

Review of the human rights situation in Transdniestria in 2017-2021 with regard to freedom of information, assembly and association, as well as the right to a fair trial.

Apriori Information and Legal Center

**FREEDOM**

**in Isolation**

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1. Preface

*Focusing on freedom of information[[1]](#endnote-2), freedom of association and assembly[[2]](#endnote-3), Apriori Information and Legal Center strives to improve the quality of Transdniestrian civil society. This review is the result of concern about its status and is not part of any project.*

The reason for writing this review was the actions of the Transdniestrian authorities over the past few years (especially in 2020), which resulted in an unprecedented increase in cases of unjustified interference with human rights in the areas of freedom of information, assembly and association. The above freedoms are of critical importance for the viability of civil society, without which a rule-of-law democratic state is impossible[[3]](#endnote-4).

At the same time, violations of rights and freedoms can and do occur in any country in the world, so the question is of particular importance is, whether the state has provided an effective means to protect them? Therefore, by providing legal assistance in most of the above cases, we recorded both the unreasonable infringement of rights and freedoms, and violations while attempting to restore them. The review pays special attention to the Transdniestrian judicial system.

At the end of the preface, it is worth noting that the review contains references, without which the understanding of the text presented may be incorrect.

1. Ad hoc terms

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) is recognized as valid on the territory of Transdniestria in accordance with Article 10 of the TMR Constitution[[4]](#endnote-5), implemented in the Decree of the TMR Supreme Council No. 226, On Attitude of the TMR to International Treaties and Other Instruments on Human Rights[[5]](#endnote-6). Based on the provisions of Article 32 §1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[[6]](#endnote-7), the European Court of Human Rights (hereinafter referred to as the ECtHR/Court) is endowed with the exclusive right to interpret and apply it. Therefore, this analysis is based on the approaches developed by the ECHR, and it is specific due to the uncertainty of the Transdniestrian status.

In relation to Article 1 of the Convention[[7]](#endnote-8), the states that have signed it have the duty to ensure the rights and freedoms of everyone under their jurisdiction. At the same time, the operation of the Convention extends to all territories or any of them responsible for the international relations[[8]](#endnote-9), taking into account the case law of the ECtHR.

In Transdniestrian cases, the ECtHR designated as respondent states the Russian Federation (“[…] due to the full financial and other support of Transdniestria”[[9]](#endnote-10)) and the Republic of Moldova (“[…] the authorities of the Republic of Moldova have jurisdiction [over the territory of Transdniestria] for the purposes of Article 1 of the Convention […][[10]](#endnote-11)).

Objections of the Government of the Russian Federation to complaints with the ECtHR, while recognizing the sovereignty and territorial integrity of the Republic of Moldova[[11]](#endnote-12), points to the need of applying to its courts[[12]](#endnote-13), although the appeal to them is not effective "both in practice and in legislation[[13]](#endnote-14).

Practically, the rules of the Moldovan courts are not enforceable on the territory of Transdniestria. In its objections to complaints to the ECtHR in cases emanating from Transdniestria, the Republic of Moldova asserts that it is possible to enforce rules of Moldovan courts on the territory of Transdniestria under the influence of “diplomatic efforts”[[14]](#endnote-15). However, such “efforts” look extremely doubtful (for example, since July 23, 2020, the decision of the Supreme Court of Justice of the Republic of Moldova, which has entered into force, has not been implemented. According to it, the sentence of O. Khorzhan issued by the TMR Supreme Court was declared illegal[[15]](#endnote-16)).

The procedure remains unclear at the legislative level. In particular, the civil procedural legislation of the Republic of Moldova established the same rules when applying for judicial protection, both for individuals whose cases originate from the territory of the Republic of Moldova controlled by the RM Government, and for people whose cases originate from Transdniestria. This situation reveals an uncertainty that has arisen from discrimination based on the same treatment to individuals who are in a significantly different situation[[16]](#endnote-17).

