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Moldova: Stock-taking of co-operation with the Council of Europe

Report prepared by the Secretariat subsequent to a visit to Chisinau
on 27- 30 September 2005

Executive Summary

Following the March 2005 elections, the dialogue between the ruling party and a part of the opposition has been initiated and produced certain results. However, views diverge on the follow-up given to the political agreement and the fulfilment of its various components. One of the main challenges for Moldova is the implementation of the EU - Moldova Action Plan agreed under the European Neighbourhood Policy in February 2005. A large part of the internal political debate remains focused on the issue of Transnistria.

Present co-operation with the Council of Europe is intensive. The development of further co-operation will be directed by the Committee of Ministers' reply to PACE Recommendation 1721(2005) on the functioning of democratic institutions in Moldova and possible specific contribution of the Council of Europe to the implementation of the EU-Moldova Action Plan.

With respect to the implementation of the current EC/CoE Joint Programme 2004-2006: the sustained efforts are to be deployed by the Secretariat and the Moldovan authorities to secure full and efficient implementation of the remaining activities before the Programme ends in September 2006. Judicial reform is at the focus of the current Joint Programme and deserves further attention in the future, in particular as regards the speedy creation and efficient functioning of the National Institute of Justice. Local self-government remains an area of concern and the programme of co-operation in this field could be further intensified.

With respect to the harmonisation of Moldovan legislation with the European standards: a certain lack of transparency was detrimental to the coherence and efficiency of legislative co-operation with the CoE. An appropriate follow-up to the CoE legislative appraisals on the subject of compatibility of Moldovan legislation with the ECHR remains an important issue.

The reform of the audiovisual sector, in particular TeleRadioMoldova, needs continued attention and support.

Efforts should be renewed to intensify the co-operation in the field of fight against corruption and organised crime including trafficking in human beings, reform of law-enforcement agencies and reform of the prison system.

Intensified co-operation with the representatives of civil society in Transnistria can be envisaged as a specific contribution of the Organisation to the democratisation processes in the break-away region.

CONTENTS

	Pages
I. Introduction	3
II. Political context	3
III. Implementation of the European Commission/Council of Europe Joint Programme ‘Support to Continued Democratic Reforms 2004-2006’	4
(i) Judicial Reform	5
(ii) Strengthening Human Rights protection at the national level.....	7
(iii) Local self-government reform.....	7
(iv) Access to social welfare by vulnerable groups.....	7
(v) Organ transplantation system and trafficking in organs	7
IV. Approximation of Moldovan legislation with the Council of Europe standards	8
(i) Efficiency of the legislative co-operation	8
(ii) Progress in the compatibility of the Moldovan legislation with the ECHR.....	9
V. Situation in the media field	9
(i) Reform of the legislation on broadcasting media	9
(ii) Public service broadcaster TeleRadioMoldova.....	10
(iii) Access to information	11
(iv) Defamation	11
VI. Other areas of co-operation	11
(i) Fight against corruption and organised crime, including human trafficking	11
(ii) Reform of the prison system	12
(iii) Reform of the prosecution bodies.....	12
(iv) Personal data protection and e-governing	12
(v) ‘Transnistrian dimension’	13
VII. Conclusions and recommendations	13
Appendix I: Programme of the visit of the Secretariat Delegation to Chisinau	15
Appendix II: Exchange of correspondence between the Minister of Justice of the Republic of Moldova and the Secretary General of the Council of Europe.....	17

I. INTRODUCTION

1. At their 904th meeting on 17 November 2004, the Ministers' Deputies

'2. decided to ask the GR-EDS to make a regular assessment of co-operation with Moldova, particularly on the three following points:

- *implementation of the joint Council of Europe/European Commission programme;*
- *progress in compatibility of Moldovan legislation with Council of Europe standards;*
- *the situation of the media' (See CM/Del/Dec(2004)904, item 2.1).*

2. A Secretariat stock-taking mission to Moldova was carried out from 27 to 30 September 2005 in the eve of the Parliamentary Assembly's debate on functioning of democratic institutions in Moldova which led to the adoption of [Resolution 1465\(2005\)](#) and of [Recommendation 1721\(2005\)](#) on 4 October 2005. The visit, which was combined with a meeting of the Steering Committee of the EC/CoE Joint Programme 2004-2006 (held on 30 September 2005), gave an opportunity to assess progress in the Council of Europe co-operation with Moldova and to identify the areas in which the co-operation might be further fostered or initiated.

3. The Secretariat Delegation is grateful to the Moldovan authorities for having organised the substantial programme of meetings with high level representatives of the executive, legislative and judicial powers (see Appendix I). The Delegation would also like to express its gratitude to the Special Representative of the Secretary General in Moldova as well as to the Council of Europe Information Office in Moldova for their precious help in organising the visit.

II. POLITICAL CONTEXT

4. On 6 March 2005 Parliamentary elections were held in Moldova. The elections were generally considered to be free and fair according to the international observation mission (in which the Parliamentary Assembly of the Council of Europe took part). However, they also revealed some weaknesses with regard to the independence of the media during the electoral campaign.

5. On 4 April 2005 Vladimir Voronin, leader of the Communist party, was re-elected President of Moldova by the new Parliament. The necessary two-thirds majority was reached with votes of some opposition parties (Christian Democratic People's Party (PPCD), Democratic Party (DPM) and Social Liberal Party (SLP)).

6. This re-election was preceded by an agreement between the Communist party and several opposition parties which accepted to vote for Mr Voronin. The agreement includes *inter alia* legislative proposals to ensure the independence of the media and the judiciary, strengthen local self-government and amend the Electoral Code. Relations between the Government and the major part of the opposition can at present no longer be described as confrontational. However, there are very diverging views on the follow-up given to this political agreement and the fulfilment of its various components.

