



International Covenant on Civil and Political Rights

Human Rights Committee

Ninety-seventh session

Summary record of the 2659th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 October 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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Second periodic report of the Republic of Moldova

The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (agenda item 6) (*continued*)

Second periodic report of the Republic of Moldova (CCPR/C/MDA/1; CCPR/C/MDA/Q/2 and Add.1; HRI/CORE/1/Add.114)

At the invitation of the Chairperson, the members of the delegation of the Republic of Moldova took places at the Committee table.

The Chairperson invited the delegation to respond to questions 1 to 12 of the list of issues (CCPR/C/MDA/Q/2).

Mr. Esanu (Republic of Moldova) said that the small size of the Moldovan delegation was due to budgetary issues and to the fact that a new Government had assumed office just a few weeks previously, entailing changes in the leadership of relevant human rights bodies. The Government had begun to implement a four-year programme in which high priority was accorded to the promotion and protection of human rights. The departments that would be implementing the programme had submitted proposals for amendments. For instance, the jurisdiction of economic courts would be curtailed and cases would be referred instead to the ordinary courts. Proceedings already under way in the economic courts would be completed and the judges would then probably be reassigned to other courts, since they were in principle irremovable from office. However, anyone who had violated human rights while in office would not be permitted to work as a judge. The issue would be resolved primarily by the Higher Council of the Judiciary.

The regime for enforcing court decisions would also be reformed, since under the current system many decisions remained unimplemented, partly owing to the inefficiency of the competent officials. The legislation would be amended to decentralize the arrangements for enforcement. The previous week the Government had referred the draft legislation concerning the principle of non-discrimination to the Ministry of Justice for reconsideration and coordination with other ministries. A difficult decision would have to be taken on the provisions prohibiting discrimination on the ground of sexual orientation. The current draft had triggered a strong social reaction involving demonstrations and joint complaints to the Ministry of Justice from faith-based organizations. The Ministry's position had not changed and it was determined to maintain the draft provisions as they stood.

With regard to torture, a commission had been set up at the Ministry of Internal Affairs to conduct internal inquiries into the events of 6 and 7 April 2009 following the previous elections. The new Minister had publicly acknowledged that some officers who had detained participants in the mass demonstration had abused their authority. The requisite disciplinary action would be taken against them. The Public Prosecutor's Office, which was also conducting an investigation, would prosecute offences that came under the Criminal Code. Although the existing legislation protected the right to demonstrate, there were plans to enact new legislation to meet all eventualities. Following the elections on 29 July 2009, several demonstrations had taken place in Chisinau, bringing traffic to a standstill. However, the measures adopted by the Ministry of Internal Affairs had been effective and no violations of the rights of demonstrators had occurred, notwithstanding the fact that some of them had resorted to violence.

Mr. Rusu (Republic of Moldova) said that the Ministry of Justice was drawing up a plan of action for human rights protection covering the period 2009–2011. Many of the measures envisaged related directly to the provisions of the Covenant. Parliament was expected to adopt the plan of action by decree in the near future.

Mr. Esanu (Republic of Moldova), replying to question 1 of the list of issues, said that there was unfortunately no statistical information for the time being on cases in which the provisions of the Covenant had been invoked before the courts. The Ministry of Justice was seeking to reform the statistical accounting system and a computerized programme covering all court cases had been adopted under the Millennium Challenge programme. It would shortly be possible to publish all court decisions so that interested

parties had access to relevant information. The programme had been installed in all courts and administrative departments but was not yet operational.

Turning to question 2, he said that the fight against corruption was a major challenge. It was one of the issues addressed in the National Development Strategy for 2008–2011 adopted by Parliament. The Government had also drawn up a bill, pursuant to article 26 of Law No. 90-XVI of 2008 on preventing and combating corruption, aimed at bringing existing legislation into line with international standards, in particular the United Nations Convention against Corruption (ratified in 2007) and the Council of Europe Criminal Law Convention on Corruption (ratified in 2003). The bill provided for amendments and additions to: the Code of Administrative Contraventions; the Code of Conduct for Public Officials; the Criminal Code; the Code of Criminal Procedure; the Law on the Centre for Combating Economic Crimes and Corruption; the Law on the declaration and control of income and property of State officials, judges, prosecutors, civil servants and office management personnel; the Law on the enforcement system; and the Law on public procurement.