Thus, neither Russia nor Moldova provided an effective means of protecting human rights and freedoms violated in Transdniestria.

At the same time, Transdniestria has developed own means of protecting rights and freedoms. In addition, the Republic of Moldova has endowed the authorities of Transdniestria with the right to interfere with the rights and freedoms of people staying in the territory controlled by the authorities of Transdniestria. So, on March 11, 1996, M. Snegur and I. Smirnov signed in the presence of the OSCE, Russian and Ukrainian representatives the Protocol on Agreed Issues[[17]](#endnote-18), according to which Transdniestria was endowed with the right to establish law and public order. In particular, according to paragraph 1 of the Protocol “Transdniestria adopts the Basic Law (Constitution)”, according to paragraph 2 - “Transdniestria adopts laws and regulations”.

Despite this, the Republic of Moldova actually ignores the Transdniestrian domestic remedies, in particular, by excluding the Transdniestrian courts from the Law On the Judiciary[[18]](#endnote-19), however, the ECtHR noted: “[…] the obligation to ignore, disregard the actions of existing de facto bodies and institutions are far from absolute nature[[19]](#endnote-20).

However, based on the case law of the European Court of Human Rights[[20]](#endnote-21), we can conclude that, in accordance with Article 35 of the Convention, the remedies available in Transdniestria should be considered “domestic remedies” at the disposal of the respondent States - the Republic of Moldova and Russian Federation — and the issue of their effectiveness should be considered taking into account the specific circumstances specified in the Complaint.

One of the objectives of this review is precisely the analysis of the effectiveness of the remedies[[21]](#endnote-22) available in Transdniestria, in the sense provided for by Article 13 of the Convention[[22]](#endnote-23), [[23]](#endnote-24).

1. Systemic challenges while implementing and protecting the right to freedom of expression, assembly and association.

Apriori Information and Legal Center notes in Transdniestria an unprecedented increase in the persecution of people who have publicly expressed their opinion since 2017.

Formally, the following articles of the TMR Criminal Code (hereinafter referred to as the TMR CC) were used as a legal basis for such prosecution:

— Art. 276: Public Calls for Extremism[[24]](#endnote-25);

— Art. 278: Incitement of National, Racial, Religious Enmity[[25]](#endnote-26);

— Art. 278-3: Denial of Positive Role of Peacekeeping Mission of the Russian Federation in the Transdniestrian Moldavian Republic[[26]](#endnote-27);

— Art. 315: Violence against Official[[27]](#endnote-28);

— Art. 316: Insulting Official[[28]](#endnote-29);

— Art. 316-1: Insulting President of Transdniestrian Moldavian Republic[[29]](#endnote-30);

as well as the following articles of the Administrative Offense Code (hereinafter referred to as the TMR AOC):

— Art. 5.62: Defamation[[30]](#endnote-31);

— 19.3: Failure to comply with the legal requirements of officials, as well as obstructing their activities[[31]](#endnote-32).

**Public Calls for Extremism** and **Incitement of National, Racial, Religious Enmity»** (TMR CC Art. 276 and Art. 278).

First of all, we note that the curtailing freedom of expression and freedom of assembly due to extremist/hateful activities must pursue the legitimate aims provided for in par. 2, Art. 10[[32]](#endnote-33) and 11[[33]](#endnote-34) of the Convention. These goals are enshrined in Art. 18 of the TMR Constitution[[34]](#endnote-35).

The algorithm for analyzing these restrictions, applied by the European Court of Human Rights, is based on the General Policy Recommendation No. 15.