7. By-elections for the post of the Chisinau Mayor were held four times this year - on 11 and 24 July, 27 November and 11 December 2005. Though these elections were recognised generally as free and fair, their results were declared invalid due to low voters' turnout. Following the failure of

the fourth attempt to elect the Chisinau Mayor, the CLRAE election observation mission recommended, as an urgent exceptional measure, the appointment of a Mayor through broad political consensus until the 2007 general local elections. The CLRAE also suggested the Moldovan authorities to consider, possibly with the assistance of the CoE, introducing changes to the Electoral Code in order to avoid any such deadlock in the future (see CLRAE press release of 12 December 2005).

8. One of the main difficulties for the country in 2005 remains the Transnistrian frozen conflict. However, in the spring 2005, the Ukrainian President Yushchenko suggested an initiative to settle the dispute mainly by achieving the democratisation of Transnistria. In June 2005, the Moldovan Parliament welcomed the so-called Yushchenko Plan in a declaration, which pointed out some perceived shortcomings of the Ukrainian proposal. On 22 July 2005 the Parliament approved the Law on the Status for the Left Bank of the river Dniestr (Nistru) (Transnistria). The Law establishes an autonomous territorial unit inseparable of Moldova. Many interlocutors place high expectations on the deployment of the EU border control mission which could contribute to resolve the endemic problem of permeability of the border between Ukraine and Moldova, the main factor of trafficking in Transnistria. The mission was launched on 1 December 2005.

9. Much of the internal political discussion in 2005 focused either on the elections or on the issue of Transnistria sometimes to the detriment of debating further democratic reforms. Several authorities have expressed the view that the Council of Europe could be more active in developing contacts and co-operation with civil society in Transnistria.

10. Throughout 2005 the Council of Europe maintained active across-the-board co-operation with Moldova and continued to offer, in particular, ample legislative expertise assistance with a view to the further approximation of national legislation to European standards. However, the situation with the follow-up to the legal appraisals remained unsatisfactory. A concerted effort announced in 2004 by the Moldovan authorities to remedy the situation did not fully materialise.

11. On 4 October, the Parliamentary Assembly of the Council of Europe, in its Recommendation 1721 (2005) on the functioning of democratic institutions in Moldova, while noting some progress, called upon the Moldovan authorities '*to speed up reforms corresponding to the Council of Europe values and standards*' and in particular to take into consideration the Council of Europe legislative expertise.

12. At present, one of the main challenges for Moldova, from the point of view of its European integration, remains the implementation of the [EU - Moldova Action Plan](#) which was adopted on 22 February 2005. The Action Plan is the main instrument for implementing the European Neighbourhood Policy in which Moldova has been participating since 2003. Among its priorities are the effective implementation of Council of Europe standards in the field of Democracy, Rule of Law and the Protection of Human Rights. On 25 March 2005, the Moldovan Parliament endorsed the implementation of the Action Plan. The discussions with various authorities and the trilateral EC/CoE/Moldova Steering Committee meeting on 30 September 2005 offered a good opportunity to discuss possible Council of Europe contribution/involvement in the implementation of the Action Plan in the Council's areas of competence.

III. IMPLEMENTATION OF THE EUROPEAN COMMISSION/COUNCIL OF EUROPE JOINT PROGRAMME 'SUPPORT TO CONTINUED DEMOCRATIC REFORMS 2004-2006'

13. The Moldovan authorities have stressed the importance of continuous co-operation with the CoE both for honouring the commitments undertaken *vis-à-vis* the Organisation and with a view to

achieve the strategic objectives of the EU - Moldova Action Plan. In this context, the coordinated tripartite co-operation is of particular importance.

14. The current EC/CoE Joint Programme encompasses four strands of action:

- a. judicial reform;
- b. support to local government development;
- c. development of social services for vulnerable groups (including mental health and organ transplantation);
- d. improvement of the capacity to apply the ECHR at domestic level.

15. The Steering Committee Meeting provided an opportunity to discuss the arrangements for speeding-up the implementation of the remaining activities to be completed before the Programme ends in September 2006. Since October 2005, the implementation of the Programme was drastically accelerated. By mid-December 2005, almost half of the programme had been completed or was underway.

16. Without entering into the details on the implemented activities (see Status Report doc. DSP(2005)66, see also <http://jp.coe.int>) and on the operational conclusions of the Steering Committee (see Steering Committee Meeting Report, doc. DSP(2005)67), the following is an overview of the ongoing co-operation with respect to some of the priority areas identified in the PACE [Recommendation 1721\(2005\)](#) on functioning of democratic institutions in Moldova.

(i) Judicial reform

17. Assistance is being provided under the current Joint Programme with respect to the reform of the judicial system, including revision of the legislation on the judiciary, establishment of the national training structure for judges and prosecutors, access to justice, institutional reform of the Ministry of Justice and fight against corruption within the judiciary.

18. When joining the CoE, Moldova undertook to provide guarantees for the independence of the judiciary. Despite some positive steps made in 2002, when the Constitution was amended to change the modalities for the appointment of judges, critics persisted against the politicisation of the judiciary due to gaps in the appointment procedures. In November 2004, the Moldovan authorities informed the CoE that the working group on the reform of the judiciary, established in line with the Parliament's decision No. 445 of 07.10.2003, was considering improvements to the relevant legislation, which would be submitted to the CoE for appraisal (see [SG/Inf\(2004\)29 Addendum](#)). The EU-Moldova Action Plan, agreed in February 2005, put a particular emphasis on the need to strengthen the independence, impartiality and effectiveness of the judiciary.

19. On 22 July 2005, the newly elected Parliament amended a package of laws on the judiciary, namely the Law on Organisation of the Judiciary, the Law on the Status of Judge, the Law on the High Council of Magistrates and the Law on the Supreme Court of Justice. The modifications to the composition of the High Council of Magistrates aimed at strengthening its role in the appointment procedures (for more details see PACE report on functioning of democratic institutions in Moldova, [doc 10671](#)). These amendments were not submitted to prior CoE expertise. However, in autumn 2005 the Moldovan authorities requested an opinion on the adopted text (see Appendix II and doc. SG/Inf(2005)20addendum). The results of the expertise will be discussed during a Conference on the judicial reform planned in early 2006 under the current Joint Programme.

