

THE RULE OF LAW, JUDICIAL REFORM AND THE PROTECTION OF HUMAN RIGHTS IN MOLDOVA AND TRANSNISTRIA

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Introduction

The Republic of Moldova, a small country landlocked between Romania to the west and the Ukraine to the east, and possibly one of the most complex countries out of all 15 that surged after the collapse of the Soviet Union a few decades back.¹ Moldova is a borderland that is “deeply divided between Romanian speakers drawn towards the European Union member Romania and Russophone Slavs who continue to feel the tug of old ties to Moscow.”² “Straddling East and West, it absorbs cultural and political influences in both directions.”³

Moldova was the only country, prior to the current state in the Ukraine, where a full-scale armed conflict had ensued within the European part of the Soviet Union, and there is a de facto

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¹ Vasile Botnaru et al., *The Post-Soviet Generation Looks to Future in Europe's Poorest Country*, RADIO FREE EUROPE RADIO LIBERTY (Aug. 18, 2011), available at http://www.rferl.org/content/post_soviet_generation_looks_to_future_in_moldova_europes_poorest_country/24300987.html.

² *Id.*

³ Valerie Adamcyk Colby, *Chisinau: Hum of Activity Belies 'Old Europe' Image*, STATE MAG. (May 2011), available at <http://digitaledition.state.gov/publication/?i=68339&p=26>.

independent state⁴ within its borders.⁵ Its foreign policy situation is complicated by the presence of Russian military units stationed within its borders and the continuing stalemate over Transnistria.⁶ Indeed, the Transnistrian conflict remains a major hindrance in Moldova's quest for European integration. Transnistria, otherwise referred to as Pridnestrovskiaia Moldavskaia Respublica (PMR), is the region on the East bank of the Nistru River, bordering the Ukraine. While not internationally recognized, the PMR is a de facto state that has existed for 20 years.⁷

This article will provide an overview of human rights violations in Transnistria, with an emphasis on the cases brought before the European Court of Human Rights. The role of human rights NGOs (such as Promo-LEX), reform-minded civil society, and the influence of the Russian Federation and the Republic of Moldova in the PMR will be explored. The current situation will be analyzed in the context of the resumption of the 5+2 negotiation,⁸ as well as

⁴ James Harvey & Gareth Stansfield, *Theorizing Unrecognized States: Sovereignty, Secessionism, and Political Economy*, in UNRECOGNIZED STATES IN THE INTERNATIONAL SYSTEM 14 (Nina Caspersen & Gareth Stansfield, eds. 2011). A de facto state has been referred to as a "secessionist entity that receives popular support and has achieved sufficient capacity to provide governmental services to a given population in a defined territorial area, over which it maintains effective control for an extended period of time." *Id.*

⁵ Alla Skvortsova, *The Cultural and Social Makeup of Moldova: A Bipolar or Dispersed Society?* in NATIONAL INTEGRATION AND VIOLENT CONFLICT IN POST-SOVIET SOCIETIES: THE CASES OF ESTONIA AND MOLDOVA 89 (Pal Kolsto, ed., 2002).

⁶ William Crowther, *Moldova: Caught between Nation and Empire*, in NEW STATES, NEW POLITICS: BUILDING THE POST-SOVIET NATIONS 316-349 (Ian Bremmer & Ray Taras, eds., 1997).

⁷ Natalya Belister, *Transnistrian Conflict: State of Affairs and Prospects of Settlement*, BLACK SEA NEWS (Jan. 27, 2013), available at <http://www.blackseanews.net/en/read/55025>.

⁸ EUROPEAN PARLIAMENT DIRECTORATE GENERAL FOR EXTERNAL POLICIES-THE TRANSNISTRIAN ISSUE: MOVING BEYOND THE STATUS QUO (Oct. 2012), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224472/evidence-stefan-wolff-the-transnistrian-issue.pdf. The 5+2 settlement process is otherwise known as the 'Permanent Conference for Political Questions in the Framework of the Negotiating Process for the Transdnestrian Settlement.' *Id.*; see *Transnistria 5+2 will be held on date—Russia's Ambassador*

the major judicial reform effort (the Strategy for Justice Sector Reform, 2011-2015)⁹ that the governing coalition in Moldova, formerly the “Alliance for European Integration” and now the “Pro-European Coalition,” is undertaking with the support of the international community.

I. *Moldova*

The Republic of Moldova consists mostly of the region formerly known as Bessarabia to the north of the Black Sea between the Prut and Nistru (Dniester) Rivers.¹⁰ Moldova has only a brief history as an independent state under the leadership of Stefan cel Mare in the 15th century.¹¹ Bessarabia later became a vassal of the Ottoman Empire, then part of the Russian Empire, a part of Greater Romania during the inter-war period, and then part of the USSR as a result of the Molotov-Ribbentrop Pact.¹² Moldova’s position as a

to OSCE, ITAR-TASS (Mar. 28, 2014), available at <http://en.itar-tass.com/world/725728>. The agenda of the 5+2 talks between Moldova, Transnistria, observers from the United States and the European Union, Russia, the Ukraine, the OSCE (Organization for Security and Cooperation in Europe) “consists of three sets of issues: socioeconomic problems, humanitarian issues, and human rights, and comprehensive settlement, including institutional, political and security issues.” *Id.*

⁹ See REPUBLIC OF MOLDOVA STRATEGY FOR JUSTICE SECTOR REFORM 2011-2015: EXECUTIVE SUMMARY (2011), available at http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf. The objective of the Strategy for Justice Sector Reform as envisioned by the Republic of Moldova is stated as follows:

[t]o build a justice sector which is affordable, efficient, independent, transparent, professional and accountable to society that meets European standards, ensures the rule of law and the observance of human rights and contributes to safeguarding society’s trust in justice.

Id.

¹⁰ See STEPHEN K. BATALDEN & SANDRA L. BATALDEN, THE NEWLY INDEPENDENT STATES OF EURASIA: HANDBOOK OF FORMER SOVIET REPUBLICS 63 (1997).

¹¹ ANDREI BREZIANU & VLAD SPANU, THE A TO Z OF MOLDOVA 338 (2007).

¹² Yefim Kogan, *General History and Governments of the Region of Bessarabia*, JEWISHGEN (2011), available at <http://www.jewishgen.org/>

borderland with a tumultuous history explains a lack of “Moldovan” identity. “Who are we?” and “What is Moldova” are hotly contested, especially as it relates to school history curricula.¹³ This is not only an “identity crisis” in psychological terms (with political implications), but there is a practical aspect as well, in terms of the large number of citizens who have dual passports – Moldovan and Romanian, Moldovan and Russian, etc.¹⁴ In a sense, Moldova is a country of citizens from other countries.¹⁵ Following the collapse of the Soviet Union, many of the former republics, especially Moldova, struggled economically and politically. Moldova is often referred to as the poorest country in Europe, with a per capita GDP of \$1,626¹⁶ and an average monthly income of 3,478 MDL (\$284).¹⁷ “Young

bessarabia/files/GeneralFlag.pdf; see also Brian Whitmore, *Molotov-Ribbentrop: In Eastern Europe, Pact's Bitter Legacy Remains*, RADIO FREE EUROPE/RADIO LIBERTY (Aug. 21, 2009), available at http://www.rferl.org/content/MolotovRibbentrop_In_Eastern_Europe_Pacts_Bitter_Legacy_Remains/1804556.html

¹³ See Dmitri Romanovski, *The History of Who? A Debate About Textbooks Returns to a Question That Never Really Goes Away: What is Moldova?* TRANSITIONS ONLINE (June 20, 2013), <http://www.tol.org/client/article/23826-moldova-language-schools-textbooks.html>.

¹⁴ George Friedman, *Geopolitical Journey, Part 4: Moldova*, STRATFOR (Nov. 18, 2010), available at http://www.stratfor.com/weekly/20101118_geopolitical_journey_part_4_moldova. To illustrate the complexity of the Moldovan identity crisis, the author states the following: “there are nations which lack a state, like the Kurds. Moldova is a state that lacks a nation. Nation building in Moldova is not so much about institutions but about creating a national consensus about the nation.” The political dimension also adds to the problem as well:

The pro-Western factions’ idea is to join the European Union and NATO and have that stamp a definition on the country. It does not take into account the powerful communists with Russian ties, nor does it take into account the substantial portion of the country that identifies with Russia rather than the West.

Id.

¹⁵ Interview with Charles Vernon, Aug. 9, 2012 (on file with author).

¹⁶ *Republic of Moldova*, U.N. DATA, available at <http://data.un.org/CountryProfile.aspx?crName=Republic%20of%20Moldova> (last visited May 25, 2014).

¹⁷ Olga Tanas & Andra Tiimu, *Moldova Government Collapses after Premier Loses No Confidence Vote*, BLOOMBERG (Mar. 5, 2013),

people have little confidence in the country's future and are leaving at an alarming rate."¹⁸ As many as one million Moldovans have left to work abroad (out of a population of 3.7 million).¹⁹ Indeed, in 2009, remittances were 23.1% of Moldova's GDP, making it one of the world's most reliant countries on remittances.²⁰ Moldova gained its independence from the Soviet Union on 27 August 1991.²¹ In 1992, the Republic of Moldova joined the Organization for Security and Co-Operation in Europe (OSCE)²² and became a member state of the United Nations.²³ In 1995, Moldova became a full member of

<http://www.bloomberg.com/news/2013-03-05/moldova-government-collapses-after-premier-loses-confidence-vote.html>.

