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Recent developments in the co-operation with Moldova (July-December 2003)

Executive summary

The co-operation between Council of Europe and Moldova continued on a very active level in the period July-December 2003, in parallel with the Chairmanship of the Committee of Ministers and the successful organisation of the Chisinau Ministerial session. The emphasis of the co-operation continues to be on the compatibility of Moldovan legislation with European norms, in accordance with the decision of the Ministers' Deputies on 30 April 2002.

There is progress in, for example, the field of anti-corruption and anti-money laundering legislation. Several national expert committees have been established in the autumn of 2003. The ratification of the Criminal Convention against corruption is awaited soon. The establishment of a National School for Judges and Prosecutors is being prepared. Some important laws are under preparation, based on Council of Europe expertise, including a draft law on fighting trafficking in human beings. Moldova has also signed the European Code of Social Security in September 2003.

However, some key issues need further attention, among them judicial reform, public broadcasting and the civil and penal codes. Furthermore, it continues to be difficult to obtain information on follow-up to expert appraisals, as well as on the implementation of existing legislation. The new penal and civil codes and codes of penal and civil procedure entered into force in June 2003, but the Council of Europe experts have been unable to verify whether their appraisals had been taken into account. The Moldovan authorities indicated that further amendments to these codes could be considered, including Council of Europe expert recommendations.

After a second series of amendments to the law on Tele Radio Moldova, the new board is in the process of launching the new structure and reappointing staff. This process, as well as the programming policy, is followed closely by the Council of Europe.

The work of the Constitutional Commission is also being followed closely. In October 2003 the Venice Commission provided comments on a first draft for a human rights chapter of the new Constitution (the first chapter agreed on so far).

The one-year Targeted Co-operation Programme (TCP) and the first European Commission/Council of Europe Joint Programme have been completed. Negotiations with the European Commission (TACIS) for a new European Commission/Council of Europe Joint Programme, supporting priority of areas of interest, are in their final stage.

I. Introduction

In the spring of 2002, following two successive Secretariat information and assistance missions, the Committee of Ministers decided to set up a Targeted Co-operation Programme (TCP), focussing in particular on the following areas of interest:

- political dialogue, in particular the functioning of the parliamentary round table;
- execution of ECHR judgements, notably the case of the Metropolitan Church of Bessarabia;
- the status of Tele Radio Moldova;
- comprehensive examination of legislation in Moldova with European norms.

A first assessment of the implementation of this programme was discussed by GR-EDS in July 2003, on the basis of the information provided in document CM/Inf (2003)29 rev.

II. Developments July-December 2003

During the period July – December 2003 the relations between Moldova and the Council of Europe were characterized not only by the successful organisation of the Chisinau Ministerial session, as the crowning point of a very active Chairmanship of the Committee of Ministers, but also by a high level of co-operation (see, for example, appendix 3).

The emphasis of the co-operation with Moldova has continued to be on the compatibility of Moldovan legislation with European norms, in accordance with the decision of the Ministers' Deputies of 30 April 2002. There is progress in, for example, the field of anti-corruption and anti-money laundering legislation (see 3.2.8 below). The ratification of the Criminal Convention against corruption is awaited imminently. Several national expert committees have been established in the autumn of 2003 and several draft laws are in preparation, based on Council of Europe expertise (including a draft law on fighting trafficking in human beings). Moldova has also signed the European Code of Social Security in September 2003. The establishment of a National School for Judges and Prosecutors is being prepared.

However, some key issues need further attention, among them public broadcasting, judicial reform and the civil and penal codes. As a general remark it continues to be difficult to obtain information on the follow-up to expert appraisals as well as on the implementation of existing legislation (for example in the field of local government or regarding the Law on Combating Extremism).

The co-operation regarding Tele Radio Moldova has been intense. After the second series of amendments to the law (in the autumn of 2003), the new board of the company is now in the process of launching the new company structure and reappointing its staff. This process, as well as the programming policy of the new Tele Radio Moldova, is being followed closely by the Council of Europe.

As stated already in the 10 July 2003 review of the co-operation, the legislation on the organisation of the judiciary is an issue that needs continued attention. The law was passed by the Parliament in May 2003; it did not take into account essential comments by the Council of Europe's experts to safeguard judicial independence and needs further reform. In particular, the legislation in force still allows the President of the Republic the possibility not to follow the proposal of the High Council of the Judiciary as regards appointment or confirmation of judges. However, the Moldovan authorities committed themselves to pursue co-operation in order to further reform the legislation on the judicial system, taking into account the comments of Council of Europe experts (letter of 25 May 2003 by the Minister of Justice, Vasile Dolghieru, to the Secretary General). As was stated already in the July 2003 document, new draft laws are due to be submitted to the Secretariat for further expertise.

The new penal and civil codes and codes of penal and civil procedure entered into force in June 2003, but the Council of Europe experts were unable to verify whether previous appraisals had been taken into account. From the point of view of freedom of expression, concerns have been raised about the possibility of disproportionate sanctions against journalists. The Moldovan authorities indicated that further amendments to these codes could be considered, including the Council of Europe expert recommendations. The Council of Europe is prepared to continue its co-operation on the basis of the existing reports.

However, it is very encouraging that frank high-level discussions regarding legal and judicial reforms have been maintained. The Minister of Justice paid a visit to Strasbourg on 27 – 28 November 2003. This continuous and constructive dialogue is essential to ensure an effective implementation of the Council of Europe expert recommendations on further reform of the legal system. Valuable information has been provided by the Moldovan authorities on the state of play as regards legislation assessed by Council of Europe experts. However, progress is still needed as regards information on the extent to which Council of Europe expert advice was taken on board in the relevant texts adopted (as was agreed in the 30 April 2002 CM decision).

As regards co-operation programmes, the one-year Targeted Co-operation Programme (TCP) and the first European Commission/Council of Europe Joint Programme (2001-2003) were both completed in the second half of 2003. Negotiations with the European Commission (TACIS) for a new European Commission/Council of Europe Joint Programme, largely supporting the same priority of areas of interest, are in their final stage, in spite of some initial delays.

The co-operation with Moldova must also be seen in the overall context of proposed changes to the Constitution, designed in particular to solve the issue of Transnistria. The Venice Commission has already offered advice to the Constitutional Commission and continues to be at the authorities full disposal.