20. With the reform of the judiciary under way, the Secretariat Delegation stressed the importance that the CoE attaches to the creation of the national training structure for judges and

prosecutors. Following previous consultations, expert meetings were held in late October 2005 in view of finalising a draft law 'On the Establishment of the National Institute of Justice'. At present, the draft law is in its final stage of coordination with all governmental institutions. The adoption of the Law is envisaged for February 2006 (see the Moldovan Parliament's 'Schedule of the legislative actions' in the SG/Inf(2005)20addendum). At a second stage, in line with the request of the Moldovan authorities, CoE will assist in the elaboration of curricula and training methodology for the School. A major conference dedicated to the opening of the School can be organised within the current Joint Programme. Initial funding for this institution has been included in the State draft budget for 2006. However, additional resources will be required to secure the smooth functioning of the institution. This could be included in the EC/CoE Joint Programme.

21. With the numerous complaints filed with the ECtHR on the failure to enforce final domestic judgments (leading case: *Prodan v. Moldova*, No. 49806/99, ECHR 2004), the work on the enforcement of the domestic judicial decisions should be further fostered. While the new Code on the execution of judicial decisions entered into force in July 2005, it seems that securing its implementation will be difficult given the exclusion from the Code of all regulations regarding the status of enforcement bodies and bailiffs. Following an urgent request by the Ministry of Justice, a series of activities related to the enforcement of domestic judicial decisions have been launched under the Joint Programme, including evaluation of the relevant legislation, organisation of the basic training for bailiffs, support in drafting of a sustainable and well-structured curriculum for bailiffs.

22. The competencies of the Ministry of Justice with respect to the administration of lawyers' activities needed further clarification. A thorough revision of the Law on the Bar Association has been completed and the draft amendments, in line with experts recommendations, are being finalised. Their adoption is planned for May-June 2006 (see SG/inf(2005)20addendum). In accordance with the Committee of Ministers' Recommendation [Rec2000\(21\)](#) on the freedom of exercise of the profession of lawyer, all necessary measures should be taken to guarantee the independence of the profession and to ensure its self-administration.

23. Institutional reform of the Ministry of Justice became a new element of co-operation under the current Joint Programme. The Ministry of Justice requested expert assistance on its internal restructuring and identification of the role that the Ministry of Justice has to play in Moldova's legal system regarding the administration of courts, including their financial management. A request has also been made to contribute to the strengthening of the legal capacity of the Ministry's staff through the provision of *ad hoc* training sessions.

24. Among other requests for co-operation in the areas of priority for the Ministry of Justice are:

- (i) creation of the system of legal aid, including the elaboration of the necessary legislation;
- (ii) improvement of access to legal information for legal professionals and general public;
- (iii) organisation of the Conference on the role of the Constitutional Court in dealing with individual constitutional complaints;
- (iv) translation and publication of the ECtHR case-law for free dissemination.

25. The problem of corruption within the judiciary is being addressed under the current Joint Programme in co-operation with the EC/CoE technical project to support the National Anti-Corruption Strategy (PACO Moldova 2005). The assessment report on corruption in the judiciary was not completed within the planned timeframe. The local experts, in charge of drawing up the report, requested assistance and continuous guidance from the international experts in order to carry out the assessment. The activity shall be revised and further involvement of the CoE experts guaranteed. Also, in October and November 2005, 200 judges and prosecutors underwent training seminars on the fight against corruption. Expert meetings for the implementation of the existing recommendations to fight corruption within the judiciary are planned for 2006.

(ii) Strengthening Human Rights protection at the national level

26. The implementation of the activities under this strand of the Programme encountered certain delays. During the mission, the Secretariat Delegation stressed the particular significance of the activities aimed at strengthening the national judicial system's capacity to apply the ECHR domestically and recalled that the effective co-operation of the Moldovan authorities would be crucial. By December 2005, the trainings on the ECHR issues for judges, prosecutors, lawyers and representatives of the civil society were well on track. A round table on the execution of the ECtHR judgments, organised on 6 December in Chisinau, provided an opportunity to discuss the efficiency of execution of the Strasbourg Court's judgments, including general measures, with the representatives of judiciary, civil servants and the representatives of the civil society.

(iii) Local self-government reform

27. [The Recommendation 179\(2005\)](#) of the Congress of Local and Regional Authorities (CLRAE) on Moldova, adopted on 9 November 2005, is critical of the limited financial and administrative autonomy of local authorities in Moldova (see also the explanatory memorandum to the Recommendation, [doc. CPL \(12\)9](#)).

28. Co-operation activities are underway to remedy the above-mentioned problems within the framework of the current EC/CoE Joint Programme and the CoE - Moldova Action Plan on local self-government reform, adopted in 2003. The background studies have been completed by the local experts in three inter-related areas: (i) distribution of competencies between the different levels of public administration (State, districts, communities); (ii) local public finances; (iii) administrative supervision. Consultations with the CoE experts will take place in January – March 2006 to formulate specific recommendations for further reform. Moreover, the activities under this strand of the Programme include the support to the development of the National Training Strategy for local government. The discussions were also held on the question of improvement of the dialogue between the state and local authorities. In this context, a series of workshops are planned to be carried out in co-operation with the CLRAE.

(iv) Access to social welfare by vulnerable groups

29. The social compound of the Joint Programme comprises *inter alia* a training programme for managers of social services with emphasis on access to social rights for three vulnerable groups: i) young unemployed persons, ii) children of parents who have left for abroad and iii) persons with disabilities. The activities carried out under this strand of the Joint Programme also gave an opportunity to look into the social policies of Moldova and to adapt further activities to the needs of the country. This compound is actively supported by the Moldovan authorities and is being implemented without delays.

(v) Organ transplantation system and trafficking in organs

30. The recent PACE report underlined that more serious attention should be paid by the Moldovan authorities and the Council of Europe to the problem of trafficking in organs (see PACE [doc 10671](#), see also PACE report on trafficking in organs in Europe, [doc 9822](#), with particular mention to Moldova).