¹⁸ International Crisis Group, *Moldova's Uncertain Future*, in THE NEW EASTERN EUROPE: UKRAINE, BELARUS, MOLDOVA 77 (Daniel Hamilton & Gerhard Mangott eds., 2007), available at http://transatlantic.sais-jhu.edu/publications/books/new_eastern_europe_text.pdf.

¹⁹ *Id.* at 106; THE WORLD BANK, MIGRATION AND REMITTANCES FACTBOOK 2011 (2nd ed., 2011), available at <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>; Adam S. Cardais, *Moldova: Hooked on Remittances*, BUS. WK. (Apr. 22, 2008), available at http://www.businessweek.com/globalbiz/content/apr2008/gb20080422_406625.htm; Colby, *supra* note 3, at 26-29.

²⁰ THE WORLD BANK, *supra* note 19 at 19.

²¹ See *Moldova*, FREEDOM HOUSE, available at <http://www.freedomhouse.org/report/freedom-world/2013/moldova#.U2KHhoFdWeE>. (last accessed May 1, 2014).

²² *History*, OSCE, available at <http://www.osce.org/who/history>. (last accessed May 1, 2014). The Organization for Security and Cooperation in Europe was established in 1975 as a mechanism to reconcile the disparate political and economic interest of East and West during Cold War. *Id.* During the Cold War, the organization focused on increasing member participation and ensuring maximum involvement to reach these objectives. *Id.*; Forum for Security Cooperation, OSCE, available at <http://www.osce.org/fsc>. (last accessed May 1, 2014). Following the breakup of the Soviet Union, the organization focused its efforts on building cooperation toward addressing the rise of major conflict zones. *Id.* "To increase military security and stability in Europe," the Forum for Security Cooperation has developed guidelines to realize this goal. *Id.* Some of these objectives include: "trust through transparency and openness, a platform for dialogue, fighting illicit small arms and ammunition, non-proliferation of weapons of mass destruction, democratic control of armed and security forces, and strengthening diplomatic channels between participating states. *Id.*

²³ U.N DATA, *supra* note 16. Moldova gained membership into the United Nations on March 2, 1992.

the Council of Europe (CoE) and is presently a party to 72 conventions of the CoE, including the European Convention on Human Rights and Fundamental Freedoms (ECHR).²⁴ In 1994 Moldova joined NATO's "Partnership for Peace" program, and in 2006 Moldova agreed to its first NATO Individual Partnership Action Plan.²⁵ The Republic of Moldova's Constitution was ratified in 1994 and later modified by Parliament in 2000.²⁶ "Moldova is a multi-party parliamentary republic".²⁷ The Constitution provides for separation of powers among legislative, executive and judicial branches of government.²⁸ The legislative authority is vested in a unicameral parliament of 101 members.²⁹ Currently there are four parties with seats in Parliament: Communist, Democrat, Liberal, and Liberal Democrat.³⁰ Moldova became the first and only former Soviet country to be governed by a democratically elected Communist regime, which was in power from April 2001 to April 2009.³¹ After the April 2009 elections (and subsequent mass

²⁴ *Council of Europe, MINISTRY OF FOREIGN AFFAIRS AND EUROPEAN INTEGRATION OF THE REPUBLIC OF MOLDOVA*, available at <http://www.mfa.gov.md/council-europe> (last visited May 2, 2014). Moldova ratified the ECHR on September 12, 1997.

²⁵ *NATO's Relations with the Republic of Moldova*, NATO, available at http://www.nato.int/cps/en/natolive/topics_49727.htm (last accessed May 2, 2014). The chronology of Moldova-NATO relation are in the section of the website titled "milestones in relations."

²⁶ *See* Constitution of the Republic of Moldova (adopted Jul. 29, 1994), available at http://ijc.md/Publicatii/mlu/legislatie/Constitution_of_RM.pdf; *Constitutional History of Moldova*, CONSTITUTIONNET (2010), available at <http://www.constitutionnet.org/country/constitutional-history-moldova>. "In 2000, a constitutional amendment endowed the parliament with the power to elect the President". *Id.*

²⁷ U.S. DEP'T OF STATE: MOLDOVA 1, available at <http://www.state.gov/documents/organization/160203.pdf>. (last accessed May 1, 2014).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*; *Republic of Moldova-General Information About the Parliamentary Chamber, INTER-PARLIAMENTARY UNION*, available at <http://www.ipu.org/parline-e/reports/2215.htm>. (last accessed May 1, 2014). Parties must receive 4% of the vote in order to receive seats in the Parliament. *Id.*

³¹ *See* POLITY IV COUNTRY REPORT 2010: MOLDOVA, SYSTEMIC PEACE

protests), the Communists lost power to a pro-European coalition.³² There was political deadlock for nearly three years, as the coalition known as the “Alliance for European Integration” (AEI),³³ could not garner enough votes in Parliament to elect a President.³⁴ This deadlock made it nearly impossible to move forward with much-needed reforms. In March 2012 President Nicolae Timofti was elected, ending 917 days of political crisis.³⁵ However, this success was short-lived. Within a year, in March 2013, the AEI collapsed in the midst of a no confidence vote.³⁶ Personal feuds, conflicting business interests and accusations of corruption among leaders of the coalition parties preceded the no confidence vote. When reports surfaced that the Prosecutor General tried to cover up the accidental death of a businessman on a hunting trip with justice officials, coalition members joined the opposition Communist Party to force the no confidence vote.³⁷ Prime Minister Vlad Filat was forced to

(2010), available at <http://www.systemicpeace.org/polity/Moldova2010.pdf>.

³² *Id.*

³³ Jos Boonstra, *Moldova: An EU Success Story*, FRIDE (Aug. 2011), available at http://www.fride.org/descarga/PB_92_Moldova.pdf. The AEI is composed of three parties: Democratic, Liberal, and Liberal Democrat parties. *Id.* at 3.

³⁴ See Judithanne McLauchlan, *Observer International* (Image), McLAUCHLAN’S MOLDOVAN MUSINGS, <http://jainmoldova.blogspot.com/2010/09/observer-international.html> (last visited May 2, 2014). Voters supported a constitutional referendum that would have provided for direct election of the President. This support would have ended the political stalemate in September 2010, but voter turnout did not meet the threshold for the amendment to take effect. I was an election observer for the constitutional referendum and later for the parliamentary elections in 2010. See also C.J Chivers, *Moldova Voting was Fair (Almost)*, NY TIMES (Mar. 8, 2005), available at <http://www.nytimes.com/2005/03/08/international/europe/08moldova.html> (explaining that there needs to be 51 votes to form a government and 61 votes to elect a president).

³⁵ See Yuriy Raykhel, *A European Integration Champion that Satisfies the Kremlin*, UKRAINIAN WEEK (Apr. 20, 2012), available at <http://ukrainianweek.com/World/47923>.

³⁶ Vladimir Socor, *Moldovan Prime Minister Filat Ousted by Intra-Coalition Rival*, 10 EURASIA DAILY MONITOR 78 (Apr. 25, 2013), available at http://www.ecoi.net/local_link/246236/356292_en.html.

³⁷ *Id.*

step down after a negative ruling by the Constitutional Court.³⁸ A new Government, the “Pro-European Coalition,” has since formed and plans to continue the path towards European integration.³⁹ The new Prime Minister, Iurie Leanca, has pledged that “Moldova must make its integration with the European Union irreversible.”⁴⁰ Now that the EU and Moldova have ratified a free trade agreement⁴¹ and are moving forward with the EU-Moldova Association Agreement that is expected to be signed in November, Transnistrian officials have declared that they will take control of several additional villages along the border.⁴² President Timofti blames these recent moves by the Transnistrian authorities as an attempt to destabilize the situation in Moldova and to slow Moldova’s advance toward integration with the EU.⁴³ Even though Moldova has made progress towards its goal of European integration, Moldova still retains membership in the Commonwealth of Independent States (CIS), an eastern-oriented

³⁸ Alexander Tanas, *Moldovan Court Bars Acting PM Filat from Seeking Office*, REUTERS (Apr. 22, 2013), <http://uk.reuters.com/article/2013/04/22/uk-moldova-government-idUKBRE93L19E20130422>. The Constitutional Court ruled that President Timofti could not name Vlad Filat to be interim Prime Minister and once the Prime Minister lost the no confidence vote, he could never again hold that position.

³⁹ See Alex Bivol, *Moldova’s pro-EU parties form new government coalition, invest cabinet*, SOFIA GLOBE (May 31, 2013), available at <http://sofia.globe.com/2013/05/31/moldovas-pro-eu-parties-form-new-government-coalition-invest-cabinet/>.

⁴⁰ *Moldovan PM Calls for ‘Building Trust’ on Transdnier Conflict*, RADIO FREE EUROPE RADIO LIBERTY (June 9, 2013), <http://www.rferl.org/content/moldova-le-anca-transdnier-trust/25011743.html>.

⁴¹ *Trade, Countries and Regions: Moldova*, EUROPEAN COMM., available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/moldova> (last visited...) On 12 June 2013, after 7 rounds of negotiations, Moldova signed a Deep and Comprehensive Free Trade Agreement with the EU.