Human Rights is based on «General Policy Recommendation No. 15 on combating hate speech» adopted by the Council of Europe’s European Commission against Racism and Intolerance (ECRI) оn 8 December 2015[[35]](#endnote-36) (see the Explanatory Memorandum to the recommendation): “the assessment as to whether or not there is a risk of the relevant acts occurring requires account to be taken of the specific circumstances in which the hate speech is used. In particular, there will be a need to consider:

(a) the context in which the hate speech concerned is being used (notably whether or not there are already serious tensions within society to which this hate speech is linked);

(b) the capacity of the person using the hate speech to exercise influence over others (such as by virtue of being a political, religious or community leaders);

(c) the nature and strength of the language used (such as whether it is provocative and direct, involves the use of misinformation, negative stereotyping and stigmatisation or otherwise capable of inciting acts of violence, intimidation, hostility or discrimination);

(d) the context of the specific remarks (whether or not they are an isolated occurrence or are reaffirmed several times and whether or not they can be regarded as being counter-balanced either through others made by the same speaker or by someone else, especially in the course of a debate);

(e) the medium used (whether or not it is capable of immediately bringing about a response from the audience such as at a “live” event); and

(f) the nature of the audience (whether or not this had the means and inclination or susceptibility to engage in acts of violence, intimidation, hostility or discrimination).”

We were forced to dwell on how certain statements should be checked for extremism, since the very concept of "extremism" in the Law On Counteracting Extremist Activity is not sufficiently accurate, because, in fact, it does not define the concept of "extremism", identifying it with the concept of "extremist activity", which essence is not contained in the Law, citing only the forms of such activity[[36]](#endnote-37). But even if we start from such an interpretation of the "extremism" concept, legal uncertainty is caused by lacking direct ties between several points defining this concept[[37]](#endnote-38), and the violence: "The Venice Commission is of the opinion that in order to consider "incitement of national, racial, religious enmity" the "extremist activity", the definition must explicitly mention the element of violence"[[38]](#endnote-39), and this requirement applies to all definitions.

Thus, the rules on extremism do not meet the requirements for the “quality of law”[[39]](#endnote-40). The Strategy for Combating Extremism in the Transdniestrian Moldavian Republic of March 2020 did not clarify the understanding of extremist actions either[[40]](#endnote-41).

**Denial of Positive Role of Peacekeeping Mission of the Russian Federation in the Transdniestrian Moldavian Republic** (TMR CC Art. 278-3).

We note that Article 278-3 of the TMR Criminal Code does not allow a person to foresee the legal consequences, since the Transdniestrian legislation contains no provisions that disclose the content of the "clear disrespect", "distortion of the positive role of the peacekeeping mission" and "diminution of merit" terms, covering a fairly wide scope of its application, which reduces the clarity and predictability of the specified criminal law provisions.

The European Court of Human Rights has repeatedly stated that “the law must be accessible to the persons concerned and worded with sufficient precision to enable them, if necessary, using appropriate advice, to foresee the consequences of any action reasonably and as it stands"39.

In addition, this provision limits the “search for historical truth”, if no assessment of this role by international organizations is available (UN, OSCE, Council of Europe, etc.). The discussion of historical memory issues is directly defined by the ECHR as part of the freedom of expression[[41]](#endnote-42), and any restrictions on this freedom are possible only under the conditions provided for in par. 2, Art. 10 of the Convention.

At the same time, the compatibility of this criminal law provision with Resolution 3314 (XXIX) of the UN General Assembly of December 14, 1974 remains unresolved[[42]](#endnote-43).

**Insulting Official and Insulting President of Transdniestrian Moldavian Republic** (TMR CC Art. 316 and Art. 316-1).

Despite the fact that “the vast majority of modern democracies excluded the concept of insulting the head of state from the criminal law”[[43]](#endnote-44), Transdniestrian legislation is not only actively applied, but also replenished with similar provisions (Art. 316-1 entered into force in March 2019[[44]](#endnote-45)).