31. A workshop on legislation on organ transplantation and minimising risks of organ trafficking was organised in April 2005. An expert report with the recommendations on improvements to the legislation in the field of organ transplantation was made available to the Ministry of Health in December 2005. Further to these recommendations, the Law No. 473-XIV of 25 June 1999 on

organs and human tissues transplantation has been revised. The relevant amendments will be discussed within the framework of a seminar planned for February 2006 under the Joint Programme.

32. The Moldovan authorities are invited to sign the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin ([CETS No. 186](#)). By signing this instrument the Moldovan authorities would show their clear commitment to improving the current situation.

IV. APPROXIMATION OF MOLDOVAN LEGISLATION WITH THE COUNCIL OF EUROPE STANDARDS

33. The approximation of Moldovan legislation with the European standards is a declared objective of the Moldovan leadership. The Moldovan authorities envisage proceeding with a systematic assessment of the existing legislation in view of its further adjustment. The continuation of CoE assistance in this context is essential.

34. In its [Resolution 1465\(2005\)](#), the Parliamentary Assembly took note of the first concrete results of the political dialogue established within the newly elected Moldovan Parliament, i.e. the July 2005 reforms on the judiciary, the Electoral Law, the Court of accounts and the Intelligence and Security Service. However, the Assembly abstained from taking a position on these reforms until the CoE experts assess them. The Assembly, furthermore, presented an analysis of the remaining challenges for Moldova's further democratic development and asked the Moldovan authorities to consult CoE experts before adopting new legislation in the areas relevant to CoE competencies.

35. On 21 November 2005, the Speaker of the Moldovan Parliament, Mr. Lupu, requested the CoE legal appraisal of the July 2005 reforms. On the same occasion, he transmitted to the Secretary General the Parliament's Schedule on the legislative action to comply with the [PACE Resolution 1465\(2005\)](#). In his letter of 16 December 2005, the Secretary General reassured the Moldovan authorities that the requested legal assistance would be provided, including assistance with respect to future reforms envisaged in the Schedule (see SG/Inf(2005)20addendum). In response to the Speaker's request, at its December 2005 session, the Venice Commission considered the adoption of the Joint Opinion with ODIHR on the July 2005 amendments to the Moldovan Electoral Law, as well as on the most recent amendments of 4 and 17 November 2005.

36. It is to be hoped that the adoption of the Schedule, which gives a precise time framing for legislative work and envisages consultations with the CoE experts, will contribute to increase the efficiency of legislative cooperation between Moldova and the Council of Europe.

(i) Efficiency of the legislative co-operation

37. Since 2002 Moldova has benefited of extensive legal assistance, notably in the framework of the 'Targeted Cooperation Programme 2002-2003' (see also § 41). This cooperation was unfortunately characterised by insufficient feedback on the follow-up given to legal appraisals (including the failure to provide the Secretariat with the versions of adopted laws). In its [Recommendation 1721\(2005\)](#), the Assembly asked the Committee of Ministers to ensure that the CoE legal appraisals on new Moldovan legislation were duly taken into account. It also recommended the Committee of Ministers to work out a better system of follow-up to CoE legal expertise.

38. On various occasions, the Secretariat delegation stressed the necessity to increase the transparency of the 'approximation exercise' and to strengthen the efficiency and coherence of legislative co-operation with the CoE. In response, the Moldovan authorities referred to the creation of a national co-ordination mechanism, under the Ministry of Justice, on implementation of the CoE experts recommendations. They also informed that the Ministry of Justice was drawing up a comprehensive report on the follow-up to the CoE expert recommendations with respect to the legislation assessed so far. The Secretariat expressed hope that the report will be submitted to the CoE as soon as possible, including the final versions of the laws adopted following their appraisals. At present, the above-mentioned report seems to be completed and will be transmitted to the Council of Europe upon completion of its translation.

39. With a view to strengthen the national capacity to carry out the 'approximation exercise', the Ministry of Justice asked the CoE to make available a legal resident expert who would assist the Ministry with the review of the legislation to be modified and with proper follow-up to the CoE legal appraisals. The Council of Europe stands ready to appoint such an expert, whose presence might also be employed for setting up a unit, possibly within the Ministry of Justice, for verification of the compliance of the existing and draft legislation with the European standards, including compatibility with the ECHR (see Appendix II).

40. In addition, during the Secretariat visit, wishes were expressed at the level of the Parliament to have available a legal resident expert who would act as an interface between the Council of Europe and the Parliament during the legislative process. The appointment of the legal expert to the Parliament might be considered upon reception of an official request.

(ii) Progress in the compatibility of the Moldovan legislation with the ECHR

41. As a matter of particular concern for the CoE remains the appropriate follow-up to the CoE legal appraisals made following the Secretary General's inquiry in application of the Article 52 of the ECHR in 2002. The expertise covered existing legislation on the freedom of religion, freedom of assembly, on political parties and other laws. In May 2005, the Minister of Justice informed the CoE that the above-mentioned co-ordination mechanism on the implementation of the CoE experts' recommendations would analyse the priorities of the legislative adjustment in the light of the priorities of the EU - Moldova Action Plan.

42. The Moldovan authorities are still expected to comply with the general measures in the case of *Metropolitan Church of Bessarabia and others v. Moldova*, notably as concerns the adoption of adequate legislation with respect to freedom of religion. Since 2002, the Council of Europe provided an extensive expert support for the elaboration of the new draft law on freedom of conscience and religious denominations. However, the latest comments by the CoE experts, transmitted to the Ministry of Justice on 23 September 2005, were still critical regarding a number of essential aspects. During the visit, the Secretariat did not receive a clear indication on the state of work with respect to the new draft law. It was informed that the parliamentarians might envisage to return to the existing law on freedom of religion with the purpose of amending it.

