

SUBMISSION TO UN HUMAN RIGHTS COMMITTEE FOR COMMUNICATION WITH THE GOVERNMENT OF
MOLDOVA IN THE FRAMEWORK OF PERIODIC REPORTS

1. In the Concluding Observations on the Third Periodic Report of the Republic of Moldova, dated November 18, 2016, state:

"5. The Committee takes note of the information provided by the State party in its report on the measures that it has taken to ensure the respect for human rights in the Transnistrian region of the Republic of Moldova and welcomes the commitment expressed by the State party's delegation during the dialogue to take all appropriate measures to ensure the effective protection of human rights in that region. The Committee remains concerned, however, that individuals in the region are unable to enjoy the same level of protection of their rights under the Covenant as their counterparts in the rest of the Republic of Moldova (art. 2).

6. The State party should review its policies and take all measures appropriate to ensure that individuals in Transnistria can effectively enjoy their rights guaranteed under the Covenant, including those that were the subject of the recommendations made by the United Nations Senior Expert on Human Rights in Transnistria, Thomas Hammarberg."

2. In his Supplementary Report on Human Rights in the Transnistrian Region, Thomas Hammarberg, referring to the Transnistrian judicial system (§ 2 of the Report), recommended:

"conduct a comprehensive and impartial review of specific aspects of the functioning of the judicial system, paying particular attention to those aspects referred to in the 2013 Report. Perhaps an international expert specializing in this field should be invited to advise on the methodology of such a review".

3. The Government of the Republic of Moldova has repeatedly confirmed before the European Court of Human Rights that the laws of the Republic of Moldova do not apply in Transnistria (see, e.g., ECHR: *Mozer v. the Republic of Moldova and Russia* [GC], no.11138/10, § 85, 23.02.2016 and others). The activity of the Prosecutor's Office of the Republic of Moldova and other Moldovan authorities is excluded in the Transnistrian region outside the control of the Republic of Moldova.

4. On 21 April 2016 the Law of the Republic of Moldova 514-XIII of 06.07.1995. "On the judicial system" were amended (Law №76 of 21.04.2016), according to which the courts of the Republic of Moldova that formally existed in the Transnistrian region were liquidated, and their competence to hear cases from the Transnistrian region (hereinafter - Transnistrian cases) were transferred to the courts of the Republic of Moldova on the right bank of Nistru river. However, these changes did not lead to the unconditional examination and settlement of Transnistrian cases by the courts of the Republic of Moldova because of the lack of an adequate procedure for persons from the Transnistrian region to appeal to these courts. In particular:

- these persons, when applying to the courts of the Republic of Moldova, cannot refer to its laws, which are not enforced on the territory of the Transnistrian region by the Moldovan Government;
- de facto authorities, as well as legal entities registered in the Transnistrian region cannot be part of the circle of participants in court proceedings;
- real estate located in the Transnistrian region cannot be the subject of legal proceedings due to the lack of its registration in the state register of the Republic of Moldova.

5. Consequently, persons situated in Transnistria are not able to "normally use domestic legal remedies" (ECHR, *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 50, 02.11.2010) of Moldova in the same way as persons situated on the right bank territory of Moldova (controlled by the Moldovan Government) can use them.

6. At the same time, we note that the obligation of States to provide a legal remedy to persons present on their territory is enshrined in Article 2(3) of the ICCPR.

7. It should also be noted that the Code of Civil Procedure of the Republic of Moldova provides for the same procedures for all persons in Moldova, although the situation of persons in the Transnistrian region, which is not controlled by the Moldovan Government, and persons in the rest of the country is different, and this same treatment is not objectively and reasonably explained. The European Court of Human Rights classifies such treatment as discrimination (ECHR, *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, 06.04.2000), and in the case of the Transnistrian region it is based on a territorial ground.