At the same time, the concept of “insult” is quite widely spelled out in the Transdniestrian legislation[[45]](#endnote-46). For example, there is no indication of the “deliberate nature” of the act, and the vague term “norms of morality” and “indecent […] form” are used. This does not meet the requirements for the “quality of law”, and, as a result, allows this rule to be applied not only to insults, but also, as will be shown below, to satirical statements and rather harsh criticism, which is contrary to international standards, since political figures should be allowed even more criticism than private individuals[[46]](#endnote-47).

At the same time, it is worth noting that the Transdniestrian law enforcement agencies widely use the following provisions of the Administrative Offense Code:

**Defamation** (TMR AOC Art. 5.62) imposes substantial fines as a sanction (up to €460).

**Failure to comply with the legal requirements of officials, as well as obstructing their activities** (TMR AOC Art. 19.3) implies administrative arrest for up to 15 days as a maximum sanction.

In addition, we have identified systemic problems in the legal regulation of freedom of assembly and freedom of association.

**The Law On Assemblies, Rallies, Street Processions and Picketing**, subpar. “a”, par. 4, Article 5[[47]](#endnote-48) provides for notification of the authorities about the ongoing mass event, and not for its authorization (permission) by the authorities.

The European Court of Human Rights has repeatedly stated that “the purpose of the notification procedure is to enable the authorities to take reasonable and appropriate measures ensuring the smooth conduct of any assembly. Such provisions should not constitute a hidden obstacle to the freedom of peaceful assembly protected by the Convention”[[48]](#endnote-49).

In particular, participants cannot be punished for participating in a spontaneous rally, since “the freedom to take part in a peaceful assembly is of such importance that a person is not subject to punishment (even the most minor disciplinary sanction) for participation in a demonstration that has not been prohibited until as long as the person does not personally commit any unlawful acts”[[49]](#endnote-50).

The European Court of Human Rights recognized this approach as correct even “if there is a real risk of public disorder”[[50]](#endnote-51).

**The Non-Commercial Organizations Law** dated March 19, 2018 introduced several discriminatory provisions and vague definitions related to the concept of “political activity”.

Thus, par. 7, Art. 2 of the NCO Law[[51]](#endnote-52) allows discrimination of:

* People joint at NCO, compared with individuals who can engage in activities that are prohibited to people associations under the threat of recognizing it as “political activity”;
* NCOs with foreign funding versus NCOs of similar activities but without foreign funding.

Such provisions are not only discriminatory, but also directly contradict the Guiding Principles on Freedom of Association adopted by the OSCE Office for Democratic Institutions and Human Rights[[52]](#endnote-53). At the same time, the ECHR decisions pointed to violation of human rights because of using the concept of “political activity” in national legislation[[53]](#endnote-54).

Some provisions of the NCO Law do not meet the criterion of “quality of law”, since, despite the extensive wording of the concept of “political activity” through “spheres” and “forms” (Clause 7, Article 2 of the Law), their wording is not sufficiently accurate, i.e. they contain terms that do not have an unambiguous interpretation: “state building”, “protection of the TMR constitutional framework”, “protection of sovereignty and ensuring the territorial integrity of the TMR”, “ensuring the rule of law and order, state and public security, national defense, foreign policy” and “development of social and political views and beliefs”.

1. Brief description of recent cases evidencing systemic challenges while implementing and protecting fundamental rights and freedoms of Transdniestrian residents

**Nikolay Malyshev**

On April 22, 2019, the chairman of the resident committee, N. Malyshev, came to the Administration of the TMR Government with the intention of filing a complaint about improper maintenance of the house. An official refused to accept the application. While filming the refusal, N. Malyshev was detained by state security officers and taken to the Tiraspol Police Department and, after giving explanations, he was released without presenting any violation and without drawing up a report. 2.5 months later, on July 4, 2019, the Acting Tiraspol Prosecutor T. Badenko issued a Resolution[[54]](#endnote-55) on initiating proceedings upon an administrative offense: failure to comply with the requirements of state security officers to stop video filming (par. 1, Art. 19.3 of the TMR AOC).