III. Information by theme

1. Pluralist democracy

1.1 Political dialogue

Following a reform of the Round Table format in early 2003 political dialogue meetings have been held in Chisinau since the month of March. In the summer of 2003 the Round Table reached consensus on recommending reform of parliamentary procedures. The Speaker of the Moldovan Parliament accepted the recommendations, and requested assistance from an expert put at disposal by the Council of Europe Parliamentary Assembly. The Secretariat of the Parliamentary Assembly has now prepared an appraisal on the rules of procedure of the Moldovan Parliament. Another consensus reached at the Round Table concerned a recommendation for parliamentary action on amendments to the present law on the right to free assembly.

The Round Table is set to continue, with financial support from the Friedrich Ebert Foundation. The Round Table met in December 2003 to discuss items surrounding a possible new Constitution and it could serve as an additional forum on this issue.

It also deserves mentioning that a school of politics was inaugurated in Chisinau in May 2003, as a part of the network of Schools in South-East Europe that the Council of Europe supports. The European Institute of Political Studies (IEPS) held its first seminars in Chisinau in May and October. In November 2003 a seminar was organised in France and Germany, under the aegis of the Council of Europe.

1.2 Elections

At the request of the Secretary General, an Opinion on the Electoral Code was adopted in December 2002 by the Venice Commission [CDL-AD (2003)1]. No further co-operation has been carried out since then on this issue. However, the authorities have informed the Secretariat that they have made a number of proposals to adjust the national legal framework.

1.3 Local Self-Government

Regarding local self-government, extensive work was undertaken within the Targeted Co-operation Programme. A special working group on reform of the local government legislation met twice (November 2002 and March 2003) and, largely based on Council of Europe expertise, a new law on local government was adopted in March 2003. This new law formed the basis for the local government elections held in May-June 2003. Both rounds of the elections were observed by the Congress of Local and Regional Authorities of Europe (CLRAE).

A conference on decentralisation in Moldova: recent developments and future trends" (8 – 9 July 2003) took place in Chisinau. It aimed at assessing the state of local democracy in Moldova on the basis of the recent legislative reform. The conclusions of the conference underlined in particular the need to monitor the proper implementation of the new legislative framework, clarify the responsibilities of first and second level local authorities, improve the mechanisms of administrative supervision over local authorities' action, reinforce the status of local elected representatives, strengthen local finance, improve institutional dialogue between the central administration and local authorities.

At the end of the conference, the participants adopted an action plan which identifies a number of specific objectives and concrete measures to be taken to further promote the decentralisation reform.

Within the framework of the action plan, the draft laws on local government finance and on the status of locally elected representatives were appraised by the Council of Europe experts. Their recommendations concerning these two laws were discussed with the Moldovan representatives at the round table on the implementation of the Conclusions of the Conference on 'Decentralisation in Moldova: recent developments and future trends' held in Chisinau on 21-23 October 2003. As a result of the discussion, and in the light of the recommendations of the Council of Europe experts, the action plan was revised and updated. However, the implementation of many specific actions identified in the action plan requires additional resources.

Recently, the Moldovan authorities informed the Secretariat that a new law on local government finance and a new law on the status of locally elected representatives were adopted. The final versions of these laws have not been communicated to the Council of Europe and, despite a formal request by the Secretary General, no feedback on the implementation of the experts' recommendations was provided. Therefore, it has not yet been possible to assess whether the two laws are consistent with Council of Europe standards and whether the action plan has to be amended further as a result of the adoption of these laws.

2. Human Rights

2.1 The Human Rights compatibility exercise

Upon adoption of the Targeted Co-operation Programme implementation immediately started regarding activities foreseen in the field of Human Rights and in particular, those related to the legal expertise of the laws included in Appendix I of the Programme (see GR-EDS(2002)25 rev.). Most of the texts were, however, translated and submitted to the Secretariat only during the second half of the Programme (see appendix 3). To date, legislative expertise has been provided under the TCP on the following laws and draft laws:

The expertise on the law on religious denominations as amended on 12 July 2002 (SG/Inf (2002) 30) highlighted several aspects which could raise problems with regards to compatibility with the requirements of the European Convention on Human Rights. A further expertise (DGII (2003)8) was conducted on the new draft law on freedom of conscience and religions organisations. The experts noticed partial improvements but there still remained a number of substantial shortcomings in the new draft which could raise problems with regard to the ECHR. A follow-up meeting to discuss these issues was held on 14-15 July 2003 in Chisinau and the authors of the expertise attended (see DGII (2003)12). On 6 October, a revised draft law was sent to the Council of Europe which was, in turn, examined by the experts. The most recent expert opinion (DGII (2003)19) was sent to the authorities on 28 October 2003 and a follow-up meeting in Chisinau is planned for 26-27 January 2004.

The expertise on the draft law on political parties and socio-political organisations (SG/Inf(2002) 34) noted a number of shortcomings with regard to Council of Europe standards, including the Venice Commission Guidelines as adopted in December 1999. The provisions on registration, refusal of registration, suspension of political parties and cancellation of registration could be in breach of the European Convention on Human Rights, and in particular with rights enshrined in articles 10 and 11.

The law was passed in the Parliament of Moldova and the new law analysed by the Venice Commission. The Venice Commission rapporteurs visited Moldova in early July 2003 to discuss this issue with the authorities. The new draft law on political parties is currently being discussed by the Parliament.

The expertise on the law on the status of members of parliament (SG/Inf(2002)41) identified some problems with regard to the protection of parliamentarians: the revocation rules are not precise and do not provide for sufficient guarantees, parliamentary immunity should be provided both for criminal and civil issues and

should be reconciled with the rights of third persons. In addition, the experts recommended amendments concerning the individual rights of the members of parliament.

The law was amended on 14 March 2003. There is no precise information available indicating whether the experts' recommendations have been taken into account.

The expertise on the law on assemblies (DGII(2003)02) identified certain shortcomings in the law and recommended that the conditions for authorisation of assemblies and the rights and responsibilities of organisers and participants be reviewed in order to bring the legislation into line with Articles 10 and 11 of the ECHR.

The expertise on the draft disciplinary regulation of the Armed Forces (DGII (2003)15) makes several recommendations in order to better ensure conformity between the draft law and, in particular, Articles 5 and 14 of the ECHR.

The expertise on the draft Law on the Government Agent (DGII (2003)11) recommends that a broader, more flexible approach is incorporated into the legislation.