A new article in the Criminal Code introduced penalties for the use of false documents in accounting in order to conceal other offences. New regulations in the area of public procurement concerned the application of the banned list of economic operators and the activities of the Working Group for Purchases. In future, all draft legislation and regulations would have to be submitted to the Centre for Combating Economic Crimes and Corruption for an expert opinion. With a view to ensuring that public officials complied with strict standards of conduct, Law No. 158 on the public service and status of a public servant, Law No. 25 on the Code of Conduct of Public Officials (2008) and Law No. 16 on conflicts of interest (2008) had been enacted. The Government was currently considering provisions for the establishment of ethics commissions to ensure compliance with the laws and consistency of enforcement. Law No. 271-XVI on assessment of holders of, and candidates for, public office had been enacted on 18 December 2008 and Law No. 239-XVI on transparency in the decision-making process on 13 November 2008. The latter Law was also designed to involve citizens in the formal elaboration and adoption of decisions. A methodology for assessing the risks of corruption in public institutions had been approved by Government Decision No. 906 of 28 July 2008.

Responding to question 3, he said that the number of constituent units of the Centre for Human Rights had been increased from 37 to 55, entailing a large staff increase at a time when the Government had reached an agreement with the International Monetary Fund (IMF) on reducing public-sector staff. By way of comparison, the total staff of the Ministry of Justice amounted to only 103 persons.

The legislation on Parliamentary advocates or ombudsmen had been amended in 2008 to increase their number and enhance their efficiency. There were now four ombudsmen, one of whom dealt solely with matters relating to children. The Director of the Centre for Human Rights, who was also an ombudsman, determined the areas of specialization of the other office-holders. The ombudsmen were empowered to refer to the Constitutional Court legislation which, in their opinion, violated human rights. The Centre for Human Rights prepared an annual report that was discussed in Parliament each year in the presence of the ombudsmen.

On question 4, he said that Moldovan counter-terrorism legislation had been amended in 2008 to ensure consistency and alignment with international treaties. It contained precise definitions of a terrorist act and a terrorist organization. As a general rule, there were no derogations from rights guaranteed by the Covenant. However, some human rights restrictions were permissible in situations involving counter-terrorist activities, such as restrictions on access to private property. The scope of such restrictions had been clearly defined to prevent any unlawful derogations from the Constitution and international treaties.

With regard to question 5, he said that, in principle, Moldovan anti-discrimination legislation was sound and effective. The non-discrimination principle was enshrined in the Constitution and in many enactments, and the law recently drafted by the Ministry of Justice on preventing and combating discrimination would add little to the existing provisions. The only remaining challenge concerned the rules of procedure to be applied, for instance in establishing whether a discriminatory act had occurred. Under the current rules, the complainant bore the burden of proof. That was no longer the case under the draft law, which required a State authority or private person to prove that an act was not discriminatory. Moreover, the Centre for Human Rights, and hence the ombudsmen, would be empowered under the new law to examine individual complaints and to adopt decisions. The existing legislation already covered discrimination on the ground of ethnic origin. Experts also agreed that it covered discrimination on the ground of sexual orientation but the draft law explicitly mentioned that ground so as to preclude any further discussion.

With regard to question 6, the problems encountered by persons belonging to ethnic and national minorities did not, in his view, stem from discrimination but from the difficulty of ensuring universal access to all public services. He had read an NGO report containing very convincing allegations regarding the problems of the Roma community. However, he had chaired a government commission comprising representatives of civil society which had sought to identify cases of genuine discrimination and which had found that in many cases other factors were to blame for existing problems. For instance, the NGO report referred to the fact that a village inhabited by Roma had no proper road and no access to medical services. He assured the Committee that the village situated next to his home, which was inhabited only by Moldovans, had exactly the same problems. Many years before, he had tried in vain to persuade Roma parents to send their children to school. He agreed, of course, that positive measures should be taken to assist the Roma and other communities, and it was to be hoped that the current national plan would help to solve the problem.