At the same time, refusal to accept applications is prohibited by par. 1, Art. 7-2 of the Law On Applications of Individuals, Legal Entities, and Public Associations[[55]](#endnote-56). Accordingly, the interference with the right to freely receive information was not “provided for by law” [[56]](#endnote-57), and therefore Article 10 of the Convention was violated in relation to N. Malyshev.

The above events led to the four lawsuits listed below.

**With regard to administrative offense for failure to follow the requirements of the State Guard Service, initiated by the Prosecutor's Office in relation to N. Malyshev.**

Judge S. Karletov refused to invite all the witnesses from Malyshev's side (ten), while all the witnesses (three) were invited from the side of the Prosecutor's Office. Thus, N. Malyshev was deprived of a reasonable opportunity “to present his case in such conditions that do not put him in a significantly less favorable position in comparison with the other side” [[57]](#endnote-58), which violated the principle of equality of parties, which is an element of a fair trial.

Judge S. Karletov, on own initiative, invited the witnesses of the "charge party" and allowed these witnesses not to answer N. Malyshev's questions, which indicates the lack of objective impartiality of the court[[58]](#endnote-59).

Employees of the State Guard Service of the TMR Ministry of Internal Affairs did not provide the judge with evidence of legal demands to stop video filming, and judge S. Karletov avoided assessing these demands.

While N. Malyshev was in the hospital, judge S. Karletov, in violation of the law, finally considered the case in the absence of N. Malyshev[[59]](#endnote-60), which “blatantly denied justice”[[60]](#endnote-61).

N. Malyshev was subjected to the maximum fine provided for in Article 19.3 of the TMR AOC (about €90).

**With regard to the case initiated by N. Malyshev against an employee of the TMR Government Office due to the unlawful actions when refusing to accept an appeal.**

Judge E. Kachurovskaya evaded consideration of N. Malyshev's key argument [[61]](#endnote-62) about the inadmissibility of refusing to accept citizens' applications, which is established by law.

Judge E. Kachurovskaya did not satisfy the requirement of N. Malyshev to recognize as unlawful the refusal of an employee of the Government Office to accept the appeal, referring to the guilt of N. Malyshev in disobeying the requirements of the employees of the State Guard Service, which at that time had not been established by a court decision that had entered into legal force, than the presumption of innocence was violated[[62]](#endnote-63).

**With regard to the case initiated by N. Malyshev against an officer of the Tiraspol Department of Internal Affairs due to the inaction (failure to draw up a detention report).**

Judge S. Chuvakina involved the Prosecutor in the case, which strengthened the side of the Tiraspol Department of Internal Affairs and violated the “fair balance” by such involvement, because there were no circumstances justifying such involvement[[63]](#endnote-64). At the same time, it is important to note that the position of the Prosecutor's Office was reflected in the court's decision: the court referred to it in support of its arguments.

**With regard to the case initiated by N. Malyshev against employees of the State Guard Service due to unlawful demands to delete the video.**

Judge N. Likhoded unreasonably returned the application of N. Malyshev to recognize as illegal the demand of the employees of the State Guard Service of the TMR Ministry of Internal Affairs (to delete the video recording): the judge pointed out the absence in the application of information that was actually there (the name of the defendants and the video recording with the requirement of the State Guard Service employees to delete the video recording) , thereby limiting N. Malyshev's access to justice.

Thus, the proceedings in those cases did not meet the standards of the right to a fair trial guaranteed by Article 6 of the Convention[[64]](#endnote-65).

**Larisa Kalik**

In December 2019, twenty-year-old L. Kalik from Tiraspol presented[[65]](#endnote-66) and published her non-fiction book “Year of Youth”. It contained 12 stories of Larisa's peers who served in the Transdniestrian army. Due to the publication, on March 3, 2020, the TMR Ministry of State Security initiated[[66]](#endnote-67) a criminal case against L. Kalik on extremist grounds (Clause 2, Article 276 of the TMR CC).