V. SITUATION IN THE MEDIA FIELD

(i) Reform of the legislation on broadcasting media

43. Reform of the legislation on the broadcasting sector in general and on the national public service broadcaster TeleRadioMoldova in particular was one of the main points raised by the opposition in April 2005 for the achievement of the 'national consensus'. Much of the internal

debate is focused on the necessity to change the composition of the Coordinating Council of Audiovisual and the composition of the Supervisory Board of TeleRadioMoldova (for more details see PACE [doc 10671](#)).

44. The international and local observers continue to insist that the broadcasting sector is far from being fully independent *inter alia* due to the remaining imperfections of the legislation. The 1995 Law on the Audiovisual is clearly out-dated. The 2003 Law on Local Public Service Broadcasting was highly criticised by the CoE experts. The 2002 Law on the National Public Service Broadcaster TeleRadioMoldova, although in line with CoE standards, lacks overall coherence due to the numerous amendments. On 9 November 2005, the representatives of several international organisations and embassies in Moldova made a joint statement, expressing their concern regarding the lack of transparency in granting broadcasting licenses and frequencies and questioning the independence of the Coordinating Council of Audiovisual. They further recalled that Moldova committed itself to put in place and implement a legislative framework on the media in line with the European standards and on the basis of recommendations of the CoE and the OSCE (for full text of the Statement, see http://www.coe.int/T/E/Human_Rights/media/).

45. Two legislative proposals on the reform of the audiovisual sector, presented by the PPCD and the Communist Party are currently within the Parliament's working group on media. An NGO specialised in media related issues, APEL, has submitted three draft laws - on audiovisual, on TeleRadioMoldova and on local public broadcasting - to the above-mentioned working group, without any feedback since then. Preparation of the draft amendments to the laws on Audiovisual and on National public service broadcaster is envisaged before the end of the year, with their adoption scheduled for summer 2006 (see SG/Inf(2005)20addendum). Beyond political tensions, it is essential that Moldova adopts a legislative framework corresponding to the standards of modern European democracy. The Council of Europe stands ready to provide any necessary assistance to this effect.

(ii) Public service broadcaster TeleRadioMoldova

46. Whilst the March 2005 Parliamentary elections were considered to be in line with most of the international standards for democratic elections, the independence and impartiality of the electronic media were cited among the weakest points of the electoral campaign. The national public broadcaster was largely criticised for having showed clear bias in favour of the ruling party (see OSCE/ODIHR Election Observation Mission [Final Report](#), PACE report on observation of the parliamentary elections in Moldova, [doc 10480](#) and [Final report](#) on the monitoring of the media outlets during the election and post-election periods by the Moldovan Independent Journalism Centre (IJC) and the Centre of sociological researches (CIVIS)). The media coverage considerably improved during the July 2005 local by-elections, though the observers remained critical in respect of the lack of impartiality by the state-run media (see CLRAE, [doc. CG/Bur\(12\)34](#)). The administration of TeleRadioMoldova filed a lawsuit against the IJC for alleged defamation of the TeleRadioMoldova professional reporting, seeking the re-publication of the Interim report on media coverage during the local by-election of July 2005.

47. During the meeting with the Secretariat delegation, the representatives of TeleRadioMoldova claimed that the elections had been covered in compliance with the regulations issued by the Central Election Commission. They also explained that this new broadcasting institution would need more time to change the persisting old-fashioned mentality and working patterns of reporting staff. The usefulness of the seminar on balance and impartiality in news coverage and political programmes organised by the Council of Europe in September 2005 was mentioned in this context. The Secretariat delegation stressed that it was the responsibility of the TeleRadioMoldova

leadership to be at the frontline of the modernisation of the working culture. The Council of Europe will continue to assist in terms of staff training.

48. With respect to the summer 2004 conflict between the non-hired journalists and TeleRadioMoldova administration (for more details see PACE [doc 10671](#)), the latter informed the Delegation that new recruitment opportunities would be opened soon and the protestors were welcome to apply.

(iii) Access to information

49. Moldova has a remarkably progressive law on access to information. Along with the persistent problems in its implementation, the international and local observers voiced concern against the potential setback in this field: new draft laws on Information and on the State and Official Secrets have been prepared respectively by the Ministry of Information Development and by the Intelligence and Security Service (see '[Article 19](#)', Statements on the draft Law on Information and on the draft Law on State and Official Secrets, September 2005). The OSCE appraisals of these draft laws were made available to the Moldovan authorities in September 2005. The representative of the Intelligence and Security Service informed the Secretariat Delegation that the draft Law on State and Official Secrets was returned by the Government for further improvements in the light of the practice of other European countries. The Council of Europe stands ready to provide any necessary assistance on this matter.

(iv) Defamation

50. Under the civil defamation proceedings, dozens of defamation lawsuits *per year* are filed against the media, the latter losing most of the cases. The absence of an upper limit for compensation for moral damage seriously endangers the financial viability of the media outlets. The Parliament envisages setting-up a working group to consider the opportunity of further modifications to the legislation on defamation (see SG/Inf(2005)20addendum).

VI. OTHER AREAS OF CO-OPERATION

51. Without attempting to be exhaustive, a few other sectors of co-operation will be highlighted here. A full description of 2005 co-operation activities with Moldova can be found at the Council of Europe Activities Database (see <http://dsp.dctnet.coe.int/CEAD/>).

(i) Fight against corruption and organised crime, including trafficking in human beings

52. At the request of the Moldovan authorities, in October 2004, the CoE provided expert support to the review of the new draft National Strategy and Action Plan for the prevention and fight against corruption. The revised versions of the Strategy and the Action Plan were subsequently adopted by the Parliament in December 2004. Technical assistance for their implementation is being provided under the EC/CoE Programme against corruption and organised crime in South – Eastern Europe (Project PACO Moldova 2005). One of the concrete results of the implementation of the Strategy and the Action Plan is the approval by the Government, in September 2005, of the Law on Financing of Political Parties. The objectives of the National Strategy and the Action Plan are ambitious and the implementation remains the main challenge. The Moldovan authorities requested the Council of Europe to consider the possibilities for further cooperation in this field. Negotiations with respect to a follow-up project for 2006 are on-going.