Replying to question 7, he said that discrimination was prohibited under both the Constitution and the Criminal Code, the latter including a ban on discrimination on the grounds of sexual orientation. However, media attention had focused on the controversy surrounding the gay pride march which had been scheduled in Chisinau in 2008 but had not taken place.

Turning to question 8, he said that the Government had both a national plan on the promotion of gender equality for 2006–2009 and a national policy on gender equality for 2009–2015. Moreover, one objective of the national development strategy was to ensure gender equality, and a parliamentary hearing on the gender equality chapter of the National Human Rights Action Plan had been organized in 2007. While some statistics appeared to indicate that fewer women were participating in public life in 2009 than in 2008, with only one female minister currently in Government as opposed to five the previous year, in reality women were well represented in public roles. While women's salaries were lower than men's on average, equal pay was received for equal work. Many women

earned less than men because they did part-time jobs and worked in lower-paid sectors. The recent increase in teachers' salaries would partly redress that balance as most teachers were women.

On the issue of the legal age for marriage (question 9), the minimum age for men and women was now the same. Early marriage had never, in any case, been regarded as a problem for Moldovan women.

Replying to question 10, he said that in 2008 guidelines on safe abortion and post-abortion care services had been drawn up and tested in two pilot centres. The guidelines would be introduced in all medical training centres. A seminar on terminating pregnancy had been held for doctors in Chisinau and Moldova had participated in a regional seminar on unsafe abortion. Indicators had been developed to monitor pregnancy termination services and assess their quality.

Family planning had been integrated into primary health care, with 3 women's health centres and 40 reproductive health offices in medical establishments operating nationwide. In 2008, eight fully-equipped reproductive health offices had been set up in Transnistria, with support from the United Nations Population Fund. The Fund had also donated a large batch of modern contraceptives, which had been distributed free of charge in the reproductive health offices. Six training courses on reproductive health and modern means of contraception had been attended by some 250 specialists in order to build capacity among family doctors and nurses. Guidelines on reproductive health and family planning service-providers had also been published. In 2009, efforts had been undertaken to bring the regulatory and legal framework into line with WHO standards in order to increase access to reproductive health services.

Regarding question 11, he said that plans had been made for responsibility for pretrial detention facilities to be transferred from the Ministry of Internal Affairs to the Ministry of Justice. Given the poor state of the existing remand centres, plans had been established to build eight new facilities. However, since the Government's lack of resources had been exacerbated by the current financial crisis, building work had not yet begun. The Government's efforts to secure loans having failed owing to IMF restrictions, it was currently appealing to the international community for assistance. Efforts were therefore being made to improve conditions in the Ministry of Internal Affairs pretrial facilities that were not beyond repair. Overcrowding was, nonetheless, a significant problem.

Mr. Rusu (Republic of Moldova) said that the Public Prosecutor's Office had adopted mechanisms to identify cases of torture and had issued a decree stipulating that all charges of torture should be registered and special investigations carried out. The decree also provided for the appointment for specialist prosecutorial staff to investigate such cases. All cases in which criminal proceedings were initiated were monitored by the Public Prosecutor's Office. Training courses were held twice a year for designated prosecutors and judges to update their knowledge and qualifications.

Medical officers had been assigned to all police stations to ensure that all persons taken into custody underwent a medical examination. Daily inspections of temporary-custody cells provided an opportunity for detainees to lodge any complaints about torture or abuse of authority with prosecutorial staff. In 2007, 137 criminal proceedings had been brought against police officers for torture or abuse of authority, and 63 officers had been convicted. In 2008, 224 such cases had been brought with 63 convictions. In the first half of 2009, 64 cases had been brought and 16 convictions handed down.