The expertise on the law on property and the law on normative price, procedure of the sale and purchase of land (DGII (2003)21) draws two main conclusions. Namely, that the interaction between two laws in question could be clarified and that the laws themselves could be further expanded in order to ensure that their implementation is in conformity with the ECHR.

2.2 Human Rights Training

In accordance with the TCP, a series of training workshops for judges and prosecutors, as well as for law students and practicing lawyers, took place between October 2002 and September 2003. The main focus of the training was on the use of the European Convention on Human Rights and its requirements in particular with respect to Articles 3, 5, 6 and 10. The presence of Council of Europe experts was highly motivating; practical exercises (case studies, moot court) were organised for the better comprehension of the machinery of the ECHR and the case law and discussions were held with regard to the compatibility of the Moldovan legislation and practice with ECHR standards. It would appear that the independence of the judiciary, the role of the prosecutor, as well as some economic aspects, were still matters of crucial concern. Requests were made for the continuation of this kind of activity and for reinforcing co-operation in order to develop genuine expertise on the interpretation of the ECHR, as well as on the impact of judgments of the European Court.

Particular interest has been expressed with regard to the European Social Charter, as this mechanism is not well known in Moldova. Even though Moldova has not yet ratified the Protocol establishing the mechanism of collective complaints, participants at the training sessions appreciated the discussions and the case studies dedicated to this issue. In this context, future activities are proposed concerning assistance to Moldovan authorities in the establishment of national reports under the European Social Charter, the ratification of the Protocol establishing the procedure of collective complaints, as well as co-operation regarding awareness on social rights.

2.3 Police and Human Rights

The planned assessment mission took place on 19 - 25 January 2003, with two experts and two Council of Europe staff members. Large-scale human rights training is needed, preferably in conjunction with the provision of, for example, fundamental equipment for police work.

A training course on domestic violence was held on 6-10 October 2003. The purpose of this training was to support the establishment of a pilot scheme to deal with domestic violence and, in this context, further training sessions will be taking place in 2004.

2.4 Minorities

Following the adoption by the Committee of Ministers of a Resolution concerning Moldova under the Framework Convention, a follow-up conference on the first results of the monitoring of the FCNM took place on 25-26 September 2003 in Chisinau. In the context of the forthcoming second monitoring cycle of the Framework Convention, a new state report on the implementation of the Framework Convention is due to be submitted by Moldova before 1 February 2004.

2.5 Freedom of expression and information

The Public Service Broadcasting Law

A new law on the public broadcaster Tele Radio Moldova (TRM) was enacted in March 2003, modifying a previous law adopted in July 2002. Further amendments were made in the autumn in order to liquidate TRM and transform it into a public service broadcaster, with a new structure and staff. The newly constituted Board is in the process of launching this new structure and reappointing staff. This process, as well as the programming policy of TRM, is being followed closely by the Council of Europe. It is expected that the programming policy of the newly established public service broadcasting organisation will ensure neutrality and independence of reporting, in particular on political issues and current affairs.

Law on the Audiovisual Sector

It appears that two draft versions of this law currently are with the Moldovan Parliament. Given the significance of the law for the operation of the private electronic media in Moldova, the Secretariat stands ready to offer expert appraisals on the drafts.

Amendments to the Moldovan Law on Access to Information

In March 2003, the Parliament adopted, in the first reading, a series of amendments to the Moldovan Law on Access to Information. According to media and Human Rights NGOs from Moldova, the amendments may not conform with European standards. Should the Parliament decide to proceed further with the amendments, their review from the point of view of their compatibility with Recommendation (2002) 2 of the Committee of Ministers on access to official documents would be desirable.

Law on Combating Extremism

The Law on Combating Extremism was enacted in March 2003 and the law has been promulgated by President Voronin (despite requests to the contrary by the Moldovan Journalists' Union, on the grounds that the law contains provisions which may hamper freedom of expression). The Secretariat has expressed its readiness to look at the law.

The new Penal Code

As mentioned in CM/Inf (2003)29 rev, some lawyers and journalists in Moldova have passed a joint resolution requesting the removal from the new Penal Code of the provisions on criminal responsibility for defamation of officials in the press. The new Penal Code includes several Articles which may lead to journalists being imprisoned.

In addition, the provisions of the new Civil Code fix no limits to the amount of damages that can be awarded in case of defamation and, therefore, may give rise to disproportionate sanctions.

Accordingly, the review of the provisions of both the Penal Code and the Civil Code on defamation from the point of view of the relevant Council of Europe standards would be desirable.

2.5.1 Legislative Expertises

An expert appraisal on a new draft Press Law, prepared by the Ministry of Justice of Moldova, was carried out in March 2003. Following the expertise, the Ministry of Justice has declared its intention to withdraw this legal initiative. Should the Ministry decide to proceed further with the preparation of a new Press Law, the Secretariat stands ready to provide its assistance.

The Moldovan authorities are expected to submit two new draft Laws on the audiovisual sector, prepared by the Co-ordination Council of the Audiovisual (CCA) and by the Electronic Media Association (APEL), for an expert appraisal in January 2004.

2.5.2 Transformation of the State-run 'Tele-Radio Moldova' into a public broadcasting service

A Conference on the transformation of the state run 'Tele-Radio Moldova' into a public broadcasting service took place on 26-27 June 2002.

As a complement to the work carried out concerning the revision of the Law on 'Tele-Radio Moldova' and its transformation into an independent public service organisation (see above), two training workshops for journalists from 'Tele-Radio Moldova' on the independent dissemination of information, organised in co-operation with the European Broadcasting Union, were carried out in February-March and June 2003. Another activity is planned in 2004.

2.5.3 Training of magistrates and lawyers on article 10 of the European Convention of Human Rights (ECHR) and the jurisprudence pertinent to the European Court on Human Rights

Several training seminars were held in 2002 and the first half of 2003. There were no new activities during the current review period.

2.5.4 Assistance to the broadcasting regulatory authority – Co-ordination Council of the Audiovisual (CCA)

In order to assist the Co-ordination Council of the Audiovisual (CCA) in the discharge of its functions, a training workshop on the working methods of broadcasting regulatory authorities, targeted to the members and personnel of the Co-ordination Council of the Audiovisual (CCA), and organised in co-operation with the CCA, took place on 3-4 June 2003. Another activity is planned in 2004, as a follow-up to the forthcoming review of the draft laws on the audiovisual sector.