This criminal case is an interference by the authorities with L. Kalik's right to freely express her opinion, and therefore its publication falls under the protection of Article 10 of the Convention. This interference was not “foreseen by law”, since the analysis of the publication, based on the approaches of the ECHR, as required by the TMR law[[67]](#endnote-68), does not allow it to be classified as extremist (see analysis of “hate speech”). In addition, Article 276 of the TMR CC, as shown above, does not meet the requirements for the “quality of law”. As a result, L. Kalik's right to freedom of expression, guaranteed by Article 10 of the Convention, was violated.

In addition, the executive authorities refused[[68]](#endnote-69) to provide L. Kalik with a decision to initiate a criminal case, thereby violating the right to know the essence of the charge, guaranteed by par. 3 (a) of Article 6 of the Convention. Repeated appeals to the TMR President V. Krasnoselsky did not resolve this problem.

L. Kalik was forced to leave Transdniestria.

**Roman Yamboglo**

On January 25, 2020, during a stand-up performance[[69]](#endnote-70) at the Civic Club No. 19, 1st year student of Transdniestrian state University R. Yamboglo joked about the attitude of the Minister of Internal Affairs of the PMR R. Mova to the problem of corruption. On February 13, 2020, a criminal case[[70]](#endnote-71) was initiated against R. Yamboglo by E. Kovalenko, the detective of the Internal Security Service of the TMR Ministry of Internal Affairs regarding insulting an official (Art. 316 of the TMR CC) and regarding murder threat (Art. 116 of the TMR CC[[71]](#footnote-1)[[72]](#endnote-72)).

**Insults**. First of all, we note that according to Article 166 of the TMR Civil Code[[73]](#endnote-73), honor and dignity relate to personal non-property rights and, accordingly, only a particular person who feels offended can claim that they have been diminished. Despite this, the notice of criminal case initiation does not contain information about such a statement.

As for the essence the issue, when analyzing offensive and defamatory statements, it is necessary to take into account 3 components: content, nature and context[[74]](#endnote-74). According to its content, R. Yamboglo's speech dealt with a socially significant topic — corruption, and not with privacy issues. Despite the fact that, according to the criminal procedure order, R. Yamboglo's speech contains “offensive language62 and phraseology, negative information, an assessment in an indecent form”, the context – a humorous show – does not allow to literally take his words about R. Mova. But even if taken literally, then, as a politician, R. Mova should have shown greater tolerance for criticism[[75]](#endnote-75), especially the satire[[76]](#endnote-76). Therefore, the initiation of a criminal case to protect the public authority of R. Mova, was not proportionate to the goal of “protecting the reputation of other persons”, specified in par. 2 of Article 10 of the Convention. The lack of such proportionality is qualified by the ECtHR as not being “necessary in a democratic society” [[77]](#endnote-77) and violating Article 10 of the Convention.

**Murder Threat**. At a humorous show, R. Yamboglo said, “I want to tell Ruslan Petrovich to be attentive while saying some things, because there is a possibility to repeat Bezbabchenko’s one-way trip to Odessa,” which can in no way meet the reality of such a threat, at least because it was expressed as part of a humorous show. Consequently, the criminal prosecution in connection with the “threat” did not have sufficient justification.

However, we note several procedural violations. First of all, the lack of proper motivation in the decisions to initiate criminal cases, namely, they do not contain specific offensive and threatening language, a description of their nature, the content of the speech and the context. In addition, the criminal investigation of R. Yamboglo was not independent, since the police major E. Kovalenko, who was investigating this criminal case, officially depended on the Minister of Internal Affairs R. Mova.

The trial ended with the recognition of R. Yamboglo guilty of insulting an official and a fine was awarded to him. Consequently, the courts ignored the aforementioned dependence of the investigation on the injured Minister of the Interior R. Mova, otherwise, the criminal charge should have been dropped. Accordingly, R. Yamboglo's right to a fair trial, guaranteed by Article 6 par. 1 of the Convention, has been violated.