⁴² *Moldova is Ready to Fight if Transnistria Attacks, Russia Does not Want to Withdraw its Troops*, MOLDOVA.ORG (Jun. 19, 2013), available at www.moldova.org/news/moldova-is-ready-to-fight-if-transnistria-attacks-russia-does-not-want-to-withdraw-its-troops-237431-eng.html.

⁴³ *Moldova Fears Violent Conflict Amid State Border Concept Issued by Transnistria*, MOLDOVA.ORG (Jun. 17, 2013), available at <http://politicom.moldova.org/news/moldova-fears-violent-conflict-amid-state-border-concept-issued-by-transnistria-237400-eng.html>.

bloc composed of post-Soviet breakaway countries, for economic assistance. Moldova is dependent on Russia for sources of energy and as a market for exports.⁴⁴ The combination of energy dependence and a lingering Transnistrian conflict has kept Moldova under Russia's sphere of influence.⁴⁵

II. Transnistria

Moldova experienced a difficult and bloody period in the early 1990s, marked by two geographically contained separatist movements in the southern and eastern parts of the country.⁴⁶ It was difficult to find a solution to the separatist trends in Moldova as the country itself was at the dawn of independence. It succeeded in resolving only one of them—the “Gagauz Question”—through devolution of power, a first in Central Eastern Europe, which established “territorial autonomy for an ethnic minority.”⁴⁷ The

⁴⁴ Skvortsova, *supra* note 5, at 550. However, the Romanian President recently visited the Republic of Moldova and discussed setting up electricity grids and bridges across the Prut River; *Romanian President Wants Moldova To Continue Path To EU, It Hopes To Get Invite In November*, MONTREAL GAZETTE (Jul. 17, 2013), available at <http://www.montrealgazette.com/news/Romanian+president+wants+Moldova+continue+path+hopes+invite/8671380/story.html>; *Energy Minister-Delegate: Iasi-Ungheni Gas Pipeline to be ready by Year-End*, ACT MEDIA (Jul. 18, 2013), available at <http://actmedia.eu/energy-and-environment/energy-minister-delegate-iasi-ungheni-gas-pipeline-to-be-ready-by-year-end/47183>. Moreover, the Iasi-Ungheni Gas pipeline is expected to be completed by the end of this year. Perhaps in future it may be possible to become less dependent on Russia for energy resources.

⁴⁵ A. Wilson & N. Popescu, *Russian and European Neighborhood Policies Compared*, in *THE SECURITY CONTEXT IN THE BLACK SEA REGION* 96 (Dimitrios Triantaphyllou, ed. 2010). Russia has developed a “neighborhood policy of its own that combines hard and soft power...stemming from a deeply ingrained Russian view of itself as a pole of influence in a multipolar world.” *Id.* Russia has asserted its hard power and thereby consolidated its influence, for example, by cutting strategic gas lines running from Russia into Moldova. *Id.* at 99.

⁴⁶ SHALE HOROWITZ, *FROM ETHNIC CONFLICT TO STILLBORN REFORM: THE FORMER SOVIET UNION AND YUGOSLAVIA* 115 (2005). Two separatist movements posed an obstacle to Moldovan pursuits for independence. *Id.*

⁴⁷ Special Committee on European Affairs, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova*, 29 THE REC. OF THE ASS'N OF THE

product of this resolution was the creation of an autonomous region within the Republic of Moldova. The success of the Gagauz question has not spilled over to the Transnistrian question.⁴⁸ The small 1,500 square mile strip following the east bank of the Nistru/Dneister River between the border with Ukraine⁴⁹ is governed out of Tiraspol, the “capital” and largest city of the Pridnestrovian Moldavian Republic (PMR). Transnistria declared its independence from Moldova in 1990 after the adoption of a 1989 Moldovan law that established Romanian and the Latin alphabet as the official language of Moldova.⁵⁰ Nationalistic and linguistic tensions intensified, escalating in a military conflict from March through July 1992.⁵¹ This region is legally a part of the Republic of Moldova, but it continues to be occupied by Russian military forces (“peacekeepers”).⁵² As a semi-autonomous region, Transnistria has become a hub for illicit activities across its borders. Drugs, humans, weapons, and money are smuggled out of the region. “The country

BAR OF THE CITY OF N. Y. 229 (2006) available at <http://www.nycbar.org/pdf/report/NYCity%20BarTransnistriaReport.pdf>.

⁴⁸ The example of Gagauzia is often used as a reason for authorities in Tiraspol *not* to settle with Chisinau, as the level of meddling into the affairs of Gagauzia (an autonomous region within Moldova) is perceived to be immense. See, for example, Stefan Wolff, *A Resolvable Frozen Conflict? The Domestic and International Politics of Self-Determination in Moldova and Transnistria*, 39 THE JOURNAL OF NATIONALISM AND ETHNICITY 863 (2011).

⁴⁹ *Country Overview*, MINISTRY OF FOREIGN AFFAIRS OF THE PRIDNESTROVIAN MOLDAVIAN REPUBLIC, available at <http://mfa-pmr.org/index.php?newsid=389>. (last visited May 2, 2014). Transnistria consists of 5 raions (Tiraspol, Camena, Ribnita, Dubasari, Grigoriopl, and Slobozia). *Id.* However, the authorities in Tiraspol have recently voted to control an additional 8 villages along the border. See MOLDOVA.ORG, *supra* note 42.

⁵⁰ See PRESIDENCY OF THE REPUBLIC OF MOLDOVA: DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF MOLDOVA (Aug. 27, 1991), available at <http://www.presedinte.md/eng/declaration>.

⁵¹ Agnieszka Tomczyk, *The New (Old) Moldovan-Transnistrian Border Conflict*, NEW EASTERN EUROPE (Oct. 30, 2013), available at <http://www.neweasterneurope.eu/interviews/912-the-new-old-moldovan-transnistrian-border-conflict>.

⁵² See *Trans-Dniester Profile*, BBC NEWS (Mar. 20, 2014), available at <http://www.bbc.com/news/world-europe-18284837> (explaining the extent of Russian presence in Moldova).

is commonly referred to as ‘Europe’s black hole,’ with crime including trafficking of people, drugs, weapons, and human organs.”⁵³ In 2005, the European Union launched EUBAM—the European Union Border Assistance Mission—at the request of the Moldovan and Ukrainian governments to assist the two countries in limiting the illicit cross-border activity.⁵⁴ This de facto state has “executive, legislative, and judicial powers as well as security forces”.⁵⁵ However, it is governed as an authoritarian presidential system.⁵⁶ The PMR has its own currency—the Transnistrian ruble—stamps (for mail within Transnistria only), a flag, and national anthem.⁵⁷ Most of the industrial production in Moldova lies on the east bank of the Nistru.⁵⁸ The recent election of Yevgeny Shevchuk increased the legitimacy of the regime. Russia had openly urged longtime incumbent President Igor Smirnov not to seek a fifth term, stressing the need for new leadership. Whereas the previous regime favored policies that promoted unification with Russia, the new regime leans more toward Transnistrian independence.⁵⁹ The road toward Transnistrian independence will be challenging, however, considering Transnistria’s dependence on Russia for financial

⁵³ Alejandro W. Sanchez, *The ‘Frozen’ Southeast: How the Moldova-Transnistria Question has Become a European Geo-Security Issue*, 22 J. SLAVIC MIL. STUD. 153, 156 (2009).

⁵⁴ U.N. DEV. PROGRAMME: INDIVIDUAL CONSULTANT PROCUREMENT NOTICE, (Mar. 2013), http://www.eubam.org/files/ICPN_01_2.pdf; see generally EU Border Assistance Mission to Moldova and Ukraine, *Background*, EUBAM.ORG, <http://www.eubam.org/en/about/overview> (last accessed May 5, 2014).

⁵⁵ Sanchez, *supra* note 53, at 158. The armed forces include four motorized rifle brigades, a tank battalion, an artillery regiment, and an anti-aircraft artillery regiment. The standing army has 4,500 troops plus an additional 15,000 that can be mobilized. The country’s 18 tanks are courtesy of the Russian 14th Army. *Id.*

⁵⁶ Nicu Popescu, *Democracy in Secessionism: Transnistria and Abkhazia’s Domestic Policies*, OPEN SOC. INST. 5 (2006).

⁵⁷ McLauchlan, *supra* note 34 (accessed by searching for pictures with search term “Transnistria”).

⁵⁸ Sanchez, *supra* note 53, at 158. While the region represents only 8% of Moldova, it boasts 40% of the industrial production. *Id.*

⁵⁹ Interview with Bjorn Kavalkov-Halvarsson, Deputy Head of Swedish Mission to the Republic of Moldova (July 25, 2012) (on file with author).

support and gas supplies. The OSCE, Russia and the Ukraine tried to mediate a settlement to resolve the Transnistrian issue. In 2005, the EU and the US were invited to join as observers, creating the “5+2” Format. Formal multilateral talks collapsed in early 2006 and remained dormant for many years. However, talks started to gain traction with the signing of the Moldovan-Transnistrian agreement at the 5+2 Vienna summit in April 2012.⁶⁰ The terms of this agreement bolstered the legitimacy of Transnistria, as Moldova recognized Transnistria as an equal partner in the negotiations.⁶¹ As a result of Moldova’s goodwill toward Transnistria, Tiraspol acknowledged the equal status of all parties to the negotiation, “which infuriated the Russian side”.⁶² “Up to that point, Russia and Ukraine”, acting as observers to the negotiation, “enjoyed more rights than the EU or the US”.⁶³ While there is some optimism regarding the possibility of a settlement, especially now that the talks have resumed, others are skeptical, arguing “. . .Moscow does not want Transnistria to reunite with Moldova, as it would lose an important foothold in Southeastern Europe.”⁶⁴ Moreover, “President” Shevchuk recently declared that “. . .the next one and a half years will be decided upon the international recognition of the Moldavian Transnistrian Republic. . .The Transnistrian nation has created its republic already. Now the question is related to the international recognition.”⁶⁵

⁶⁰ Kamil Calus & Piotr Oleksy, *Expectations And Reality Collide In Tiraspol*, NEW EASTERN EUROPE (June 9, 2013), <http://www.neweasterneurope.eu/node/839>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Sanchez, *supra* note 53, at 161.