Replying to question 12, he said that his Government had ratified the United Nations Convention against Transnational Organized Crime and the protocols thereto and the Council of Europe Convention on Action against Trafficking in Human Beings. In 2001, criminal liability for trafficking in persons had been established and in 2007, further criminal liability for organizing illegal migration had been included in the Criminal Code. In 2005, new legislation to prevent and combat trafficking in persons had established the competence of local authorities in that sphere. A national committee coordinated all efforts to combat human trafficking in conjunction with local bodies. Domestic legislation contained specific provisions to combat trafficking in children. There was also legislative provision for assistance to all victims of trafficking in protection and rehabilitation centres, which were often run with NGOs.

Sir Nigel Rodley asked whether the lack of examples of cases in which the Covenant had been cited before the courts reflected poor knowledge of the Covenant on the part of lawyers.

He wished to know to what extent the laws on terrorism had been applied to date. The State party's written reply to question 4 of the list of issues included definitions of both terrorism and terrorist acts. He requested clarification on what kind of acts connected with terrorism would not constitute terrorist acts. It was unclear how terrorism could be defined in terms of an ideology and whether both the ideology and the practice had to be proved, or whether one or the other was sufficient. Moreover, insofar as terrorism was "through violence", according to the State party's definition, he failed to understand the need for the phrase "and/or other illegal violent actions" in that definition.

Turning to the replies to question 11, he requested clarification of the statistics provided on the number of cases and persons convicted of torture. If the number of persons convicted had indeed dropped from 63 in 2007 to 36 in 2008, it would be useful to learn why. Likewise, all the figures for 2009 appeared to be remarkably low, particularly given that they would doubtless include data collected after the events of April 2009. He asked whether there had been a substantial reduction in the number of complaints, including credible or serious complaints. If so, it would be interesting to learn the reason for that reduction. Noting the very low number of prison sentences, he asked how long those sentences had been and why there had not been more of them. Given that the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had found on his 2008 visit that ill-treatment was widespread, it would be interesting to know how that situation had changed and the reasons for the changes. He requested confirmation of reports that individuals taken into police custody were given a medical examination only if they requested it, that the examinations were sometimes perfunctory and that there were no written reports of the examinations.

While he welcomed the introduction of prosecutorial visits, which he presumed were conducted on a random basis and without prior notification, he requested further information on how the system worked in practice, particularly in terms of the frequency of visits. He enquired about application of the statute of limitation for the crime of torture. What were the length and purpose of the limitation? Emphasizing the apparent absence of an independent police complaints system, he asked what resources would be allocated to the newly established national prevention mechanism and requested clarification as to who would be responsible for authorizing

publication of reports of visits carried out under the mechanism.

With regard to the events of 6 and 7 April 2009, he expressed the view that investigations undertaken by the Ministry of Internal Affairs might not inspire public or international confidence, given that, for the most part, its own personnel would be implicated. He requested further details of investigations being carried out, particularly with regard to identifying the number of potential victims of unlawful killing by the authorities and any measures being taken to bring the perpetrators to justice.

Ms. Keller emphasized that the Committee's interest was not only in what legislation existed in a State party but also in how it was applied, and requested additional information in that regard. Referring to the case of Gheorghe Straisteanu, reported to the Committee by Amnesty International, she asked what measures were being taken to investigate the misuse of anti-corruption laws in charging the victim and corrupt conduct by law enforcement officials. Welcoming the increase in the number of staff members of the Centre for Human Rights, she enquired about the frequency of visits by the parliamentary advocates to facilities where detainees were held. Were such visits scheduled or unannounced? Were detainees able to speak confidentially with parliamentary advocates about their treatment in detention, especially if they wished to lodge complaints? She also requested further information on whether parliamentary advocates and the staff of the Centre for Human Rights could submit evidence to prosecutors and recommend that charges be brought.

She asked what the State party was doing to increase financial resource allocations to the Centre for Human Rights and ensure that the funding process was independent of the Executive. Enquiring about the procedure for investigating complaints of human rights violations submitted orally or in writing to the Centre, she requested specific examples of cases. She asked for clarification concerning some of the statistical data provided in the State party's written reply to question 3 of the list of issues. Had the various rulings referred to improved the situation? Why were so few complaints formally investigated? What was being done to raise awareness of the existence and functions of human rights bodies among the general public and detainees?