2.5.5 Other

A workshop on the Moldovan legislation on access to information will be organised in 2004, in cooperation with the IOCoE and the Independent Journalism Centre in Chisinau.

3. Rule of Law

3.1 Constitutional reform

Following a proposal by President Voronin, a Joint Commission for the revision of the Constitution of Moldova was established. Both representatives of the Moldovan authorities and from Transnistria participate in this Commission. The Venice Commission co-operates with this Commission. Members of the Venice Commission discussed possible options for a new federal Constitution at meetings with members of the Constitutional Commission on 22-24 July 2003 and provided comments on the first draft for a human rights chapter of the new Constitution in October 2003. This is the only chapter hitherto agreed within the Joint Constitutional Commission. The Venice Commission is in close contact with the EU and OSCE on this topic.

3.1.1 The Constitutional Court

The Venice Commission has been asked by the Minister of Foreign Affairs of Moldova for an opinion on amendments to the law on the Constitutional Court. The Commission adopted its [opinion](#) at its plenary session on 5-6 July 2002 following a seminar on the subject, which took place in Chisinau on 17-18 June 2002. It seems that awaiting constitutional changes, the draft has not been passed by Parliament and no deadlines are fixed for its adoption. The Venice Commission has expressed its readiness to co-operate on revised drafts.

3.2 Legislation

3.2.1 The criminal code

A legal expertise on the new Criminal Code has been provided [doc. PCRED/DG1/EXP (2003)7]. As stated in the July 2003 document, it would be pertinent to discuss this expertise with the Moldovan authorities. [see also item 2 Human Rights].

3.2.2 Draft Code on administrative offences

An expert appraisal of a draft code was done in June 1999 (ADACS/DAJ EXP (99) 6). On this basis two expert meetings took place in Chisinau (20-21 May 1999 and 13-14 November 2000). A new expert report (PCRED/DG1/EXP (2003)48) was discussed in Chisinau in September 2003.

3.2.3 The Code on criminal procedure

An expert appraisal was prepared in August 2000 (ADACS/DAJ EXP (2000)14) and was followed by an expert meeting in Chisinau. Important points raised by the Council of Europe experts resulted in changes to the draft. The amended draft law was subject to a renewed expert appraisal in January 2001. This law has been adopted by the Parliament and entered into force without a new expertise by the Council of Europe. An expert appraisal of this new Code is currently underway and should eventually be the subject of further discussions with the Moldovan authorities.

3.2.4 The Civil Code and property legislation

A legal expertise on the civil code (doc. PCRED/DGI/EXP (2002) 51), adopted in April 2002, took place in 2002 (expert meeting in December 2002). A synthesis of the expert recommendations has been handed over to the Ministry of Justice, which committed itself to propose changes to the existing law on this basis. However, the code entered into force and the experts were unable to check whether previous appraisals had been taken into account. The Moldovan authorities indicated that further amendments to these codes may be proposed on the basis of Council of Europe expert recommendations. The Council of Europe is prepared to continue its cooperation based on the existing reports.

The law on acquisition and sale of property has been submitted for Council of Europe expertise and this process is underway.

3.2.5 Code on civil procedure

The new civil procedure code entered into force. The new Code is currently under CoE expert assessment and could be further discussed with the Moldovan authorities. [see also item 2 Human Rights].

3.2.6 Law on notaries

Legal expertise was provided in November 2002 (doc. PCRED/DGI/EXP (2002) 44). The text has been amended and a second legal expertise on the new version of the text was prepared (PCRED/DGI/EXP (2003) 38). The experts have been unable to verify whether their recommendations have been taken into account.

The Moldovan authorities have recently indicated that they would like an expert meeting on the subject.

3.2.7 The law on administrative litigation

An expert mission to Chisinau took place on 4 – 5 June 2002 to evaluate the state of administrative reform. Specific recommendations have been provided by the experts.

A law on administrative litigation was adopted in May 2000. It has been subject to expert appraisal [PCRED/DGI/EXP (2002)30 Rev]. An expert meeting to discuss the report took place on 9 September 2003. The authorities have indicated that the Moldovan expert conclusions of this meeting will be presented to the Council of Europe for discussion.

3.2.8 Anti-corruption legislation

Moldova has signed both the Criminal and Civil Conventions against corruption (ETS 173 and 174), but has yet to ratify them (apparently a parliamentary ratification of the Criminal Convention has taken place on 30 October 2003 and a deposit of the instrument is awaited). The authorities have also indicated that a ratification of the Civil Convention against corruption will follow soon.

In October 2002, Moldova was evaluated within the framework of GRECO; the report, containing reform proposals, was adopted in October 2003. A National Commission was established on 6 November 2003 to implement the recommendations and to elaborate a national strategy for fighting corruption.

The evaluation report for Moldova adopted by the Stability Pact Anti-Corruption Initiative (SPAI) in April 2002 contains a series of recommendations for legislative and institutional reforms.

The draft law on "the statement and control of the incomes and property of state officials, judges, prosecutors, public employees and other persons holding leadership positions" (DG I/Octopus (2002)8) was subject to an expert appraisal but has since entered into force. However, based on the expertise, amendments are being considered by the Parliament.

There have also been expert appraisals on the laws "on fighting corruption and protectionism" and "on the Centre for fighting economic offences and corruption". Eventually a new Law on Prevention and Sanction of Corruption has been elaborated and will be presented to the Council of Europe soon (December 2003 information from the authorities).

3.2.9 Legislation relating to the fight against organised crime (including human trafficking)

Moldova has ratified the Convention on Money Laundering, the Search For, and Confiscation of the Proceeds from Crime (STE 141). The report by PC-R-EV (MONEYVAL), adopted in December 2001, contains a series of recommendations to reinforce the fight against money laundering, including the process of criminalizing money laundering. To date, MONEYVAL lacks further information as regards the legislative modification of the definition of "laundering" and clarification of the responsibility on the Financial Intelligence Unit. However, according to the authorities article 243 (money laundering) of the Criminal Code has been amended.

Moldova participated in a pilot project on reform of the penal legislation relating to human trafficking. A new draft law is currently being discussed in the Moldovan Parliament. This law should reinforce the pursuit of traffickers and afford greater protection and rights to the victims.