⁶⁵ *Transnistria Seeks Independence In 1.5 Years*, MOLDOVA.ORG (Aug. 26, 2013), available at <http://politicom.moldova.org/news/transnistria-seeks-independence-in-15-years-238512-eng.html>.

III. *The European Court of Human Rights*

The European Court of Human Rights (ECtHR) was founded in 1959 by Article 19 of the European Convention on Human Rights (ECHR) established by the Council of Europe.⁶⁶ The Court is made up of 47 judges, one for every State party to the Convention; “the judges are elected by the Parliamentary Assembly of the Council of Europe” from a list of three candidates submitted by the State to serve non-renewable nine year terms.⁶⁷ The ECHR has been called “the most effective human rights regime in the world”⁶⁸ and the ECHR is considered the “Constitutional Court of/for Europe”⁶⁹ as well as “a quasi-constitutional court in the field of human rights for Europe.”⁷⁰ The Court is a supra-national judicial body recognized by 47 countries, impacting 820 million citizens. This “new” system created a means for 820 million Europeans to petition directly to the Court if they believe their fundamental rights protected under the ECHR have been violated by a member state. By granting European citizens this extensive power in making claims to the body, the ECtHR is regarded as the largest international Court ever assembled.⁷¹ Naturally, this change caused an astounding uptick in the number of applications before the Court. The “vast majority of the current caseload comes from Central and Eastern European countries where political systems and methods of rights protection

⁶⁶ See EUROPEAN CONVENTION ON HUMAN RIGHTS, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf. (last visited May 1, 2014).

⁶⁷ See EUROPEAN COURT OF HUMAN RIGHTS: THE ECHR IN 50 QUESTIONS (Jul. 2012), available at http://www.echr.coe.int/Documents/50Questions_ENG.pdf.

⁶⁸ HELEN KELLER & ALEC STONE SWEET, A EUROPE OF RIGHTS: THE IMPACT OF THE EUROPEAN COURT OF HUMAN RIGHTS ON NATIONAL LEGAL SYSTEMS 3 (2008).

⁶⁹ *Id.* at 7.

⁷⁰ Theodora Christou & Juan Pablo Raymond, *European Court of Human Rights: Remedies and Execution of Judgments*, in BRIT. INST. COMP. L. 49 (2005).

⁷¹ Luzius Wildhaber, *Essay: The European Court of Human Rights: The Past, the Present, the Future*, 22 AM. U. INT’L L. REV. 526 (2007).

are still in transition from communism.”⁷² The expansion of the CoE to include central and eastern European countries contributed to the increasing backlog of cases. To address the dramatic rise in applications, additional legislation was promulgated to improve the court’s capacity in dealing with the severe backlog of cases. Protocol 14 to the ECHR was introduced in 2004 and, after a delay in ratification by Member States, entered into force in June 2010.⁷³ The goal of Protocol 14 is to ensure the efficacy of the Court by “optimizing the screening and processing of applications” while reducing the workload of the Judges and the Committee of Ministers of the Council of Europe and maintaining a focus on the cases which contain important or previously unanswered human rights issues.⁷⁴

Judgments of the ECHR include General Measures and Individual Measures. General Measures are issued to prevent similar violations in the future. These are used when the violation is a result of domestic legislation, when there is a lack of domestic legislation, and/or when national courts have misinterpreted domestic legislation of the ECHR.⁷⁵ Individual Measures are issued to remedy the effects of the violation on the applicant.⁷⁶ The ECtHR’s Committee of Ministers monitors compliance with the Court’s judgments.⁷⁷ The caselaw of the ECtHR is constitutionally required to be applied in Moldova’s courts.⁷⁸ Indeed, “[t]he [ECtHR] performs its most

⁷² Costas Paraskeva, *The Relationship between Domestic Implementation of European Convention of Human Rights in the Ongoing Reforms of European Court of Human Rights with a Case Study on Cyprus and Turkey*, INTERSENTIA 30 (2010). The figure was 60% of the caseload in 2004. *Id.*

⁷³ See Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending the Control of the Convention (opened for signature May 13, 2004, entered into force Jan. 6, 2010), *available at* <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=194>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Article 4 of the Moldovan Constitution provides “(1) Constitutional provisions concerning human rights and liberties shall be interpreted and applied according to ...the international treaties Republic of Moldova is party to. (2) In case of inconsistencies between human rights covenants and treaties to which the

important governance functions through the building of precedent-based case law.”⁷⁹

IV. *Human Rights in the Republic of Moldova*

The U.S. Department of State declared that in 2012 “[t]he most significant human rights problem” in Moldova “was government corruption, which undermined the credibility and effectiveness of the police and the judiciary as well as respect for the rule of law.”⁸⁰ As of 2013, Transparency International ranked Moldova tied with three other countries, 102 out of 177 countries.⁸¹ The Perception Index is based on a scale of how corrupt the public sector is perceived to be, with 0 as highly corrupt and 100 as very clean. Moldova’s score is 35. With a closer examination of the judiciary alone, Moldova ranks at 132 of 142 for judicial independence.⁸² This ratio, meant to establish “the perceived extent in which the judiciary of the country is independent from influences of members of government, citizens, or firms,” provides Moldova with a rank of 2.2 on a 7 point scale.⁸³ According to public opinion polls carried out by Transparency International in 2010, only 18% of Moldovans believe the government’s efforts to fight corruption have

Republic of Moldova is party, and its internal law, priority shall be given to international regulations;” *see* LEGAL RESOURCE CENTER OF MOLDOVA, EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS BY THE REPUBLIC OF MOLDOVA 1997-2012 41 (2012), *available at* http://crjm.org/app/webroot/uploaded/Execution_of_Judgments_of_the_ECHR_by_the_Republic_of_Moldova_1997-2012.pdf. In 1999, the Constitutional Court of the Republic of Moldova adopted a judgment (Number 55) in which it explained how Article 4 of the Constitution would be applied. *Id.*

⁷⁹ KELLER & SWEET, *supra* note 68, at 14.

⁸⁰ U.S. DEP’T OF STATE, COUNTRY REPORT: MOLDOVA 2012 HUMAN RIGHTS REPORT (2012), <http://www.state.gov/documents/organization/204527.pdf>.

⁸¹ *Corruption Perception Index*, TRANSPARENCY INT’L (2013), *available at* <http://cpi.transparency.org/cpi2013/results/> (last accessed May 1, 2014). Moldova shares 102nd place with Ecuador, Panama, and Thailand. *Id.*

⁸² *Country Profiles*, TRANSPARENCY INT’L, *available at* http://www.transparency.org/country#MDA_DataResearch_SurveysIndices. (last accessed May 1, 2014).

⁸³ *Id.*

been effective, 37% reported having paid a bribe, and 53% believe the level of corruption has increased (between 2007 and 2010).⁸⁴ When surveyed on the public institutions they believed to be most affected by corruption on a 5-point scale, with 5 being extremely corrupt, Moldovans responded by ranking the Police force the highest with a 4.1 followed closely by the Judiciary with a score of 3.9.⁸⁵ Another major area of concern are allegations of police torture and mistreatment of people in detention.⁸⁶ According to Amnesty International, torture cases are still prevalent in Moldova and “in many instances law enforcement representatives were directly involved or tried to cover them up”.⁸⁷ In the 2013 Moldova Country Report, Amnesty International concluded that despite “changes to the law, impunity for torture and other ill-treatment continued.”⁸⁸

Moreover, “[t]he government made only limited progress in holding officials accountable for killings and other abuses committed by government security forces during the 2009 crackdown on post election demonstrations.”⁸⁹ Then-CoE Commissioner for Human Rights, Thomas Hammarberg “visited Moldova two and a half weeks after post-electoral demonstrations” held on April 6-7 2009, in order to learn more about the “treatment of people detained in relation to those events”.⁹⁰ Two and a half years after his April 2009 visit, Commissioner Hammarberg, in a letter to then-Prime Minister Filat, which strongly emphasized the importance of dealing with the remaining human rights violations committed in April 2009, stated: “concrete and resolute action should be taken to bring to justice those responsible for illegal acts during that period, and reforms should be pursued with a view of preventing such large-scale violations from

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ U.S. DEP’T OF STATE, *supra* note 80 at 1.

⁸⁷ *Id.* at 5.

⁸⁸ AMNESTY INTERNATIONAL, MOLDOVA REPORT 2013 (2013), <http://www.amnesty.org/en/region/moldova/report-2013>.

⁸⁹ U.S. DEP’T OF STATE, *supra* note 80 at 1.

