

To: President of the Republic of Moldova

- Copy to:
1. Parliament of the Republic of Moldova,
  2. Coordinating group for implementing the strategy on justice sector reform,
  3. Commission for implementing the National Human Rights Action Plan,
  4. Office of the High Commissioner for Human Rights,
  5. European Commissioner for Human Rights,
  6. UN Subcommittee for the prevention of torture,
  7. European Committee for the prevention of torture,
  8. Office of the UN Resident Coordinator in Moldova,
  9. Council of Europe in Chisinau,
  10. OSCE Mission to Moldova,
  11. EU Delegation to the Republic of Moldova,

### **Repeated request to the President of Moldova not to promulgate the Law on People's advocate**

24 January 2014, Chisinau

The signatory organizations are requesting the President of the Republic of Moldova not to promulgate the Law on the People's advocate and send it back to the Parliament to be amended and repeatedly voted on, by observing the requirements on transparency of the decision making process.

On the 24 December 2013, 17 non-governmental organizations have addressed the President of the Republic of Moldova, publicly calling him not to promulgate the Law on the People's advocate, adopted in the first reading in Moldova's Parliament Plenum on the 23 December 2013, and send it back to the Parliament. The signatories of the said message have invoked the exaggerated eligibility requirement for the candidates for People's advocate to have a minimum of 20 years experience. Before the 23 January 2014 the Parliament has not made public the official version of the Law of the People's Advocate, which has been adopted in the second reading on the 23 December 2013. The Presidency did not react to the said public appeal.

The signatories have analyzed in details the draft law submitted for promulgation and are repeatedly calling for the law not to be promulgated. Besides the unjustified and discriminatory requirement with respect the work experience the People's advocated candidates must have, the draft law contains a number of other shortcomings, which are a considerable regress with respect to the draft law voted in the first reading. In the second reading, the law has gone through the following major changes:

1. The People's advocate mandate has been limited, unjustifiably, to only protect the interests of physical persons (relevant provisions are, for example, the preamble to the law and the provisions on the subjects who can resort to the People's advocate).
2. Another position has been institutionalized of a People's advocate on protecting the children rights. The working group for drafting the law, created by the Ministry of Justice, between 2011-2013 and until the Parliament has adopted the draft law in the first reading, has held public discussions related to the activities of a single People's advocate, assisted by a number of deputies, one of which would be specialized in the protection of children's rights. The institutionalization of two People's advocates is creating confusions and unclearness regarding their statute and activities, partially repeating the problems identified during the activities of the current Parliamentary advocates.
3. The criteria has been excluded, according to which the People's advocate candidates should have a notorious experience in the area of protection and promotion of human rights,