The law "on prevention and fighting of money laundering" has been subject to expert appraisal (doc. PCRED/DGI/EXP (2002) 50) and follow-up will be ensured within the framework of MONEYVAL.

3.3 The judicial system

3.3.1 Legislation on the organisation of the Judiciary and possible amendments

The legislation on the judiciary and the reform proposals have been subject to Council of Europe expertise.

An Opinion by the Venice Commission regarding the draft law amending the Constitution (doc. CDL-AD (2002) 14), and concerning in particular the judicial system, was adopted in July 2002.

Subsequently the draft amendments to the laws on the organisation of the judiciary, status of judges and the High Council of Magistrates were submitted to Council of Europe experts (doc. PCRED/DGI/EXP (2002) 47). This legislation was adopted by the Parliament on 8 May 2003, before an expert report could be discussed with the Moldovan authorities (expert meeting in Strasbourg on 19-20 May 2003) and does not take into account some essential expert comments regarding judicial independence. In a letter dated 14 May 2003, the Secretary General requested from President Voronin to take adequate measures to ensure that the expert recommendations be taken into account, which was accepted by President Voronin (letter to the Secretary General of 16 May 2003). The recommendations were discussed and handed over in writing to the

Moldovan delegation during the meeting on 19-20 May and the Moldovan authorities have committed themselves to continued work (letter of 25 May 2003 by the Minister of Justice, Vasile Dolghieru, to the Secretary General). New draft laws are due to be submitted to the Secretariat for further expertise.

The authorities have informed the Council of Europe that a Working Group was established on 7 November 2003 to elaborate proposals for improvement of legislation regarding the efficiency and quality of justice and that the CoE recommendations will serve as a basis for this exercise.

Furthermore, the draft law on the Ministry of Justice has been subject to an expert appraisal [doc. /DG1/EXP (2003)6] and an expert meeting was held in Chisinau on 22-23 May 2003). The law has passed a first parliamentary reading.

An expert appraisal on the commercial courts is still underway.

3.3.2 Law and regulations concerning the creation of a National School of Judges and Prosecutors

A working plan was adopted in Strasbourg in October 2003, to be implemented in 2004 (possibly within the framework of a new Joint Programme with the European Commission). The relevant texts relating to the creation and running of the school will be subject to an examination by the Council of Europe experts and the Moldovan authorities.

A Moldovan group of national experts has met twice since October 2003 to identify the exact technical and material needs of the new school.

3.3.3 Draft law on the execution of judicial decisions

A draft was reviewed in February 2001 (doc. PCRED/DGI/EXP (2001) 3) and was followed-up by an expert meeting in Strasbourg 19-20 December 2001. The draft law on judicial clerks has also been subject to expert appraisal (doc. PCRED/DGI/EXP (2002) 49) in December 2002 and experts meeting in Chisinau 3-4 June 2003. The cooperation in this field is set to continue.

The authorities have recently informed the Secretariat that a new consolidated Code on Execution has been presented to Parliament on 25 November 2003 (final adoption foreseen in spring 2004).

3.3.4 Draft law on the status and powers of Court Clerks

A meeting of experts was organised in Strasbourg in March 2001 to prepare the draft law on the status of Court Clerks. An expert appraisal has been initiated and an expert meeting took place on 12-13 June 2003. The draft law has now been presented to the government for consideration.

This cooperation will continue, including as regards the curriculum for training Court Clerks and auxiliary personnel (cp. former point 3.3.5 in document CM/Inf (2003)29 rev).

3.3.5 Law on Prosecutor General's Office

A round table on the reform of the Prosecutor General's Office was organised on 15-16 November 2002 in Chisinau. The law was then adopted by the Parliament, without prior appraisal by Council of Europe experts. The law has since been the subject of an expert appraisal *a posteriori* (doc. PCRED/DGI/EXP (2002) 45). The report was discussed in Strasbourg on 3-4 July 2003. The CoE remains prepared to further cooperate for possible legislative amendments, if so requested.

3.3.6 Draft law on the organisation of the Judicial Police

A meeting of experts on the organisation of the Judicial Police took place on 11-12 June 2002. A legal appraisal was organised (PCRED/DG1/EXP (2003)40) and will, according to the authorities, be taken into account in a new Regulation on the Judicial Police.

3.3.7 Draft law on the organisation of the Bar and training of lawyers

An expert appraisal of the draft amendments to the legislation in force was carried out in December 2002 PCRED/DGI/EXP (2002) 48) and was discussed in Chisinau on 10-11 July 2003. The cooperation will

continue – the authorities have informed the Secretariat that the expert recommendations will serve as the basis for further improvement of the law.

3.4 The penitentiary system

The Steering Committee for prison reforms continues to track the implementation of the existing Action Plan, targeting in particular: the overcrowding in prisons, the treatment of prisoners from a psychological and medical point of view, the treatment of long term prisoners and prisoners serving life sentences, treatment of minors, training of personnel and alternatives to imprisonment.

The complementary legislative reforms could concern the treatment of prisoners, the protection of Human Rights and a code of ethics for the penitentiary staff.

4. Social Cohesion

Preparation for the signature and ratification of the European Code of Social Security

The Council of Europe organised a seminar in Chisinau on 15-16 May 2003 in order to assist with the preparation for the signature and ratification of the European Code of Social Security. Moldovan authorities and experts from the Council of Europe prepared a zero report, in accordance with the control procedure of the Code, with a view to assess the compatibility of Moldovan social security legislation with this legal instrument.

The Code was signed on 16 September 2003 and preparations for ratification are underway.

5. Education

A legislative expertise on the Law on Education of 1995 was transmitted to the Permanent Representation on 30 May 2003. The expertise aimed at ensuring compatibility between the law and the European Convention on Human Rights. Feedback from the Moldovan authorities has indicated that a drafting process for a new law on education is underway in the Ministry of Education. The Council of Europe remains ready to provide support for this process upon the request of the Ministry of Education.

As regards history teaching a first intensive series of seminars on curricula and standards, preparation of new history textbooks and in-service teacher training for history teachers was carried out from 23-27 September 2002. A second series of seminars was held from 19-21 February 2003 which allowed another 50 Moldovan history teachers to benefit from European best-practice in the areas of curricula, textbooks and in-service training. Two visits to Strasbourg by the Deputy Prime Minister in October 2002 and April 2003 allowed for an evaluation of the activities as well as a consolidation of the priority planning for Council of Europe support for history teaching in Moldova.