⁹⁰ See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, 17 Jul. 2009, available at <https://wcd.coe.int/ViewDoc.jsp?id=1469277>.

occurring in the future.”⁹¹ The human rights community is still waiting to see individuals held accountable for their actions.⁹² Police officers accused of torturing and murdering those detained are free pending trial.⁹³ Human rights activists interviewed for this project lamented the lack of accountability for the brutality committed during the demonstrations, indicating the Interior Ministry’s unwillingness to deal with this important issue.⁹⁴ One interviewee stated that officials want to be perceived as reform-minded. “They say the right thing in Strasbourg or in donor meetings, but, when you dig deeper, when the rubber hits the road, and someone would need to go to jail, it just doesn’t happen.”⁹⁵ Other significant problems raised by human rights activists include:

[h]arsh and overcrowded conditions in prisons, arbitrary detention by police, restrictions on the freedom of assembly and speech by local authorities; closure on opposition broadcaster; violence against women, trafficking in persons; discrimination against Roma; harassment of lesbian, gay, bisexual, and transgender (LGBT) individuals; limited enforcement of workers’ rights; and child labor.⁹⁶

⁹¹ Letter from the CoE Commissioner for Human Rights to the Republic of Moldova, 21 December 2011, *available at* <https://wcd.coe.int/ViewDoc.jsp?id=1891925>.

⁹² AMNESTY INT’L, *supra* note 88 (explaining “[o]f 128 complaints received by the Prosecutor General’s Office in connection with incidents following demonstrations in April 2009, only 43 had reached the courts and only three police officers had been convicted by the end of 2012. In all three cases the officers received suspended sentences.”).

⁹³ *Id.*

⁹⁴ Confidential interview with human rights activist. Transcript on file with the author.

⁹⁵ *Id.*

⁹⁶ See U.S. DEP’T OF STATE, *supra* note 80 at 1; *see also* U.N. DEVELOPMENT PROGRAMME, VIOLENCE AGAINST WOMEN IN THE FAMILY IN THE REPUBLIC OF MOLDOVA (Dec. 2011), http://www.undp.md/presscentre/2011/ViolenceWomen_12Dec/Rap_Violenta-F_rom_FINAL-09-12-2011.pdf; ADVOCATES FOR HUMAN RIGHTS, ET AL., IMPLEMENTATION OF THE REPUBLIC OF MOLDOVA’S DOMESTIC VIOLENCE LEGISLATION: A HUMAN RIGHTS REPORT (Nov. 2012), *available at* http://www.theadvocatesforhumanrights.org/uploads/moldova_reportupload.pdf.

Moreover, there is evidence that government officials have committed human rights abuses with impunity and their complicity in trafficking or corruption matters are not successfully prosecuted or punished.⁹⁷ Moldovan courts are bound by the Constitution to apply precedents of the ECtHR. The ECtHR is, therefore, in the position to have a positive impact on improving the human rights situation in Moldova. During the last 4 years petitioners have filed about 1,000 applications to the ECtHR per year, and Moldova has consistently ranked in the top six countries in terms of per capita filings.⁹⁸ Of the 4,500 applications, the ECtHR found that about 1,000 were admissible.⁹⁹ The average percentage of applications found admissible is 5%, whereas for Moldova that figure is 30%.¹⁰⁰ Thus Moldova's rate of admissible cases is six times higher than that of other developing countries.¹⁰¹ In 2012, Moldova ranked 9th in the raw number of pending cases before the ECtHR allocated to a judicial formation.¹⁰² Currently there are about 1,743 pending applications by Moldovan citizens before the ECtHR.¹⁰³ By the end of 2011, there were 227 judgments against Moldova, finding more than 50 types of violations.¹⁰⁴ In 207 of those cases the ECtHR

⁹⁷ See U.S. DEP'T OF STATE, *supra* note 80 at 7; see also U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT: MOLDOVA-TIER 2 (2012)*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192367.htm>.

⁹⁸ *Annual Reports*, EUROPEAN COURT OF HUMAN RIGHTS, available at http://www.echr.coe.int/Pages/home.aspx?p=echrpublications&c=#newComponent_1345118680892_pointer (last visited May 1, 2014). In 2009, Moldova ranked 3rd (behind Georgia and Liechtenstein), in 2010 Moldova ranked 6th, in 2011 Moldova ranked 3rd, and in 2012 Moldova ranked 6th. *Id.*

⁹⁹ Interview with Judge Mihai Poalelungi, President, Supreme Court of Justice of the Republic of Moldova (a former Judge on the European Court of Human Rights, 2008-12) (July 23, 2013), in Chisinau, Moldova (in Romanian, translated by Prof. Svetlana Suveica) (on file with author).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² EUR. CT. H.R., *ANNUAL REPORT 2012* 151 (2012), available at http://www.echr.coe.int/Documents/Annual_report_2012_ENG.pdf.

¹⁰³ EUR. CT. H.R., *REPUBLIC OF MOLDOVA*, available at http://www.echr.coe.int/Documents/CP_Republic_of_Moldova_ENG.pdf (last updated Jan. 2014).

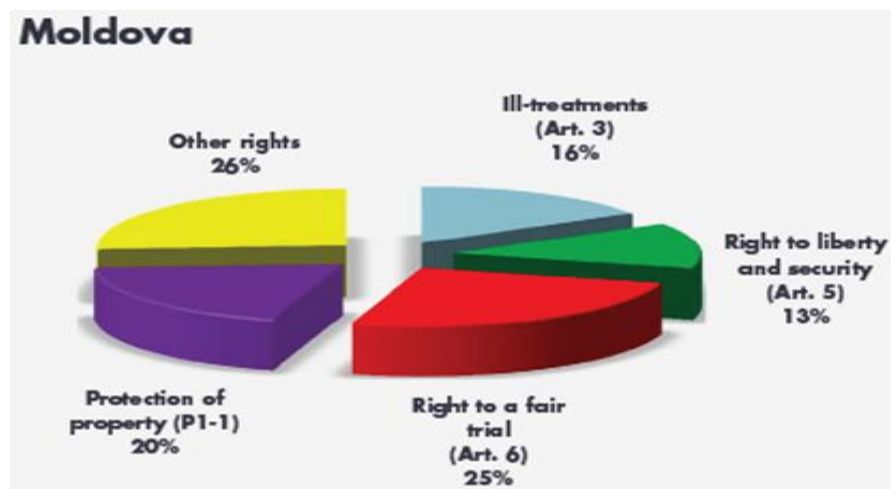
¹⁰⁴ LEGAL RESOURCE CENTER OF MOLDOVA, *supra* note 78, at 12.

2014]

MOLDOVA AND TRANSNISTRIA

121

found violations: only 2 cases found no violations.¹⁰⁵ In 2012, there were 27 judgments involving Moldova.¹⁰⁶ In all but one, the ECtHR found at least one violation of the ECHR: 42% involved “inhuman or degrading treatment,” 29% involved “right to a fair trial,” 21% involved “lack of effective investigation, 21% involved “right to liberty and security,” among other violations.¹⁰⁷ More than half of the judgments against Moldova are in the area of criminal procedure and criminal law, torture and ill treatment.¹⁰⁸ The graph below represents the allocation of the types of ECtHR judgments against Moldova:



Graphic from the European Court of Human Rights¹⁰⁹

¹⁰⁵ *Id.*

¹⁰⁶ EUR. CT. H.R., ANNUAL REPORT 2011, Statistical Information (Section XII) and EUR. CT. H.R., ANNUAL REPORT 2012, Statistical Information (Section XI).

¹⁰⁷ EUR. CT. H.R., *supra* note 102.

¹⁰⁸ Interview with Judge Raisa Botezatu. Retired, President of the Supreme Court of Justice, Republic of Moldova, Chisinau, Moldova, (Aug 1, 2012) in Romanian, translated by attorney Olimpia Iovu (on file with author).

¹⁰⁹ EUR. CT. H.R., STATISTICS ON JUDGMENT BY STATE 5 1959-2010, http://www.echr.coe.int/Documents/Stats_violation_1959_2010_ENG.pdf (last visited May 2, 2014).

Reflecting on the high number of cases filed before the ECtHR from Moldova, Judge Poalelungi, President of the Supreme Court of Justice of the Republic of Moldova, explained that it “tells us about the malfunction of the judicial system in general, and the lack of trust of Moldovan citizens to the judicial system.”¹¹⁰ The large number of filings also reflects the work of an active cohort of well-trained lawyers who are bringing these cases to the ECtHR. One Rule of Law expert noted that among Moldovan lawyers there is an awareness of the court in Strasbourg and a “waking up to the opportunity to bring cases before the ECtHR.”¹¹¹ I interviewed many of these lawyers, who work for NGOs such as the Human Rights Embassy, the Legal Resource Center, Lawyers for Human Rights, and Promo-LEX. For example, the Legal Resource Center (LRC) is an NGO specialized in litigating cases before the ECtHR. The LRC conducts trainings for judges and for prosecutors. They also translate judgments of the ECtHR into Romanian.¹¹² There were more than 4,000 text pages to translate into Romanian between 2006 and 2010.¹¹³ Similarly, Lawyers for Human Rights, founded in 2001, organizes trainings for judges and lawyers, translates judgments against the Republic of Moldova into Romanian, and strategically brings cases and represents litigants before the ECtHR.¹¹⁴ The Human Rights Embassy, an offshoot of Amnesty International, has trained more than 180 lawyers to be human rights defenders and the process involved in bringing applications before the ECtHR.¹¹⁵ Currently, the Human Rights Embassy is implementing a program of electronic education for lawyers in human rights from five CIS countries. It is a one-year distance learning course for 125 defense lawyers from five countries, 25 of

¹¹⁰ Interview with Judge Mihai Poalelungi, *supra* note 99.