53. An assessment of Moldova's compliance with the recommendations of the GRECO First Round Evaluation Report ([GRECO Eval I Rep\(2003\)3](#)) was carried out in December 2005. Further evaluation, in the framework of the Second Round, will start at the beginning of 2006.

54. The exploration of links between corruption and trafficking in human beings represents the innovative approach to the fight against these phenomena. A risk analysis of corruption related to trafficking in human beings has been completed under the PACO Moldova 2005 project and made available to the Moldovan authorities. Further consultations on the issue are planned and will result in concrete recommendations for further action.

55. In October 2004, the Moldovan authorities requested an expertise on the draft Law on the Prevention and Combating Trafficking in Human Beings, elaborated on the basis of preliminary comments furnished by the OSCE/ODIHR and OSCE Mission to Moldova. The joint comments by the CoE and OSCE/ODIHR experts were provided to the Moldovan authorities in December 2004. The main findings of the expert opinion were that the draft law addressed in a comprehensive manner the problem of trafficking in human beings by setting detailed prevention and victim protection measures. On 20 October 2005, the Moldovan Parliament passed the Law in its final reading.

(ii) Reform of the prison system

56. Co-operation with respect to the prison system (including centres of pre-trial detention, which will be transferred to the Ministry of Justice before August 2006) needs to be further fostered to address the problem of overcrowding, conditions of detention and practice of prison staff (see *Becciev v. Moldova*, *Sarban v. Moldova*, October 2005, *Ostrovar v. Moldova*, September 2005, see also [AI Annual Report 2005, Moldova](#)).

57. Moldova is one of the three target countries selected for a pilot project on prisons, which has been initiated by the Committee for the Prevention of Torture (CPT). The pilot project will notably include a special needs assessment for assistance towards the implementation of the CPT's recommendations with subsequent formulation of concrete projects on prisons.

(iii) Reform of the prosecution bodies

58. Much of the internal political debate is focused on the necessity to depoliticise the prosecution bodies, notably by changing the mechanism of appointment of the Prosecutor General. A special parliamentary group, created in April 2005, is working on the reform of the Law on the Status of Prosecutor. The Council of Europe stands ready to provide expert assistance with respect to the above-mentioned reform.

(iv) Personal data protection and e-governing

59. The advancement of the work on the establishment of an extensive electronic database on natural and legal persons, carried out by the Ministry of Information Development, is impressive. It has, however, triggered questions as to which measures were put into place to guarantee the minimum safeguards in the processing and use of the information collected. According to the representatives of the Ministry, a new draft law on processing of personal data has been elaborated in accordance with the CoE expert recommendations made in 2001 and submitted to the Government. The draft law notably contains a proposal for the creation of an independent mechanism to control the use of the database. Following a request by the Moldovan authorities in August 2005, the OSCE/ODIHR provided a legal appraisal of the new draft law with recommendations for further improvements. The Secretariat Delegation suggested prompt

ratification of the Convention on Protection of Individuals with regard to Automatic Processing of Personal Data ([CETS No. 108](#)), which Moldova signed in 1998.

60. The draft Law on processing of personal data has been approved by Moldovan Government on 7 December 2005. The Convention CETS No. 108 will be ratified following the final adoption of the law.

61. Furthermore, since one of the main functions of the Ministry of Information Development is the transformation of Moldova to an information society, the Ministry should have a leading role in the promotion of the new communication channels between the authorities and citizens. Much is still to be done to ensure the public access to legal information (legislative and other normative acts, court decisions and draft legislation), which should be made available through new information and communication technologies. The Council of Europe is ready to provide assistance which would contribute to the development of e-governing in Moldova.

(v) 'Transnistrian dimension'

62. On 10 June 2005, the Moldovan Parliament adopted three resolutions in response to the Ukrainian proposal on the Transnistrian conflict settlement. In one of these documents, it outlined the essential pre-conditions for democratisation of the break-away region and asked the CoE, the OSCE and the EU to be actively involved in this process. This demand was re-iterated by the Moldovan authorities during the stock-taking visit.

63. The Secretariat is considering ways of inclusion of the 'Transnistrian dimension' in the Council of Europe co-operation activities with Moldova. At this stage, the Council of Europe contribution to the democratisation process can take form of intensified work with the Transnistrian civil society through more involvement of the Transnistrian NGOs in the activities carried out by the Council of Europe in Moldova, notably by the CoE Information Office and the Chisinau School of Political Studies.

64. Particular request for political support and technical assistance has been made by the Minister of Re-integration of Moldova with respect to the modernisation of curriculum and teaching materials of the Transnistrian schools teaching in Cyrillic. The negotiations with the *de facto* Transnistrian authorities have not yet shown the expected results: history, geography and language teaching remain issues which block any kind of agreement.

VII. CONCLUSIONS AND RECOMMENDATIONS

65. The development of the co-operation between Moldova and the Council of Europe will be directed by:

- the Committee of Ministers' reply to PACE Recommendation 1721(2005) on the functioning of democratic institutions in Moldova;
- the possible specific contribution of the Council of Europe, in the areas of its competence, to the implementation of the EU-Moldova Action Plan, concluded in the context of the European Neighbourhood Policy.

66. At this stage the following recommendations/conclusions can be drawn-up:

- a sustained effort by the Secretariat and the Moldovan authorities should be undertaken to secure the complete and efficient implementation of the existing EC/CoE Joint programme which comes to an end in September 2006;

- the harmonisation of Moldovan legislation with European norms and standards (compatibility) suffers of a lack of transparency. Moldovan authorities should provide regular information on the follow-up given to experts' recommendations and full details on the adopted legislation. The 'approximation exercise' would also benefit of better planning, with the presentation of the texts to be examined with a sufficient time limit before adoption;
- the functioning of the judicial system and the execution of the judicial decisions (including the decisions of the European Court of Human Rights) remain a subject of concern and will deserve further attention in the future. The creation and efficient functioning of the National Institute of Justice would constitute a positive step in this direction;
- local self-government remains an area of concern and the programme of co-operation in this field could be further intensified in the light of the CLRAE Recommendation 179(2005) and the 4th monitoring report on local democracy in Moldova, adopted in November 2005;
- the much delayed reform of the audio-visual sector needs continued attention, in particular, the reform of the Coordinating Council of Audiovisual and the complete transformation of the TeleRadioMoldova into a genuine public service broadcaster;
- finally, efforts should be renewed to intensify the co-operation activities with the representatives of civil society in Transnistria with a view to contribute to the democratisation of the break-away region.