A meeting of Moldovan and European experts took place at the Georg Eckert Institute for International Textbook Research in Braunschweig, Germany from 26-27 June 2003 to discuss reform of history teaching in Moldova. As a result of this meeting, a Summer School training session in "New Approaches to Teaching History" was held in Holercani from 27-29 August 2003. A discussion of the government "concept" for history teaching in Moldova as well as a third series of seminars for teachers was also carried out from 19-22 October 2003, with the generous support of a voluntary contribution from Switzerland.

In addition, Moldova continues to take part in the activities under the "Black Sea Initiative" developing a teaching pack on the history of the Black Sea.

As regards higher education a seminar on democratic governance of higher education institutions was held in Chisinau from 16-17 October 2003. The seminar addressed the on-going development of a European higher education area and the reforms which this entails in the governance and management of higher education institutions. In particular the representation and participation of all members of the higher education community in the democratic governance of the institution was emphasised, as was the role of the higher education institutions as sites of democratic citizenship.

Language education policy was also identified as a priority subject for the TCP. Following a needs assessment mission on language education in Moldova in June 2002, a seminar was held in Moldova on

standard setting in language learning, teaching and assessment (21-22 November 2002) under the EC/CoE Joint Programme. A number of important Council of Europe reference texts and materials have subsequently been translated and printed in the national language, namely, the Common European Framework of Reference for Languages and the European Language Portfolio Guide for teachers and teacher trainers.

In the context of the project "Education Policy and Minorities" in Moldova a specific language education policy evaluation mission of experts was carried out in June 2003. This mission contributed its evaluation and recommendations for language education with regard to minorities to the overall report and recommendations on education policy and minorities which will be presented to the Moldovan authorities

APPENDIX 1**30 APRIL 2002 DECISION BY THE MINISTERS' DEPUTIES ON ENHANCED CO-OPERATION WITH MOLDOVA***794th meeting – 30 April 2002**Item 2.1a***Current Political Questions****a. Activities for the development and consolidation of democratic stability**

(CM/Del/Dec/791/2.1, CM(2002)44, CM/Monitor(2002)7, GR-EDS(2002)CB6, GR-EDS(2002)22, SG/Inf(2002)18, SG/Com(2002)793, Parliamentary Assembly Recommendation 1554 (2002), Parliamentary Assembly Resolution 1280 (2002), CDL(2002)40, CG (9) 6 part 2)

Decisions

The Deputies

1. took note of the synopsis of the GR-EDS meeting held on 19 April 2002 (document GR-EDS(2002)CB6);

[...]

Situation in Moldova

3. In the light of the following elements:

- Parliamentary Assembly Recommendation 1554 (2002) on the functioning of democratic institutions in Moldova, as well as Parliamentary Assembly Resolution 1280 (2002) on the same subject;
- the report by the Secretary General on the consultations between parliamentary leaders of Moldova, held, at his initiative, in Strasbourg on 16 April 2002 [doc. SG/Com(2002)793];
- the report of the Secretariat Information and Assistance Mission to Moldova, headed by the Deputy Secretary General [doc. SG/Inf(2002)18];
- the report by the Secretary General on the use of his powers by virtue of Article 52 of the European Convention on Human rights in respect of Moldova [doc. SG/Inf (2002)20];
- the report by Secretary General's experts on the freedom of expression and information in Moldova, undertaken in the context of the Committee of Ministers Monitoring procedure [doc. CM/Monitor(2002)7];
- the report of the Congress of Local and Regional authorities of Europe on the situation of local self-government in Moldova, to be debated at the next Session of the Congress [doc. CG (9) 6 part 2];
- the experts' analysis of the laws applied in the context of the decision to temporarily suspend the activities of a political party in Moldova;
- the consolidated opinion on the law on modification and addition in the Constitution of the Republic of Moldova by the European Commission for Democracy through Law [doc. CDL(2002) 40];
- the opinion on Moldova by the Advisory Committee on the Framework Convention for the Protection of National Minorities [doc. CM(2002)44];

i. decided to give its full support to the efforts undertaken by the Secretary General and the Parliamentary Assembly to promote democratic dialogue between the ruling party and the parliamentary opposition in Moldova, with a view to the possible holding of a political round table with the participation of all political forces in Moldova (possibly, in the presence of the Council of Europe);

- ii. reiterated the availability of the Council of Europe for continued expertise, in particular through the Venice Commission and the CLRAE, with a view to overcoming the present difficulties as regards the autonomous status of Gagauzia and its future anchorage in the Constitution of Moldova;
- iii. invited the Secretariat to enter into detailed discussions with the competent Moldovan authorities to prepare, within a set time-frame, an analysis of the compatibility of present and future relevant legislation in Moldova with the European Convention on Human Rights, as interpreted in the Strasbourg Court case-law and with other European norms, with particular regard to the conclusions of the various reports mentioned above; the Council of Europe analysis should be accessible to all interested parties (in particular, the parliamentary opposition) and regular information on the follow-up given to the Council of Europe expert analysis should be provided by the Moldovan authorities;
- iv. welcomed the proposal to hold an early meeting of the tripartite Steering Committee of the European Commission/Council of Europe Joint Programme for Moldova to review the implementation of the programme, in particular the December 2001 Action plan for legal system reform in Moldova, putting emphasis on the development and independence of the judiciary;
- v. invited the Secretariat to prepare, in co-operation with the competent Moldovan authorities, detailed proposals for the assistance which could be provided in the context of the reform of history teaching in Moldova, as well as teaching of languages;
- vi. expressed their willingness to consider additional proposals based on clearly identified needs and specific requests from the Moldovan authorities;
- vii. invited the Moldovan authorities to inform the Committee of Ministers on urgent steps undertaken with a view to ensuring a full execution of the European Court of Human Rights judgment in the *Metropolitan Church of Bessarabia* case;
- viii. instructed their Rapporteur Group on democratic stability (GR-EDS) to pursue examination of the situation in Moldova, in particular Secretariat proposals for the implementation of the above-mentioned decisions, including their detailed financial implications;
- ix. decided to resume consideration of this issue on the basis of the conclusions of the GR-EDS examination of the situation.