¹¹¹ Interview with Judge Dag Brathole, NORLAM 2010-2012 (July 30, 2012) (on file with author).

¹¹² LEGAL RESOURCE CENTER OF MOLDOVA, *supra* note 78, at 111.

¹¹³ Interview with Vlad Gribinecea, Legal Resource Center, Chisinau, Moldova. (Aug. 2, 2012) (on file with author).

¹¹⁴ Interview with Vitalie Zama, Lawyers for Human Rights (Aug 2, 2012) (on file with author).

¹¹⁵ Interview with Lela Metreveli, Human Rights Embassy (Aug. 10, 2012) (on file with author).

whom are from Moldova. The Human Rights Embassy is now focusing on domestic courts and training defense lawyers how to use international standards and the ECHR before domestic courts as a way to encourage Moldovan judges to apply ECtHR precedents.¹¹⁶

V. *Sample ECtHR Judgments against Moldova*

Paladi v. Moldova (10 March 2009) concerning the “extended pre-trial detention of Ion Paladi, former Deputy Mayor of Chisinau, and the failure to provide him with the medical treatment required by his serious health condition”: The ECtHR found Moldova violated Article 3 (prohibition of inhuman or degrading treatment), Article 5§1 (right to liberty and security), and Article 34 (right of individual petition).¹¹⁷

Ciorap v. Moldova (no. 2) (27 April 2010): This “case concerned Mr. Ciorap’s complaints that the police tortured him in detention and left him for days on end in appalling conditions and without urgent medical help.” The ECtHR found Moldova violated Article 3 (prohibition of inhuman and degrading treatment).¹¹⁸

Paduret v. Moldova (5 January 2010): Mr. Paduret was tortured when in police custody while being questioned in connection with a robbery. The “authorities failed to carry out an effective investigation into his ill-treatment. . .allowing the perpetrators to escape responsibility.” The ECtHR found a violation of Article 3 (prohibition of inhuman or degrading treatment).¹¹⁹

Manole, et. al. v. Moldova (17 September 2009): “The applicants complained about the censorship of the television and radio station, Teleradio-Moldova”. The ECtHR found a violation of Article 1 (freedom of expression).¹²⁰

¹¹⁶ *Id.*

¹¹⁷ EUR. CT. H.R., REPUBLIC OF MOLDOVA, *supra* note 103, at 2.

¹¹⁸ *Id.* at 4.

¹¹⁹ *Id.* at 4.

¹²⁰ *Id.* at 4.

Metropolitan Church of Bessarabia and Others v. Moldova (13 December 2001): “The Metropolitan Church of Bessarabia, an Orthodox Christian Church, was refused recognition by the authorities on the ground that it had” separated “from the Metropolitan Church of Moldova, which was recognized by the State. The Metropolitan Church of Bessarabia” and leaders from the Church complained “that without recognition a religious denomination could not be” recognized on Moldovan territory. The ECtHR found that Moldova violated Article 9 (freedom of religion) and Article 13 (right to an effective remedy).¹²¹

Genderdoc-M v. Moldova (12 June 2012): This “case concerned the banning of a demonstration” of the NGO Genderdoc-M planned to promote laws “for the protection of sexual minorities from discrimination”. The group claimed that the ban was unlawful “and that it had been discriminated against because it promoted the interests of the gay community in Moldova”. The ECtHR found Moldova violated Article 11 (freedom of assembly and association), Article 13 in conjunction with Article 11 (right to an effective remedy), and Article 14 in conjunction with Article 11 (anti-discrimination).¹²²

Whether and how these decisions are implemented and the extent to which these ECtHR precedents can affect legal and judicial reform in the Republic of Moldova is the subject of my long-term study. Judge Poalelungi believes that Moldova is a positive example for other states, pointing out that Moldova has a stronger record of implementation than states like Russia and Turkey.¹²³ However, recent headlines have claimed “Moldova ranks in a list of countries that delay ECHR judgment execution.”¹²⁴ In a nutshell, it seems as if there are no longer delays in Moldova’s making payments of just satisfaction pursuant to the ECtHR’s Individual Measures. Whether changes in laws and policies enacted pursuant to the ECtHR’s

¹²¹ *Id.* at 5.

¹²² *Id.* at 3.

¹²³ Interview with Judge Mihai Poalelungi, *supra* note 99.

¹²⁴ *European Integration: Moldova Ranks In List Of Countries That Most Delay ECHR Judgment Execution*, MOLDOVA AZI (Jul. 20, 2011), available at <http://www.azi.md/en/print-story/19803>.

2014]

MOLDOVA AND TRANSNISTRIA

125

General Measures are able to bring about deep reform is still an open question. As a leading human rights lawyer in Moldova explained, it is “not a question of change of legislation but of the mentality of judges. The *laws* are more or less in line with standards of the ECHR; the problem is with the *application* of the laws.”¹²⁵ Judge Raisa Botezatu, who has served as a judge in Moldova for more than 30 years, including service as President of the Supreme Court of Justice and working closely with the Council of Europe to prepare a report about the compatibility of Moldova’s laws with the European Convention on Human Rights prior to its ratification in Moldova, stated it was unfortunate that Moldova still does not have a willingness to do strong and deep reform.¹²⁶

VI. *Justice Sector Reform*

Insofar as a bulk of the filings before the ECtHR deals with criminal due process and the administration of justice, justice sector reform is needed to improve the human rights situation in the Republic of Moldova. A number of groups have been working with the government of Moldova over the last 20 years to improve the justice sector and to establish a stable rule of law environment: the American Bar Association Rule of Law Initiative (ABA ROLI), the Norwegian Mission of Rule of Law Advisors to Moldova (NORLAM), the U.S. Agency for International Development (USAID), and the OSCE have been most active partners in these endeavors. Examples of their projects include the USAID donation of computers and software to provide for randomized case management. Even though the system does not address corruption directly, it is expected to improve transparency.¹²⁷ Additionally, ABA ROLI’s has established a conference on strengthening precedent in Moldova. ABA ROLI has also prepared and printed a casebook composed of the most important Moldovan criminal law and criminal procedure cases and will act as a reference manual for

¹²⁵ Interview with Vlad Gribinecea, *supra* note 113.

¹²⁶ Interview with Judge Raisa Botezatu, *supra* note 108.

¹²⁷ Interview with Ina Piscalru, USAID, (Aug. 13, 2012) (on file with author).

lower court judges and prosecutors.¹²⁸ Another example includes NORLAM's trainings for judges about the importance of the ECtHR case law and the process in applying the case law into their decisions.¹²⁹ Moldova's legal system is based on the civil law tradition, and therefore the judge's decisions do not set the legal precedent. Yet Moldovan judges are expected to apply the precedents of the ECtHR, which creates a dilemma. Moldovan judges are bound by precedents of the judges of the ECtHR in Strasbourg, but not decisions made by Moldova's Supreme Court of Justice in Chisinau.¹³⁰ The principle of justice inherent in the Common Law tradition of *stare decisis* is that similarly situated litigants will be treated similarly. Many reformers in Moldova have concerns about the lack of uniform judicial practice and worry when the same judges apply different solutions in similar cases.¹³¹ One human rights lawyer explained "there needs to be legal certainty—parties should know what will happen in a case."¹³² This can be ensured when judges use legal reasoning and apply precedents. The President of the Supreme Court of Justice is working to encourage changes at the national level to improve the overall judicial process. One contemplated change is to combine civil law with common law tradition, giving the Supreme Court of Justice the ability to issue Advisory Opinions to offer clarifications for lower courts.¹³³ This would provide for the uniform application of the law and would be a way to introduce the concept of precedent into the Moldovan legal system.¹³⁴ There is a massive judicial reform effort underway in Moldova—the Justice Sector Reform Strategy—developed and

¹²⁸ Interview with Judge Richard Grawey, ABA ROLI, (July 26, 2012) (on file with author).

¹²⁹ Interview with Judge Torolv Groseth, Judge, Rule of Law Adviser. NORLAM. Chisinau, Moldova (Aug. 7, 2012) (on file with author).

¹³⁰ Interview with Judge Dag Brathole, then serving with NORLAM (Nov. 2010) (on file with author). I would like it noted Judge Dag Brathole first inspired my research on this topic during his presentation *The European Court of Human Rights and the Moldovan Judicial System*, a public lecture at ULIM.

¹³¹ Interview with Vitalie Zama, *supra* note 114.

¹³² *Id.*

¹³³ Interview with Judge Poalelungi, *supra* note 99.