Appendix I

PROGRAMME
Stock-taking of Co-operation with the Council of Europe
(Chişinău, 27 - 30 September 2005)

TUESDAY, 27 SEPTEMBER 2005

- 18.00** Meeting with NGOs
20.00 Meeting with the representatives of diplomatic missions in Chisinau

WEDNESDAY, 28 SEPTEMBER 2005

- 08.00 - 08.45** Meeting with Mrs **Eugenia KISTRUGA**, Deputy Minister of Foreign Affairs and European Integration
09.00 – 10.00 Meeting with:
 - Mr **Victor PUŞCAŞ**, President of the Constitutional Court
 - Mrs **Valeria ŞTERBEŢ**, President of the Supreme Court of Justice, President of the Supreme Council of Magistrates**10.15 – 11.45** Meeting with:
 - Mrs **Victoria IFTODI**, Minister of Justice,
 - Mr **Valeriu BALABAN**, Prosecutor General of the Republic
 - Mr **RADU**, Adviser to the Prime Minister for Judicial Problems
 - Mr **Gheorghe AMIHALACHIOAIE**, President of Bar Association of Moldova**12.00 – 12.45** Meeting with **Mr Vladimir MOLOJEN**, Minister of Information Development
15.45 – 17.00 Meeting with participation of:
 - Mr Igor **BODORIN**, Councillor /Deputy Chief to the Minister of Interior on Human Rights issues
 - Mr Grigore **CIOCANU**, Chief of Apparatus, Centre for Combating Economic Crimes and Corruption /CCECC/
 - Mr Vasile **DEDIU**, Vice-Director of the Intelligence and Security Service (SIS)**17.15 – 19.00** Separate meetings with the leaders of the Parliamentary Parties: PCRM, AMN, PPCD, PD, PSL
19:15 – 19:45 Meeting with Mr Nicolae **CHIRTOACA**, President of the School of Political Studies

THURSDAY, 29 SEPTEMBER 2005

- 8:00 – 8:45** Breakfast with Head of OSCE Mission Ambassador W. **HILL**
Joint Meeting with participation of:
09.00 - 09.55 Mr **Roman CAZAN**, Deputy Head of the Government Apparatus
Mr **Igor SEMENOVCHER**, General Director of the Regional Development Agency
Mr. **Sergiu TATAROV**, the Councillor of the Prime Minister
10.00 - 10.50 Meeting with Mr **Vasile ŞOVA**, Minister of Reintegration
11.15 - 12.30 Meeting with Mr **Ilie TELEŞCU** Director of the National Public Broadcasting Institution Tele-Radio Moldova

- 13.00 - 13.30** Meeting with E.S. Mr **Vasile TARLEV**, Prime Minister of Moldova
- 13.30 - 14.50** Lunch with Representatives of the European Commission
- 15.00 - 15.30** Meeting with Mr Marian **LUPU**, Speaker of Parliament
- 15.35 - 16.45** Joint Meeting with participation of:
- Mr **Sergiu STATI**, Chairman of the Parliamentary Commission for Foreign Affairs and European Integration,
 - Mr **Vladimir ȚURCAN**, Chairman of the Legal Commission for Appointments and Immunities
 - Mr. **Mihail SIDOROV**, Vice-Chairman of the Parliamentary Legal Commission for Appointments and Immunities
 - Mr **Ștefan SECĂREANU**, Chairman of the Parliamentary Commission for Human Rights
- 16.50 - 17.30** Meeting with Mrs **Raisa APOLSCHII**, Ombudsman, Director of the Centre for Human Rights
- 17.45 – 18.30** Meeting with Mr **Ion MIHAILO**, President of the Coordinating Council of the Audiovisual

FRIDAY, 30 SEPTEMBER 2005

- 08.30 - 12.00** **Tripartite Meeting of the Steering Committee of the EC/CoE Joint Programme for Moldova**
- 13.30 - 16.00** Working lunch, offered by deputy Minister of Foreign Affairs, Mrs Eugenia **KISTRUGA**

Delegation:

Jean Louis Laurens, Director of the Directorate of Strategic Planning
 Uwe Muller, Adviser, Directorate General of Political Affairs
 Leyla Zeinalova, Administrative Officer, Directorate of Strategic Planning

The Secretariat Delegation was accompanied by Special Representative of the Secretary General in Moldova, Mr Vladimir Philipov.

Appendix II

Exchange of correspondence between the Minister of Justice of the Republic of Moldova and the Secretary General of the Council of Europe

Council of Europe
The Secretary General

Strasbourg, 11 October 2005

Dear Minister,

Thank you for your letter dated 15 September about future co-operation between Moldova and the Council of Europe for the reform of the judiciary and, in particular, of the legal framework for Judicial institutions.

First of all, being fully aware of the challenge which the legislative review you envisage represents for your country, I congratulate you for your decision to undertake it and encourage you to carry it through in line with the commitments agreed by Moldova upon accession to the Council of Europe ten years ago. I should like to assure you that your proposals are most welcome, and that we will deploy all possible efforts to support their implementation.

We would be glad to appoint a Council of Europe expert to work in the Ministry in Chisinau to assist national experts in the drafting of legislation and in examining compliance of draft legislation with European standards in the field of the Judiciary, notably the Law on the organisation of the Judicial System, the Law on the statute of Judges and the Law on the Supreme Council of Magistrates. The resulting comments would then be discussed during meetings with a wide participation of parties involved to examine the best way to take the recommendations of the expert into consideration and, if necessary, draft complementary legislation.

.../...