APPENDIX 2**Non-exhaustive list of Moldovan legislation that may be examined for its compatibility with the European Convention of Human Rights.****1. Provisions on the treatment of prisoners, detention, the right to a fair trial and the right to an effective remedy**

General review of adequacy of relevant Moldovan legislation, in particular Articles 101 (1) and 193 of the Criminal Code

Criminal Sanctions Reinforcement Code (notably Articles 93 and 113)

Disciplinary rules of Armed Forces, approved by the Law n° 776-XII of 13 May 1996

Criminal Procedure Code and Civil Procedure Code (notably provisions concerning deprivation of liberty, for example, with regard to witnesses, detention on remand, performance of a psychiatric expertise)

Questions of the legal basis and procedure for the placement of mentally ill persons in psychiatric hospitals (judicial control and remedies), including Article 57 of the Criminal Code

Code on Administrative offences (notably Article 249)

Questions of the legal basis and procedure for the arrest or detention of a person in view of deportation or extradition (judicial control and remedies)

Questions of the legal basis and procedure for the reparation of moral damages in cases of unlawful deprivation of liberty.

Act on Economical Courts n° 970 of 24 July 1996

Criminal Procedure Code (notably Articles 5 and 26)

Existence and effectiveness of remedies available in the Moldovan legal system, including in relation to Article 235 of the Code of Civil Procedure and Section 33 of the Act on Political Parties and other Socio-political Organisations No. 718-XII of 17 September 1991

2. Functioning of political parties, the status of member of Parliament, etc.

Act on Political Parties and other Socio-political Organisations No. 718-XII of 17 September 1991 (notably Sections 5 para. 3 and 29)

Act on the Status of Member of Parliament No. 39-XIII of 7 April 1997 (provisions governing the lifting of immunity and removal from office)

Electoral Code

3. Freedom of expression, to participate in demonstrations, etc.

Constitution (notably Articles 32 and 34)

Act on the Status of Member of Parliament No. 39-XIII of 7 April 1997

Press Law No. 564-XIV/1999 (notably Section 4) and new draft press law

Criminal Code (notably Article 140 § 4)

Constitution (notably Article 32)

Act on the organisation and conduct of public gatherings No. 560-XIII of 21 July 1995 (notably Section 20)

Act on the Status of Member of Parliament No. 39-XIII of 7 April 1997

Code of Administrative Procedure (notably Article 1741 § 4)

National Minorities Act (Law on the rights of persons belonging to national minorities and their associations No. 382 of 28 August 2001, notably Section 6)

Criminal Code (notably Articles 67, 224 §1, 2032 §2, and 2034, as well as inter alia, the provision on the liability for abuse of exercising the right to assembly)

Code of Administrative Offences (notably the provision on the liability for abuse of exercising the right to assembly)

Act on Children's rights (notably Section 3 § 13)

Act on Education (notably Section 56 g)

4. Freedom of thought, conscience and religion

Law on cults No. 979 of 24 March 1992

Decision of the Government on the approval of the Statute of the Orthodox Church of Moldova (Metropolitan Church of Moldova)

Code of Civil Procedure (notably Article 235)

Code of Administrative Offences (notably Article 200)

Law on alternative service No 633 of 9 July 1991

5. Civil Code, Criminal Code, Administrative Code, Code of Civil Procedure and Code of Criminal Procedure

6. Implementation of judicial decisions

Legislation on the execution of judicial decisions in civil matters
Criminal Sanction Enforcement Act

7. Child protection in the context of Articles 5, 8 and Additional Protocol No. 1, Article 2

Questions of the legal basis and procedure for the arrest and detention of vagrant minors (judicial control and remedies)

Family Code (Articles 72 and 124, the taking of children into care, adoption)

Criminal Procedure Code (Article 5; the taking of children into care, p. 48)

Law on education No. 547 of 21 July 1995

Act on children's rights

8. Other legislation

Law on postal service (notably Section 32 § 1)

Family Code (Act No. 1316-XIV of 26 October 2000, notably Article 15 para. 1 (g))

Constitution (Articles 54 and 55)

Civil Code (notably Article 95)

Law on property and Law on the normative price and the sale manner of the land No 1308- XIII of 25 July 1997

Law on foreign investments No 998- XII of 1 April 1992

Legislation on the nature of state institutions

Legislation in the field of education – ECHR/Framework Convention for the Protection of National Minorities expertise should be included in any Council of Europe expertise in this field.

Constitution (notably Articles 10 para. 2 and 35 para. 2)

National Minorities Act (Law on the rights of persons belonging to national minorities and their associations No. 382 of 28 August 2001, notably Section 6)

Law on the functioning of languages of September 1989

Criminal Code (notably Articles 155-3, 155-5, 157, 159, 160-2 and 161-3), also in relation to the Act on Pledge (notably Sections 58-59)

**APPENDIX 3 (FRENCH ONLY)
EXPERTISES DU CONSEIL DE L'EUROPE**

décembre 2003

Moldova expertises (programme ciblé)

Texte	Reçu	Traduit	Transmis experts	Transmis Moldova	Référence	Observations	Suivi en Moldova
Constitution	oui	oui					
Projet de loi sur les partis politiques et les organisations socio-politiques	oui	oui		11/09/2002 22/11/2002 15/03/2003	SG/Inf(2002)34 CDL-AD (2002) 28 CDL-AD (2003) 8	Avis entériné par la Commission de Venise (octobre 2002) Avis adopté par la Commission de Venise en mars 2003	Loi adoptée par le Parlement mais non promulguée par le Président de la République Réunion entre les experts et les représentants des partis politiques en juillet 2003 à Chisinau
Loi relative à l'organisation et au déroulement des rassemblements	oui	oui	oui	20/01/2003	CDL-AD (2002) 27	Avis entériné par la Commission de Venise (octobre 2002)	
Loi sur le Statut du Député	oui	oui	oui	25/10/2002	CDL -AD (2002) 25 SG/Inf (2002)41	Avis entériné par la Commission de Venise (octobre 2002)	