With regard to equal rights for men and women, she enquired about levels of representation of women in the judiciary and academia, and the mandate of the Department for Equal Opportunities and Prevention of Violence at the Ministry of Social Protection, the Family and the Child. Concerning reproductive health, she asked whether it was planned to continue offering courses to specialists free of charge and what measures the State party was taking to improve the provision of contraception and family planning advice, in particular by increasing the numbers of young people who made use of the country's health clinics and providing counselling to women with unwanted pregnancies. Referring to the case of a young woman imprisoned for aborting her foetus at a late stage of pregnancy, she asked what was being done to ensure that (a) conditions of detention for women complied with articles 3 and 10 of the Covenant, including with regard to health care and post-abortion care, and that (b) law enforcement and medical personnel behaved in a gender-sensitive manner and respected patients' rights, including the right to confidentiality. Lastly, she asked what training was given to the judiciary on traditional, historical, cultural or religious attitudes that might give rise to gender-based discrimination in enforcing the rights embodied in article 14 of the Covenant.

Mr. Salvioli welcomed the positive steps that the State party had taken in the area of discrimination, particularly with regard to the constitutional and legislative framework and the provision of a complaints mechanism. He nevertheless expressed concern that, even after some time, not all the provisions of the various international instruments ratified by the State party had been incorporated into its domestic legislation. In particular, he noted the absence of a requirement to promote equality, which should also be included in formal education at all levels. He expressed the view that anti-discrimination legislation was not being effectively enforced and asked what specific measures were being taken to provide training for law enforcement officials in that regard. He expressed particular concern about discrimination in law and in practice against children living with HIV/AIDS and asked what measures were planned or under way to improve the situation. Did the State party intend to introduce questions relating to sexual and reproductive health into educational curriculums? He welcomed the fact that, despite opposition from some religious groups, the Government was maintaining its positive stance with regard to non-discrimination on the grounds of sexual orientation and asked whether training was being provided, particularly to the police, in how to apply legislation in a manner sensitive to both sexual orientation and gender.

Mr. Rivas Posada, welcoming the various positive steps taken to combat human trafficking, nonetheless emphasized that progress was needed not only in law but also in practice. He requested clarification on the status of investigations undertaken with respect to the trafficking offences and networks described in paragraphs 279 and 280 of the State party's periodic report. It was essential that cases of trafficking should be investigated fully and the perpetrators prosecuted and punished, with appropriate compensation for victims. He requested additional information on the nature of the problem of trafficking in the Republic of Moldova in general and in the Transnistrian region in particular.

Ms. Wedgwood expressed concern at violence perpetrated by the police and other law enforcement bodies in the State party. Any optimism the authorities had previously felt that the situation was improving must have been shattered by the events of 6 and 7 April 2009. Purging long-held attitudes from such institutions would not be easy, but it was vital for the social and economic well-being of the nation, and she encouraged the Government to draw on the experience of other countries. A culture of prompt and thorough investigation of complaints must be created so as to ensure that the State party's citizens and the international community had confidence in the State and its legal system. Despite the work involved, the process of reporting to human rights treaty bodies should be viewed not as a chore, but as an opportunity to raise awareness of the importance of human rights issues among law enforcement agencies and the wider community.

Mr. Thelin, having acknowledged the problems that the State party faced in its transition between systems of government, requested clarification of the powers of the Office of the Ombudsman in relation to question 3 of the list of issues. What action would it take if it should find evidence of poor judicial decisions or processes? He took it that the ombudsman could not overrule or interfere with the judiciary in such cases, as that would undermine the rule of law.

Ms. Majodina congratulated the Government of the Republic of Moldova on the progress it had made in implementing its gender equality plan and took note of the statistics on political participation provided in the written replies. However, she noted that those

statistics had been drawn up in April 2008 and pointed out that there might well have been changes since the elections in September 2009. She asked what the current levels of representation of women were in Parliament and whether the target of 30 per cent representation for women was likely to be reached before 2015.

