimed at promoting terrorism, and according to Article 12 the Government could establish



a separate anti-terrorist operation zone. Within this zone, the anti-terrorist forces would have the right to control the identity of and detain anyone, enter any house and use any means of transportation. The chief of the anti-terrorist forces would also be able to exercise control over the reports of mass media on the activities within the zone. The zone regime was to remain in place as long as the threat persisted and the operation continued under the order of the chief of the anti-terror forces.

### *Enforcement of Tax Legislation*

On 27 December, the Parliament adopted a new fifth Fiscal Code chapter, which regulates the enforcement of fiscal legislation. The new provisions granted extensive powers to the fiscal authorities, while leaving the persons affected by the measures in a weak position.

While the general powers included, *inter alia*, the right to control and seize fiscal documents, conduct searches in both private homes and business facilities, access electronic systems, and suspend bank ac-

counts, the special powers included the right to confiscate the property of and detain persons suspected of involvement in illegal fiscal activities.

Article 143 of the chapter stated that the fiscal authorities could detain a person for the purpose of establishing his/her identity if other available measures had been exhausted and had proven unsuccessful. The detention could normally not exceed three hours. However, in exceptional situations, it could be extended to 72 hours.

According to Article 267, a person in whose case the fiscal authorities had made use of their enforcement powers had the right to submit an appeal to court. However, the appeal did not oblige the fiscal authorities to suspend any measures, and during a possible trial the burden of proof rested with the person who had filed the appeal. Before the new Fiscal Code chapter had even been adopted, the Administrative Court Law was amended so as to no longer enable private persons to claim compensation for moral suffering by the fault of the State.

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### Endnotes

<sup>1</sup> Unless otherwise noted, based on the Moldovan Helsinki Committee (MHC), *Report on the Respect of Human Rights in the Republic of Moldova (including Trans-Dniester) in 2001*, January 2002.

<sup>2</sup> RFE/RL, Eugen Tomic, "Moldova: Still Troubled, 10 Years After Independence", *RFE/RL Newslines*, 23 August 2001.

<sup>3</sup> Based on OSCE/ODIHR, *Final Report from Election Observation Mission to the Republic of Moldova*, 3 April 2001, at [www.osce/odihr](http://www.osce/odihr).

<sup>4</sup> *Ibid.*

<sup>5</sup> *RFE/RL Newslines*, 10 December 2001.

<sup>6</sup> For additional information see MHC, *Report on the Compliance of the Republic of Moldova with the Council of Europe Obligations on Freedom of Expression and Information*, July 2001.

<sup>7</sup> For more information, see IHF, *Human Rights in the OSCE Region, Report 2001*.

<sup>8</sup> *Ibid.*