Projet de loi sur la cour constitutionnelle et les amendements correspondants	oui	oui	oui	15/7/2002	CDL-AD (2002) 16 DG II (2003)002	Avis entériné par la Commission de Venise (juillet 2002)	
Projet de loi modifiant la Constitution	oui	oui	oui	9/7/2002	CDL-AD (2002) 14	Avis entériné par la Commission de Venise (juillet 2002)	
Code électoral	oui	oui	oui	15/1/2003	CDL-AD (2003)1	Avis entériné par la Commission de Venise (décembre 2002)	
Loi sur l'Autonomie locale	oui	oui	oui	28/11/2002		réunions experts: 8/11/02 et 4 – 6/3/2003	Lois adoptées
Lois sur les finances publiques locales et les statut des élus locaux	oui	oui	oui	4/11/2003	Avis consolidés du 20 et 29 octobre 2003	Pas d'infos en retour	Projets devant le Parlement
Projet de loi notariale	oui	oui	oui	28/11/2002 13/06/03	PCRED/DGI/EXP (2002) 44 PCRED/DGI/EXP (2003) 38		nouveau texte envoyé en mars 2003 et nouvelle expertise
Loi sur le Ministère public	oui	oui	oui	28/11/2002	PCRED/DGI/EXP (2002) 45	réunion d'experts 3 – 4/07/03	version révisée soumise à expertise en juillet 2003
Projets d'amendements aux lois: organisation judiciaire, statut des juges, Conseil Supérieur de la Magistrature	oui	oui	oui	28/11/2002	PCRED/DGI/EXP (2002) 47	réunion d'experts 9-20/05/03	loi adoptée par le Parlement le 8 mai, avant la réunion d'expertise; des amendements sont en préparation et seront soumis à expertise
Projet de loi sur les greffiers de justice	oui	oui	oui	en cours	PCRED/DG1/EXP (2003)23	réunion d'experts 12-13/06/03	nouvelle version transmise le 23.09.03
Projet d'amendements à la Loi sur le barreau	oui	oui	oui	12/12/2002	PCRED/DGI/EXP (2002) 48	réunion d'experts 10-11/07/03	Amendements en cours de préparation

Projet de Code de l'exécution des décisions de justice	oui	oui	oui	28/01/2001	PCRED/DGI/EXP (2001) 3	réunion d'experts 3-4/06/03	groupe de travail créé au Parlement
Projet de Loi sur les huissiers de justice	oui	oui	oui	12/12/2002	PCRED/DGI/EXP (2002) 49	réunion d'experts 3-4/06/03	adopté en 1 ^{ère} lecture
Code civil	oui	oui	oui	décembre 2002	PCRED/DGI/EXP (2002) 51	réunion d'experts: 16-18/12/02	synthèse des recommandations des experts remise au Ministère de la Justice, qui s'est engagé à proposer des amendements au Code en vigueur
Projet de Code de procédure civile	oui	oui	en cours			en attente d'un nouveau texte; coopération à coordonner avec la procédure administrative	Code entré en vigueur. Le Ministre s'est montré disposé à proposer des amendements sur la base des recommandations des experts
Projet de Loi sur le Ministère de la Justice	oui	oui	oui	27/02/2003	PCRED/DG1/EXP (2003)6	réunion d'experts 22 – 23/05/03	
Code pénal	oui	oui	oui	27/02/2003	PCRED/DG1/EXP (2003)7	une réunion d'experts devrait être organisée rapidement	Code en vigueur. Le Ministère de la Justice, s'est engagé à proposer des amendements.
Projet de Code des infractions administratives	oui	oui	oui	24/5/03	PCRED/DG1/EXP (2003)48	réunion d'experts 3/09/03	
Code de procédure pénale	oui	oui	en cours			ancien projet datant de 2001 expertisé	Code en vigueur (sans nouvelle expertise du CdE); Nouveau code soumis pour expertise en juillet 2003 (e Ministre s'est montré disposé à proposer des amendements sur la base des recommandations des experts).
Projet de loi sur la Police judiciaire	oui	oui	oui	20/9/2003	PCRED/DG1/EXP (2003)40		

Projet de loi sur les juridictions administratives	oui	oui	oui	15/5/2003	PCRED/DGI/EXP(2002)30 Rév.	réunion d'experts le 2/09/ 03	
Projet de loi sur l'administration publique centrale	oui	oui	oui	15/5/2003	PCRED/DG1/EXP (2003)41		
Loi sur les droits des enfants	oui	oui	oui	24/5/03	PCRED/DG1/EXP (2003)53		
Code de la famille	oui	oui	oui	24/5/03	PCRED/DG1/EXP (2003)52		
Loi sur les institutions judiciaires économiques	oui	oui	oui	en cours			
Loi sur le blanchiment	oui	oui	oui	12/12/2002	PCRED/DGI/EXP (2002) 50	Suivi dans le cadre de Moneyval	
Projet de loi sur la Déclaration des revenus	oui	oui	oui	28/11/2002	DGI/Octopus (2002) 8		
Loi sur le Centre de lutte contre la criminalité économique et la corruption	oui	oui	en cours	25/05/03	PCRED/DGI/ EXP (2003) 26		
Loi sur la lutte contre la corruption et le protectionnisme	oui	oui	en cours	25/05/03	PCRED/DGI/ EXP (2003) 26		
Règlement disciplinaire des Forces Armées, approuvé par la loi N° 776 – XII du 13 mai 1996	oui	oui	oui	14/10/03	DGII(2003)15		
Projet de loi sur la presse	oui	oui	oui	02/04/03	ATCM(2003)007		
Projet de loi sur l'audiovisuel	non						
Loi sur les minorités nationales, sur les droits des personnes appartenant à des minorités nationales et de leurs associations	oui	oui					

Loi n° 979 du 24 mars 1992 sur les cultes.	oui	oui	oui	30/08/02	SG/Inf(2002)30		Groupe de travail du MJ pour préparer des amendements à la loi
Nouveau projet de loi sur la liberté de conscience et les associations religieuses soumis pour expertise	oui	oui	oui	17/04/03	DGII(2003)8 DGII(2003)19 (observations des experts sur le projet de loi révisé)	réunion d'experts 14-15/07/2003 (Doc DGII(2003)12) réunion avec un expert et les Autorités moldaves prévue le 26-27 janvier 2004	
Loi n° 633 du 9 juillet 1991 sur le service de remplacement	non						
Législation sur l'exécution des sanctions pénales	non						
Loi sur le service postal	non						
Loi n° 998 – XII du 1er avril 1992 sur les investissements étrangers							
Loi de septembre 1989 sur les langues	oui	oui					
Loi sur l'Education	oui	oui	oui	30/5/2003			