In relation to question 10 of the list of issues, she took note of the progress made on reforming and increasing access to safe reproductive health services and the State party's efforts to align itself with WHO standards. However, in the light of the case (referred to by Ms. Keller) of a woman who had been in prison for 20 years for having an abortion, it seemed to her that in practice negative attitudes towards women who had undergone abortion remained widespread among law enforcement and medical personnel. She asked what further measures could be taken to ensure safe access to such services.

Mr. Esanu (Republic of Moldova), referring to question 1 of the list of issues, confirmed that his delegation had indeed been unable to find any examples of court cases that had made reference to the Covenant. However, there had been cases where reference had been made to the European Convention on Human Rights.

Replying to question 4, he stated that in his country criminal cases could only be addressed through the Criminal Code, and not other legislation. The purpose of, for example, the Law on Combating Terrorism was to set goals for ministries and other authorities, and not to replace or duplicate the purpose of the Criminal Code.

In response to question 11, he said that medical examinations were mandatory for all detainees. He expressed concern about the quality of medical personnel available at police stations, who were nurses rather than doctors. Medical staff were obliged to report any sign of injury to the prosecutor's office, and that information was passed on a daily basis to the Office of the Ombudsman, the Ministry of Justice and the Ministry of Internal Affairs. The Ministry of Justice was working on a bill which would provide for mandatory forensic examinations of detainees at their request. Detainees had the right to be examined by a private doctor of their choice, but were often unable to pay for such an examination.

By way of clarification, he said that his country's national mechanism for the prevention of torture was the Office of the Ombudsman. The Advisory Council under the Centre for Human Rights was a consultative body intended to assist the ombudsmen. Individuals empowered either by the Office of the Ombudsman or the Advisory Council had the right to visit at any time any facility where detainees were being held or suspected of being held. Unannounced visits to places of detention were made. In the past, there had been legally valid reasons for preventing unannounced visits, but under the current law there were no longer any regulations that could block the access of ombudsmen. Detainees had the right to speak in private with a visiting ombudsman or member of the Advisory Council.

The Ministry of Internal Affairs had set up a commission to investigate all the events of 6 and 7 April 2009, including events that raised only disciplinary, as opposed to criminal, concerns. He acknowledged that a future investigation by an outside body would be more credible than that internal investigation.

In any case where there was evidence of a violation of rights guaranteed by the Constitution, ombudsmen had the right to submit a request for information to the relevant body, which was obliged to examine that request, take measures to terminate the violation in question and reply in writing to the ombudsman. Ombudsmen also had the right to request the prosecutor's office to undertake an investigation, which could in turn lead to criminal proceedings.

In accordance with the Constitution, all State expenditure must be approved by the Government. Thus it was unconstitutional for the judiciary's budget to be outside governmental control, a fact which jeopardized conformity with the Covenant. Efforts were under way to find solutions to the issue by fixing the level of the judiciary's budget in legislation. At present, however, there was no evidence of any reduction in the proportion of the State budget allocated to the judiciary.

He recalled that a request had been made to the Constitutional Court in relation to a provision that applications for cassation must be made by lawyers. An ombudsman had considered that provision to be unconstitutional and, following his request to the Constitutional Court, it had indeed been so declared.

Mr. Rusu (Republic of Moldova), responding to questions about the disparity between the number of complaints relating to torture and the number of convictions, pointed out that criminal responsibility for torture had only been specifically established in 2005; prior to that date such cases had been treated as abuse of authority. Since 2007, as the tables contained in the written replies showed, there had indeed been convictions for torture and ill-treatment following complaints.

Local prosecutors were responsible for verifying the legality of detention on a daily basis and for compiling weekly reports on those checks for submission to their immediate superiors. Visits to individual places of detention typically took place once a week; during such visits the local prosecutor would meet with detainees, who could inform him of any alleged instances of torture or ill-treatment.

With regard to question 12 of the list of issues, he stressed that the region of Transnistria, where the problem of trafficking in human beings was most serious, was not under the control of the authorities of the Republic of Moldova. They were therefore physically unable to carry out checks or take action there. The situation in that region could only be solved at the political level.

The meeting rose at 5.55 p.m.