8. In fact, the extraordinary claim filed with the legal support of NP "ILC "Apriori" in 2023, related to the violation by the Transnistrian de facto authorities of the Kravchisins' rights (Case N 2-4891/23), was rejected by the Chisinau municipality court (Center) on formal grounds, which amounts to a denial of access to justice. This denial of access to justice is contrary to the case law of the European Court of Human Rights, which provides that the formal grounds applied by the national courts should take into account the actual situation and be consistent with the objectives of due process of law, as pointed out by the applicants in their appeals to higher instances. The Chisinau Municipal Court (Center), while denying the plaintiffs from Transnistria access to justice, did not take into account that (a) the territory of Transnistria is not controlled by the Moldovan Government and (b) the Moldovan Law No. 173 of 22 July 2005 "On basic provisions of the special legal status of localities from the left bank of Nistru river (Transnistria)". Under this provision, the procedure of functioning of the national judicial system for persons from the Transnistrian region which is not controlled by the Moldovan Government is not defined.

9. At the same time, neither in the Cravchisins case, nor, earlier, in the Horzhan case (Ruling of the Supreme Court of Justice of the Republic of Moldova of 23.06.2020, case no. 1re-52/2020, which demanded to release Horzhan, but never was executed) the Moldovan courts have not demonstrated their ability to apply the case law of the European Court of Human Rights elaborated in the case of the "Turkish Republic of Northern Cyprus" (ECHR: *Cyprus v. Turkey* [GC], no. 25781/94, 10.05.20018; *Loizidou v. Turkey*, 18.12.1996 (PRELIMINARY OBJECTIONS), Reports of Judgments and Decisions 1996-VI).

10. In any case, the very nature of the extraordinary recourse to Moldovan courts demonstrates the absence of a judicial procedure for persons from the Transnistrian region of the Republic of Moldova.

11. Meanwhile, international cooperation in the field of human rights protection has a number of examples of the implementation of such a legal remedy in a country afflicted by internal conflict. In particular, the Human Rights Chamber in Bosnia and Herzegovina (Annex 6 of the Dayton Accords), composed of highly qualified international judges and with an adequate complaint procedure based on the procedure of the European Court of Human Rights, whose applicability in the Republic of Moldova is permitted by Article 2(1) of its Code of Civil Procedure.

12. The establishment of such a legal remedy in the Transnistrian region - the Human Rights Chamber in Transnistria - will make it possible to fulfil Moldova's positive obligations "to take ... legal ... measures in order to guarantee the observance of the rights provided for in the Convention" (ECHR: *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 331, 08.07.2004, etc.) and will ensure transitional justice procedures in the Transnistrian region and the resulting basic social consensus, including in the reintegration process.

13. Moreover, the creation of such a legal remedy for Transnistrian region will allow the effective implementation of T. Hammarberg's recommendations, because the "comprehensive and impartial review of specific aspects of the functioning of the judicial system", which the UN Senior Expert on Human Rights recommends, will not be carried out episodically, but continuously. For 9 years since T. Hammarberg drafted the Report on human rights in the Transnistrian region, none of the recommendations in the area of the judiciary have been implemented by the de facto authorities. Transnistrian authorities refuse to review cases in which the European Court of Human Rights found human rights violations. In particular, the Supreme Court of Transnistria refused to review a case in which the European Court of Human Rights ruled (ECHR: *Cravcișin v. the Republic of Moldova and Russia*, no. 43176/13, 28.09.2021). We draw attention to the fact that the Human Rights Chamber in Transnistria, composed of international judges, which can be considered as experts on the recommendations of T. Hammarberg, will be able to carry out not only review, but also permanent control over "specific aspects of the functioning of the judicial system", influencing both decisions of Transnistrian courts on specific cases and on problems of general nature, similar to the way the European Court of Human Rights does it.

14. If you are interested in more details, you can read our big review of the persecution practices in areas of freedom of expression and the right of assembly and association, as well as the work of the judiciary on these cases in the Transnistrian region:

<https://apriori-center.org/obzor-hr-apriori-2017-2021/>

In addition, in 2022 following the withdrawal of the Russian Federation from the CoE, we have updated our legal analysis of the situation from review mentioned above:

<https://apriori-center.org/kratkaja-koncepcija-palaty-po-pravam-cheloveka-v-pridnestrove/>

Both documents are available in English with separate link on the URLs.

15. Because of the above, in this desperate position we insistently request to create an adequate legal remedy for persons in Transnistrian region of the Republic of Moldova.

Non-Profit partnership "Assistance to Effective Justice", Tiraspol

Non-profit partnership "Information and Legal Center "Apriori", Tiraspol

We have no objection to the publication of this submission on the committee's website.