

EXPERIENCE IN MOLDOVA

1. I do not speak Romanian which is the state language of Moldova, but Russian is universally spoken and understood in Moldova.
2. In February 2004 I undertook a week-long three-person mission to Moldova on behalf of the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ). The mission was led by former ICJ President Claire L'Heureux-Dubé, a former Justice of the Supreme Court of Canada. The Press Release for our visit, dated 24 February 2004 was headed: "Moldova - Judiciary Compromised by Executive Interference and Corruption."¹
3. Our 14,000 word Report, entitled "The Rule of Law in Moldova" was published by the ICJ on 30 November 2004.²
4. The Report was summarised as follows:

Moldova is typical of the "Newly Independent States" which came into being following the collapse of the USSR in December 1991. As well as facing a protracted and painful transition from the Soviet system of state planning to a free market economy, it is seeking to make a decisive break from the judicial systems typical of the Soviet period.

In the former USSR, the judiciary was a low status profession, mainly staffed by women, as opposed to the prosecutor's office, which was high status and mainly staffed by men. Both criminal law and civil law, while based on codes borrowed from the Swiss-German tradition, were seen as having a mainly educational function. All judges were members of the Communist Party, and were required to report regularly to their local Party committee. In addition, if a judge was faced with a politically sensitive case, she could be sure to receive a telephone call from the local Party Secretary - the so-called "telephone justice" - if she did not already implicitly know how to decide. The rule of law was in no sense respected.

In a short space of time, Moldova has attempted to implement the rule of law and create an independent judiciary. As noted below, it has ratified all the core UN human rights treaties. It has acceded to the Council of Europe. The accession process involves a comprehensive examination of existing law and practice to determine compatibility with Council of Europe standards and to recommend change.

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Moldova made substantial progress between accession in 1995 and 2001. That year witnessed an event so far unique to Moldova, of all the Newly Independent States: the return of the Communist Party to power in free and fair elections. Between 2001 and 2003 a number of reputable inter-state and non-governmental organisations raised serious concerns as to what appears to be a systematic undermining of the independence of the judiciary by the new government.

This was the context for the visit of the International Commission of Jurists (ICJ) Centre for the Independence of Judges and Lawyers (CIJL). The findings of the ICJ/CIJL are that beyond allegations of corruption, the Moldovan judiciary has substantially regressed in the last three

¹ http://old.icj.org/news.php3?id_article=3263&lang=en (accessed on 21 November 2011)

² http://old.icj.org/news.php3?id_article=3598&lang=en (accessed on 21 November 2011)

years. Most worrying is a return to a largely compliant judiciary and to "telephone justice". The ICJ/CIJL not only identified and analysed this trend, but found that its source originated in the Supreme Council of Magistracy (SCM) which has become a conduit for the exercise of the President's will.

5. We met the following during our visit:

- Members of the Judiciary: the Chairmen of the Constitutional Court, Supreme Court (and Supreme Council of the Magistracy - they are one and the same person), the Chisinau Court of Appeal, as well as its Vice-Chairman, three women judges from the Association of Judges of Moldova, and two District Court Judges.
- The First Deputy Minister and a number of officials from the Ministry of Justice
- The Deputy General Prosecutor
- The Parliamentary Commissioner on Legal Affairs.
- A number of former judges, including the three members of the Committee for the Independence of the Judiciary.
- The Chairman, Vice-Chairman, and Head of the Censor Committee, of the Bar Association of Moldova.
- The Dean of the Law Faculty at the State University, who is also Chairman of the Association of Lawyers of Moldova.
- The three Parliamentary Advocates (Ombudsmen) at the Human Rights Centre.
- Representatives of the Organization for Security and Cooperation in Europe (OSCE), UNDP and other international organisations.
- Members of an opposition political party, including former judges and parliamentary advocates.
- Representatives of a wide range of non-governmental organisations.

6. We also travelled to Tiraspol, in Transnistria (Prednistrovian Moldovan Republic or PMNR), where we met members of the Constitutional Court, the Prosecutor

- General, Ministry of the Interior, students at the Taras Shevchenko University, and local non-governmental organisations.
7. I travelled again to Chisinau, the capital of Moldova in December 2005, on behalf of ECMI, the European Centre for Minority Issues, which has its headquarters in Flensburg, Germany.
 8. During this visit I met the following organisations and persons:
 - *Association "Promolex"*; Ion Manole, President; Alexandru Postica, Director. They were taking a number of important cases to the ECtHR,
 - *Public Association of Lawyers for Human Rights*; Vitalie Nagacevschi, President; Vladislav Gribincea, Consultant Advocate, who was taking cases to the ECtHR under most articles of the ECHR, including the remaining two *Ilascu* detainees, and the Romanian language schools cases
 - *Helsinki Committee for Human Rights in Moldova*, Stefan Urutu, President. I was already well acquainted with Mr Urutu, who was my colleague in the International Helsinki Federation, and worked with him during the ICJ Mission.
 - *Institute for Public Policy*, Oazu Nantoi, Program Director
 - Department of Information and Analysis, Moldovan Parliament, Stefan Gligor, Senior Officer
 9. In 2006-7 I led a project commissioned by the Council of Europe's Committee for Prevention of Torture (CPT) examining the penitentiary systems of Albania, Georgia and Moldova with reference to the compliance of these states with reference to their obligations under the European Convention for the Prevention of Torture, and in particular their performance in carrying out the recommendations made by the CPT following regular visits. The CPT works in complete confidentiality, and our Report and Recommendations are also confidential. However, I gained a privileged insight into the history and problems of the Moldovan prison system.
 10. In 2007 to 2009 Oxford Project Management (the consultancy branch of Oxford University) contracted me as the legal expert for their Project, funded by the UK Department for International Development and SIDA, "Support to the Delivery of Effective and Sustainable Social Assistance Services".

11. In addition to providing expert analysis and recommendations for Moldovan government legislation and policies, I visited Chisinau for a week in July 2007. I wrote substantial Reports for OPM in 2007 and 2009.
12. I have remained in close touch with "Promolex" and with the Helsinki Committee. Indeed, one of the key members of staff in "Promolex", Alexandru Uzun, was a student of the LLM/MA in Human Rights at Birkbeck College, of which I am the Director.
13. My continuing interest in Moldova and its problems has resulted in the publication in 2014 of my chapter "Transnistria" in Part II, Case Studies from the Commonwealth of Independent States, in Christian Walter, Antje von Ungern-Sternberg, Kavus Abushov (eds) *Self-determination and Secession in International Law – with a particular focus on the Commonwealth of Independent States* (Oxford University Press, 2014) pp. 157-174
14. I also published in 2014 a journal article on the Strasbourg case of *Catan and others v Moldova and Russia*, "Geopolitics and the right to education, and why 'no person' is in fact a child" v.26 n.2 (2014) *Child and Family Law Quarterly* pp.196-215