- providing only for a “work experience of at least 20 years”. Thus, it is unclear who would be able to candidate; and also the requirement of a minimum of 20 years of experience is unjustifiable and discriminatory.
4. The process for selecting the People’s advocate has been radically distorted. Initially, the selection of the People’s advocate was supposed to be organized within an open contest. The draft law which has been adopted in the first reading contained the following provisions: a) open contest, by ensuring the free access of any person, who meets the requirements provided for by the law, to participate in the contest; b) ensure transparency, by offering all interested individuals the information related to the way the contest is carried out; c) equal treatment, by applying on a non-discriminatory basis the selection criteria and the conditions for carrying out the contest with respect to all the candidates. The draft law voted in the second reading does not contain the above-mentioned principles anymore and provides for the nomination of candidates for People’s advocate position only by the parliamentary fractions or/and by 20 members of Parliament. Also, the draft law provides for the establishment of a special Parliamentary Committee to examine the candidates’ nominations. Thus, the draft law has considerably limited the circle of potential candidates, pre-conditioning their nominations by the support from members of the Parliament.
  5. The timeline during which the public may get familiar with the candidates and the information regarding the public debates has been reduced from 20 days to 5 days. The Parliament has considered as useless the publishing of this information in the mass-media.
  6. An obligation is imposed upon the People’s advocate not to inform the public about the state’s problems. This confusing text has been even introduced in the text of the oath, a fact which is unacceptable and in conflict with the People’s advocate mandate. Also, there was no alternative version of the oath text for people who can not take an oath given personal beliefs.
  7. The circle of people who can resort to the People’s advocate has been unjustifiably reduced. According to the draft sent for promulgation, the non-governmental organizations, or other legal entities, can no more resort directly to the People’s advocate regarding the violations of human rights, allowing them to do so only if they are a potential victim.
  8. The draft law has excluded the possibility of a person, who feels his/her rights have been violated by a court decision, to resort to the People’s advocate. Court decisions do not exclude effects, which would violate fundamental human rights.
  9. The draft law has unjustifiably excluded the possibility for “people placed by the court under interdictions (legally incompetent)” to resort to the People’s advocate.
  10. The national mechanism for the prevention of torture has been assimilated by the People’s advocate. Thus, the People’s advocate has been given competencies, which, actually, conflict with the Optional protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment. A chapter has been excluded about the activities of the Consultative Council for the prevention of torture as a national mechanism for prevention of torture and other cruel, inhuman or degrading treatment or punishment. The provisions exclude the possibility for the civil society to carry out the responsibility of a national mechanism for the prevention of torture – site visits for monitoring detention centers. The law does not stipulate whether the reports, following the site visits for monitoring the detention centers, will be made public. The People’s advocate is not a national mechanism for the prevention of torture itself. This position, criticized by the former UN rapporteur against torture following his visit in 2008, has been presented to the Government of the Republic of Moldova as part of the country report on the implementation of the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (November 2009) and the Universal Periodic Review (March 2012).

Thus, unfortunately, we have discovered that the Draft law on People’s advocate which has been sent to the President for promulgation is a regress, as compared to the draft law sent by the Government to the Parliament and ignores, as specified above, the recommendations of the working group and the experts involved in the process of drafting the law. Also, the pre-conditioning for the candidates for People’s advocate to have a political support is implicitly excluding the possibility for the public to

nominate notorious individuals, with experience in protection and promotion of human rights and discredits, as a matter of fact, the statute of the People's advocate institutions.

The signatories are requesting:

1. The President of the Republic of Moldova not to promulgate the Law on People's advocate and sent it back to the Parliament to be amended and re-voted, by observing the transparency of the decision making process.
2. The Parliament of the Republic of Moldova to amend the law by excluding the unclearness and observing the recommendations of the relevant international institutions on the activity of the national human rights institutions, as well as of the local experts, after a public debate with interested individuals and organizations.

The signatory organizations:

1. Alliance of the organizations for people with disabilities from the Republic of Moldova,
2. Human Rights Embassy,
3. Amnesty International Moldova,
4. Association of women for environment protection and sustainable development,
5. Public Association „Certitudine”,
6. Independent Press Association (API),
7. Association for Efficient and Responsible Governance (AGER),
8. Journalistic Investigations Center,
9. Promo-LEX Association,
10. The Centre of Legal Assistance for Persons with Disabilities,
11. „Acces-info” Centre,
12. Children rights information center (CIDDC),
13. GENDERDOC-M information center,
14. Center for Health Policies and Analyses (PAS),
15. Legal Resources Centre from Moldova (LRCM),
16. Center for resources on human rights (CReDO),
17. International Center “La Strada”,
18. Independent Journalism Center (CJI),
19. Non-discrimination Coalition,
20. National Youth Council from Moldova (CNTM),
21. Doina-Ioana Straisteanu, member of the Council for preventing and eliminating discrimination and ensuring equality,
22. East-European Foundation,
23. Gender-Center,
24. Institute for Public Policies (IPP),
25. Institute for Penal Reforms (IRP),
26. Moldovan Institute for Human Rights (IDOM),
27. National Platform of the Eastern Partnership Civil Society Forum,
28. Good Governance Program, Soros-Foundation Moldova,
29. Terra-1530,
30. Transparency International Moldova,

Contact person:

Ion GUZUN, legal advisor, Legal Resources Centre from Moldova, tel.: (+373) 22 843 601, e-mail: [ion.guzun@crjm.org](mailto:ion.guzun@crjm.org)