¹³⁴ *Id.*

2014]

MOLDOVA AND TRANSNISTRIA

127

implemented by the Ministry of Justice. In 2011, Moldova's Parliament adopted legislation that embarked on a major Judicial Reform Strategy that was accompanied by a detailed action plan, consisting of a timeline with measurable goals that would be implemented within five years, by 2015.¹³⁵ "Determining factors" for embarking on this strategy, as outlined in the Strategy, included the following: a significantly low level of public confidence in the judicial system's effectiveness and fairness, aspirations to join the EU, the perception of the high degree of corruption in the justice sector, and the creation of a favorable environment for economic growth and attraction of investments.¹³⁶ The overall objective of the Strategy "is to build an accessible, efficient, independent, transparent, professional justice sector, with high public accountability, consistent with European standards to ensure the rule of law and protection of human rights."¹³⁷ Specific objectives of the Strategy include the following:

Strengthen the independence, accountability, impartiality, efficiency and transparency of the judiciary; streamline the process of pre-trial investigation and prosecution, as needed to safeguard human rights, ensure individual security and reduce the level of crime; improve the institutional framework and processes that ensure effective access to justice: effective legal aid, examination of cases and enforcement of court decisions within a reasonable time, upgrading the status of some legal professions related to the justice system; promote and implement the principle of zero-tolerance to corruption in the justice sector; implement measures that will allow the justice sector to contribute to the creation of a favorable environment for sustainable economic development; ensure effective observance of human rights within judicial practices and policies; coordinate and define powers and responsibilities of key actors within the justice sector and ensure cross-sectoral dialogue.¹³⁸

¹³⁵ JUSTICE SECTOR REFORM, *supra* note 9, at 1.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

The Justice Sector Reform Strategy and Implementation Plan has seven pillars:

Pillar I. The Judicial System

Pillar II. Criminal justice

Pillar III. Access to justice and enforcement of court decisions

Pillar IV. The integrity of actors operating in the justice sector

Pillar V. The role of the justice system in economic development

Pillar VI. Human rights in the justice sector

Pillar VII. Well-coordinated, managed and accountable justice sector¹³⁹

The Ministry of Justice has formed Working Groups for each pillar to develop and to monitor the progress of reform.¹⁴⁰ The action plan is driven by EU assistance. There are different stakeholders monitoring progress with each of the pillars. NORLAM, for example, is monitoring Pillar 2.¹⁴¹ The reform plan is quite ambitious. Many interviewees expressed skepticism that all goals associated with all seven pillars could be implemented within five years. However, there was optimism that this Justice Sector Reform and Action Plan could lead to significant improvements in judicial administration in Moldova. The first evaluation will take place in 2014, therefore we will soon know if progress is being made. There are high stakes for the Government of the Republic of Moldova. If the schedule is not followed and the deadlines not met, then the monetary aid will cease. As one stakeholder said, they are trying to bring about reform by using “carrots, not sticks.”¹⁴²

¹³⁹ *Id.* at 1-2.

¹⁴⁰ *Id.* at 2.

¹⁴¹ Interview with Judge Groseth, *supra* note 129.

¹⁴² *Id.*

VII. Human Rights in Transnistria

Transnistria is a region notorious for human rights abuses. According to the Freedom House rating of freedom in the world in 2012, Transnistria is “not free.”¹⁴³ “In comparison with other ‘disputed territories’ in the post-Soviet region, in terms of political rights and civil liberties, Transnistria trails behind Abkhazia (only ‘partly free’) and Nagorno-Karabakh. It only slightly outperforms South Ossetia, which since 2008 has been effectively transformed into a Russian military fortress in the South Caucasus.”¹⁴⁴ The European Parliament, in its Resolution on Human Rights Violations in Transnistria, “strongly deplores the lack of respect for human rights and human dignity in Transnistria” and “condemns the continued repression, harassment and intimidation of representatives of the independent media, NGOs and civil society by the Transnistrian separatist regime.”¹⁴⁵ “There are very little civil society groups as there is a constant crackdown and censorship by government officials.”¹⁴⁶ When interviewing human rights lawyers about the attitude of officials in the region, “impunity” was the most common word used. While it is difficult for international organizations to monitor the situation within Transnistria, the NGO Promo-Lex, through its work representing litigants before the ECtHR, drafts comprehensive reports documenting the human rights situation in Transnistria each year.¹⁴⁷ Promo-Lex recently provided an ominous report into Transnistria’s lack of compliance with basic human rights protections:

¹⁴³ FREEDOM HOUSE, FREEDOM IN THE WORLD 2012: TRANSNISTRIA (2012), <http://www.freedomhouse.org/report/freedom-world/2012/transnistria>.

¹⁴⁴ Stanislav Secieru, *The Transnistrian Conflict – New Opportunities and Old Obstacles for Trust-Building (2009-2010)*, 11 SOUTHEASTERN EUROPEAN AND BLACK SEA STUDIES. 256 (September 2011).

¹⁴⁵ *European Parliament Resolution On Human Rights violations In Moldova’s Transnistrian Region*, THE MOLDOVA FOUND. (July 12, 2007), available at <http://foundation.moldova.org/news/eng/105>.

¹⁴⁶ Sanchez, *supra* note 53, at 159.

¹⁴⁷ PROMO-LEX, HUMAN RIGHTS IN TRANSNISTRIAN REGION OF MOLDOVA IN 2011 (2011), available at http://www.promolex.md/upload/publications/en/doc_1340372019.pdf.

People detained/arrested arbitrarily by “local organs of power” are subject to various forms of torture in detention institutions and investigators offices in order to testify. The most utilised form of torture is: placing the person in an iron chair, binding the body to this chair with a rope, then the victim’s hands are gradually pulled with another rope, causing pain and incurable finger injuries, etc. People in “militia” custody are often mistreated, being kicked with blunt, hard objects over the body, receiving blows with rubber batons and feet kicks in kidneys area; denailing by placing needles under nails, threatening use of firearms or shooting, etc. Victims were isolated over various periods of time in a “narrow carcer”, without water, food, including limited access to bathroom for long period of times, in order to plead guilty.¹⁴⁸

There are 4,000 people in prison in Transnistria (out of a population of 500,000) compared to 6,000 people in prison in the Republic of Moldova (population of 3.5 million).¹⁴⁹ The treatment of inmates and the deplorable conditions of the Transnistrian facilities has raised concerns. “Overcrowding (3 detainees per bed) is a ‘normal’ phenomenon for the prisons in the region. . .”¹⁵⁰ Access to health care is inadequate (or completely absent), which especially affects detainees with disabilities.¹⁵¹ Some facilities have no medical personnel or medications.¹⁵² The prison in Tighina, in a basement, is described as follows:

It has continuous artificial lighting, these prisoners are deprived of daylight. There is no ventilation system (detainees have the possibility to ventilate the cell only through the door window, when food is provided). Food quality is very poor, containing mollusks and garbage;

¹⁴⁸ *Id.*

¹⁴⁹ Interview with Ion Manole, Promo-LEX (July 27, 2012) (on file with author).

¹⁵⁰ PROMO-LEX, *supra* note 147.

¹⁵¹ *Id.*

¹⁵² *Id.*

2014]

MOLDOVA AND TRANSNISTRIA

131

prisoners often refuse to eat because they claim some substances are introduced in it. The toilet in the cell is a container with a lid. The detention isolator has a common toilet, near the bathroom, which was not cleaned for a long time and the odor persists. The bathroom is a separate room, with 3 sinks and 2 pans (iron, plastic) and there is just cold water, mildew damp walls. Detainees wash themselves together (women with men) in one of these pans. In cell there is no running water, so prisoners take with them plastic bottles in order to carry water for a whole day. . . The cells are made of concrete, very cold and wet, and the floor is also made of concrete. The bed is a wooden platform, placed along a wall. There are no linens. The nurse seldom visits the detainees, asking about their needs through the cell door window (there is no direct examination). . . there is no medicine. Because of the odor, the detainees are forced to smoke intensely.¹⁵³

“Detainees from Prison No 1 in Hlinaya complained to Promo-LEX that contaminated water led to toothaches, stomachaches, and severe skin problems and that regular medical care was lacking. The mortality rate was high, especially among tuberculosis-infected inmates.”¹⁵⁴ In addition to the poor physical conditions, “[p]sychological torture included blackmailing inmates with threats of raping their wives and daughters and threatening inmates with detention in cells with inmates with infectious diseases.”¹⁵⁵ According to the Transnistrian Constitution, every 18-year-old man is subject to compulsory military service in the national

¹⁵³ *Id.*

¹⁵⁴ U.S. DEP’T OF STATE, *supra* note 80, at 6; *Tuberculosis Country Work Summary: Republic of Moldova*, WORLD HEALTH ORG. (2010), available at http://www.euro.who.int/__data/assets/pdf_file/0005/168602/Moldova-country-work-summary_140612.pdf. Moldova is one of the top countries dealing with the issue of multi drug-resistant TB. *Id.*; Jason Beaubien, *Faces Of Drug Resistant Tuberculosis*, NPR (June 4, 2013), <http://www.npr.org/blogs/health/2013/06/12/182903139/faces-of-drug-resistant-tb>. “TB has also been a huge problem in the prisons of Eastern Europe. Overcrowding and crumbling infrastructure turned penitentiaries into hotbeds of TB transmission.” *Id.*

¹⁵⁵ U.S. DEP’T OF STATE, *supra* note 80 at 5.