Ms Victoria Iftodi
 Minister of Justice
 82, 31 August St.
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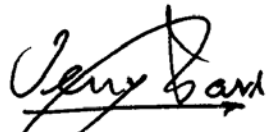
Fax: + 33 (0)3 88 41 27 99
+ 33 (0)3 88 41 27 40

I understand that these laws are not to be considered as an exhaustive list, and we would be available to assist with any other draft pieces of legislation which you would want to submit to our expert, to the extent that they fall within the remits of Council of Europe competences and provided we have the necessary financial resources.

Furthermore, you will be aware that the Council of Europe has already undertaken several expertises on the compatibility of Moldovan legislation with the requirements of the European Convention on Human Rights (ECHR). We remain ready to provide further assistance. In parallel, the expert appointed to work in the Ministry of Justice to assist the national drafters will also be alert to the need to ensure compatibility of all legislation with European human rights standards, notably those of the ECHR. This is in line with the principles set out in Committee of Ministers Recommendation Rec (2004) 5.

Having regard to the aforementioned Recommendation and to ensure sustainability of these reforms and their implementation, may I suggest that one of the objectives of the presence of a Council of Europe expert in Chisinau should be to assist the setting up of a unit, possibly within the Ministry of Justice, for the verification of compliance of draft and existing laws with European standards, including compatibility with the ECHR. In my opinion, this suggestion would help to build domestic capacity in this field.

Yours sincerely,



Terry Davis

**MINISTERUL JUSTITIEI
AL REPUBLICII MOLDOVA**

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Tel (3732) 23 47 95, Fax.(3732) 23 47 97



**MINISTRY OF JUSTICE
REPUBLIC OF MOLDOVA**

82, 31 august str., MD 2012 Chisinau
Tel.(3732) 23 47 95, Fax.(3732) 23 47 97

15. 09 2005 Nr. *06/7300*

**In regard to: Mr. Terry Davis
General Secretary of the Council of Europe**

Excellency,

During the last 10 years from the adhesion of the Republic of Moldova to the Council of Europe, to its dimensions that comprises, especially, the protection of human rights, pluralistic democracy and supremacy of law, development of the democratic stability in Europe by sustaining constitutional, legislative and political reforms, our State has been granted the Council of Europe support and solidarity.

The huge legislative experience which possesses the Strasbourg Fore, offers the Republic of Moldova the chance to perfect continuously the national legislation and to adjust it to the European standards, whereas the assistance which the Council of Europe may grant, shall ensure an effective accomplishment of the democratic reforms.

One of the most efficient mechanisms, which ensure the adjustment of the Republic of Moldova legislation to the standards imposed to the members of this prestigious international forum, is the legal opinion of the CE experts given on the laws and on the drafts of the laws. Nevertheless, its efficiency depends, greatly, on the Republic of Moldova capacity, and, especially, on the Ministry of Justice ability to secure the implementation in the national legislation of the expert's recommendations. Although, in this respect has been achieved some success, the Republic of Moldova still come across certain impediments in implementation of the legal opinions given by the experts. In such conditions, is highly demanded the initiation of a raw of measures through which should be ensured the strengthening of the Ministry of Justice public servants capacities, as well of the other authorities in the field of assessment the legislation in force and of the elaboration of the drafts on its amendments and/or completion.

In this regard, is considered timely the delegation by the Council of Europe of an expert in the aforesaid domain, who will act within the Ministry of Justice together with its public servants and will instruct and guide during the whole process of assessment and implementation of the expert examination.

This activity could be performed by means of:

- A direct colligation of the CE and national expert(s) upon a thorough analysis of the legal opinion with the aim to point out the necessary measures for its implementation. Taking into consideration the fundamental importance of establishing an independent justice system, and the fact that on this matter are subdued to analysis a number of drafts of the normative acts, is proper to assess the laws that received legal opinion in the justice domain. In case when the domain is accepted, are proposed to be given a close examination upon the following

acts: Law on the judicial system organization, Law on the statute of judge, Law on the Supreme Council of Magistrates.

- Organization of some conferences and seminars with the participation of all interested persons, within which follows to be submitted for discussions both the problems approached in the expert examination, and those that refer to the implementation of the CE expert's recommendations by the Republic of Moldova ;
- Working out by the CE and national experts of the drafts necessary for the implementation of the CE expert's recommendations.

Also, we are pleased to present you other directions considered to be of priority for the Ministry of Justice activity in 2006, and in which respect we are kindly asking for the Council of Europe assistance: the justice, including the establishment of the National Institute of Justice; the prevention and combat of corruption; the insurance of the judicial decisions enforcement ; the advocacy promotion and endorsement of a Code on Ethics for advocates, as well as of a legislation regarding free legal assistance; insurance of the right to an individual appeal in cassation, as the most efficient method of protection the human rights, including the organization of a conference on the topic: " The Role of the Constitutional Court in examination of the individual appeals in cassation", and not the least the translation and publication in Moldovan language of the ECHR jurisprudence, of the reference doctrine, for a gratuitous spreading with the purpose to ensure the human rights protection.

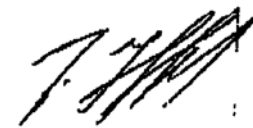
On the other hand, within the judicial reform a great importance has the determination of the Ministry of Justice role in the process of the justice implementation. In this context, we kindly are asking for your assistance in the analysis of the following aspects:

- determination of the Ministry of Justice competence in respect of financing the Courts of Law;
- Organization of the Courts of Law activities (settling of a program, organization of the office's activity, organization of the archives activity, etc. ;)
- Control over the Courts of Law activity and, especially, over the process of organization the trial proceedings.

The accomplishment of those issues mentioned above would lead to a new dynamics of relations between the Council of Europe and Republic of Moldova, aimed to orientation of the reforms to a direction compatible with the European standards requirements, to a thoroughgoing study and the consolidation of the results, as well as to the next achievements.

Taking advantage of this opportunity, please accept my sincere gratitude for the assistance supplied during the period of collaboration.

Respectfully and with high consideration,



Victoria Iftodi
Minister