132 *INTERCULTURAL HUMAN RIGHTS LAW REVIEW* [Vol. 9]

Army for one year. Some in Tiraspol do not want to serve in the Army, because they believe it is the illegal army of an illegal regime and part of a propaganda-machine against Moldova.¹⁵⁶ Some parents decide to send their children to Moldovan schools, because they are scared of what is happening in Transnistria and wary of the propaganda incorporated in the school curriculum.¹⁵⁷ If those youth go to Chisinau in order to escape service in the Transnistrian army, the authorities will send documents to them in Chisinau that they must return to Tiraspol.¹⁵⁸ Some may object to service in the Transnistrian on ideological grounds, but others fear the abuse and hazing of young conscripts.¹⁵⁹ These young soldiers are forced to live in deplorable facilities and suffer similar abuse occurring in the prisons as described above. “Many young have complained about cases of harassment (dedovshchina), torture and other forms of punishment” as well as “cruel, inhuman and degrading treatment in the paramilitary structures in the region”, which include “burning on body of items, kicks on the head, push-ups at night, sinking the head in the toilet, kicks on various parts of the body, forced harmful work, turns for more than 3 days without interruption, strangulation, etc.”¹⁶⁰ There are also limitations on the right to a fair trial. Russian is used exclusively during court proceedings,¹⁶¹ so Romanian speakers are at a severe disadvantage.¹⁶² Also, there are many obstacles in retaining a Moldovan lawyer during a court proceeding. “In particular, no lawyer from the Bar can provide legal assistance in

¹⁵⁶ Interview with Ion Manole, *supra* note 149.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ U.S. DEP’T OF STATE, *supra* note 80 at 5.

¹⁶⁰ PROMO-LEX, *supra* note 147.

¹⁶¹ When I was observing criminal court proceedings in Chisinau, I noticed that if there was a participant in the case who was a Russian speaker, then all of the proceedings would switch to Russian. See, for example, J V Scourfield McLauchlan, *Criminal Court Observation*, MCLAUCHLAN’S MOLDOVAN MUSINGS (Dec. 25, 2010), <http://jainmoldova.blogspot.com/2010/12/criminal-court-observation.html> for a discussion on my personal blog.

¹⁶² PROMO-LEX, *supra* note 147. Romanian speakers make up roughly one-third of the population on the East Bank of the Nistru. (The demographic breakdown is roughly 1/3 Moldovan/Romanian, 1/3 Ukrainian, and 1/3 Russian.) *Id.*

the region without having a local ‘curator’ lawyer. Obtaining the consent of such a ‘curator’ is very difficult and expensive.”¹⁶³

Moreover, there are limitations on freedom of conscience. For example, minority religious groups, including the Jehovah’s Witnesses and the Lutheran Church, face difficulty registering with the local authorities. Jehovah’s Witnesses endure added persecution, because they conscientiously object to service in the military.¹⁶⁴ The Catholic Church and the Lutheran Church are having difficulty recovering their property and buildings owned by them during the inter-war period.¹⁶⁵ Furthermore, there are restrictions on the freedom of the press. “In Transnistria, both of the region’s major newspapers, *Pridnestrovie* and *Dnestrovskaya Pravda*, were official publications of the separatist administration. Separatist authorities harassed other small, independent newspapers for publishing reports critical of the regime.”¹⁶⁶ Another serious human rights issue concerns the closing of Latin script schools. There is a “continuous violation of [the] right to education in [the] native language of the Moldovan and Ukrainian ethnic people.”¹⁶⁷ An extensive OSCE Report provides a detailed discussion of the events surrounding the closing of the Latin script Moldovan language schools.¹⁶⁸ Promo-LEX argues “. . . the figures demonstrate a clear trend of Russification of the population in the [T]ransnistrian region, particularly through education. This is a practice that continued from Soviet times, but to a much more pronounced intensity in the last 20 years in the eastern region of Moldova.”¹⁶⁹ As far as ECtHR caselaw involving alleged human rights abuses in Transnistria, cases cannot be directly brought against the PMR separatist regime because of its status.¹⁷⁰ Litigants must

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ U.S. DEP’T OF STATE, *supra* note 81 at 15.

¹⁶⁷ PROMO-LEX, *supra* note 147.

¹⁶⁸ See OSCE, THE MOLDOVAN ADMINISTERED LATIN-SCRIPT SCHOOLS IN TRANSNISTRIA: BACKGROUND, CURRENT SITUATION, ANALYSIS, AND RECOMMENDATIONS, (Nov. 2012), available at <http://www.osce.org/moldova/99058?download=true>.

¹⁶⁹ PROMO-LEX, *supra* note 147.

¹⁷⁰ Interview with Judge Poalelungi, *supra* note 99.

bring their cases against the Republic of Moldova and Russia when seeking relief from violations of the ECHR on the East Bank.¹⁷¹ Citizens residing in Transnistria could bring their cases before a Moldovan court, to be considered by national judicial bodies, but this does not happen often.¹⁷² Citizens know that rulings of the national court would not be enforced in Transnistria.¹⁷³ In fact, citizens would put themselves at greater risk if they decided to go to Chisinau to challenge actions of the authorities in Tiraspol.¹⁷⁴ If people go to Chisinau to complain, “they are treated like they are crazy, and they are told to go back to Transnistria.”¹⁷⁵ The authorities in Chisinau say there is nothing they can do to help them once they return to Tiraspol. In effect, these individuals are doubly persecuted and treated even worse than if they had stayed in Transnistria.¹⁷⁶ Threatening to complain to the ECtHR does not intimidate the separatist regime in Tiraspol; their attitude is, as one individual I interviewed put it, “no one can stop us, no one can prove the allegations. . .officials there act with impunity.”¹⁷⁷

Nevertheless, there are two landmark ECtHR cases involving the East Bank:

A. *Case of Ilascu and Others v. Moldova and Russia* (8 July 2004)¹⁷⁸

Ilie Ilascu, leader of the Moldovan Popular Front opposition party, and others were convicted on a number of terrorist-related offenses in 1993. They were detained for several years and subjected to ill-treatment. The ECtHR found several violations of Article 3 (prohibition of inhuman or degrading treatment) and violations of

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Interview with Ion Manole, *supra* note 149.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See EUR. CT. H.R., REPUBLIC OF MOLDOVA, *supra* note 103.

2014]

MOLDOVA AND TRANSNISTRIA

135

Article 5 (right to liberty and security) by Moldova and Russia.¹⁷⁹ Evidence of these violations was shown through the unlawful detention of the applicants following their arrest in 1992; the trial by the “Supreme Court of the MRT;” “the ill-treatment; inhumane prison conditions and torture inflicted on them during their detention; the death penalty sentence imposed on Mr. Ilascu”; and exposure to mock executions.¹⁸⁰ Related to this case is the *Case of Ivantoc and Others v. Moldova and Russia* (15 November 2011).¹⁸¹ The ECtHR issued its ruling in the *Ilascu* case in 2004, but as of 2006, only two of the applicants had been released. Mr. Ivantoc and Mr. Petrov-Popa were still in custody.¹⁸²

B. Case of Catan and Others v. Moldova and Russia (19 October 2012)¹⁸³

Parents and children in Transnistria complained about the effects of the language policy adopted by the separatist regime in 1992 and 1994 that forbade the use of Latin script in schools. Measures to enforce that policy included the “forcible eviction of pupils and teachers from Romanian-language schools as well as forcing the schools to close down and re-open on different premises”. The ECtHR found that there was a violation of Article 2 of Protocol No. 1 (right to education) on the part of Russia, but not on the part of the Republic of Moldova.¹⁸⁴

The situation in Transnistria is difficult. There is no civil society, no international obligations, and no international monitoring.¹⁸⁵ The *Ivantoc* case is significant, insofar as the ECtHR agreed with Moldova that it does not have effective control over the region. This statement on effective control has a grave impact on the

¹⁷⁹ *Id.*

¹⁸⁰ Wildhaber, *supra* note 71, at 530-531.

¹⁸¹ *See* EUR. CT. H.R., REPUBLIC OF MOLDOVA, *supra* note 103.

¹⁸² Wildhaber, *supra* note 71, at 531.

¹⁸³ *See* EUR. CT. H.R., REPUBLIC OF MOLDOVA, *supra* note 103.

¹⁸⁴ *Id.*

¹⁸⁵ Interview with Ion Manole, *supra* note 149.

human rights situation in Transnistria. The constitutional authorities of the Republic of Moldova have a limited ability to intervene with the separatist regime. Moreover, the Moldovan government is dealing with its own systemic issues of corruption and justice sector reform.¹⁸⁶

Conclusions: The Rule of Law, Judicial Reform, and Protection of Human Rights in Moldova

The grave human rights abuses taking place in Transnistria should be considered in a regional context. Given its economic and political instability, Moldova has been caught between the interests of much more powerful players on the regional scene: the EU, with the attractive possibility of reunification with Romania through European integration; Russia, teasing with cheap prices for gas in exchange for accession to the Eurasian Union; and Turkey, seeking to strengthen its position as a regional leader to influence the course of affairs from South-Eastern Europe to China. Transnistria is a playing card in this complicated geopolitical game. The “losers” of this game are those suffering abuse at the hands of the separatist regime. On the right bank of the Nistru, things seem to be on track for progress with much-needed legal and judicial reforms and a continued path towards European integration. However, setbacks remain, as we have seen with the recent collapse of the Alliance for European Integration and the current situation along the border with Transnistria. Further study of whether the case law of the European Court of Human Rights can positively improve rule of law in the Republic of Moldova is needed along with continued monitoring of the implementation of the Justice Sector Reform Strategy.

¹⁸⁶ See JUSTICE SECTOR REFORM, *supra* note 9.