**Mikhail Ermuraki**

In September 2019, M. Ermuraki came to an appointment with the director of School No. 9, where he had a conversation in the presence of a secretary and two teachers. At the end of the conversation, M. Ermuraki handed over to the director the article he had written earlier “to read it and assist in its publication in the media” [[78]](#endnote-78). The director kept an audio recording of what was happening and reported the conversation to the Ministry of State Security.

The forensic-linguistic examination of January 20, 2020 found in the text and statements "signs of insulting a group of persons united based on nationality of belonging to the citizenship of Transdniestria, indicating inferiority on the basis of their national statehood - citizens of the TMR.

In addition, as follows from the Conclusion, during his conversation with the school principal, M. Ermuraki “began to express insulting words to the TMR President, in particular, such as “mercenary”, “puppet”, as well as other deliberately false information regarding his activities".

According to the investigation, both the text and the statements of M. Yemuraki “expressed a clear disrespect for the peacekeeping mission of the Russian Federation in the TMR”, “denied the positive role of the peacekeeping mission of the Russian Federation in maintaining peace, security and stability in the TMR”, voiced “calls that distort positive role of the peacekeeping mission” and called “the presence of a peacekeeping contingent on the territory of Transdniestria as occupation, and persons, including military personnel, related to the peacekeeping mission, as occupiers.”

On March 16, 2020, 3 criminal cases were initiated against M. Ermuraki[[79]](#endnote-79):

* insulting statements against a large circle of people on the basis of belonging to the citizenship of Transdniestria, degrading the dignity of persons of various nationalities […]" (Clause 1, Article 278 of the TMR CC);
* obvious exceptional disrespect for the peacekeeping mission of the Russian Federation in Transdniestria and for calling “the presence of a peacekeeping contingent on the territory of Transdniestria as occupation, and persons, including military personnel, related to the peacekeeping mission, as occupiers” (Article 278-3 of the TMR CC);
* publicly insulting an official - the TMR President V. Krasnoselsky (Article 316-1 of the TMR CC). The notification does not contain information about a statement by the specified person, despite the fact that honor and dignity relate to personal non-property rights and, accordingly, only a particular person who feels offended can claim it).

The above suspicions in the commission of these crimes, although based on the conclusion of a forensic linguistic examination, nevertheless, are arbitrary in nature, because they do not comply with the procedure for analyzing “hate speech” and insults73 adopted by the ECHR. In addition, criminal prosecution is carried out under Articles 278-3 and 316-1 of the TMR CC, which do not meet the requirements of the “quality of law”.

Under such circumstances, the interference of the Transdniestrian authorities with M. Ermuraki's right to freedom of expression is not “provided for by law”, and therefore Article 10 of the Convention is violated.

At the time of this publication, criminal cases against M. Ermuraki are being considered in the Tiraspol City Court. It is worth noting that the Prosecutor's Office requested during one meeting an additional linguistic examination, which was subsequently carried out by the Department of Forensic Examination of the TMR Ministry of Internal Affairs.

**Alexander Samoniy**

On June 2, 2020, a criminal case was initiated[[80]](#endnote-80) against the Tiraspol City Council Member A. Samoniy according to Part 2 of Article 276 of the TMR CC (calls for extremist activities) and according to Article 316-1 of the TMR CC (insulting the TMR President) due to his alleged publications on Facebook .

According to Articles 90 and 95 of the TMR Criminal Procedure Code, the Order must contain "grounds for initiating proceedings"[[81]](#endnote-81). At the same time, "the basis for initiating a criminal case are sufficient data indicating the signs of a crime"[[82]](#endnote-82).

Contrary to the above provisions, the criminal case order does not contain the words of A. Samoniy, for which he is being prosecuted, and which, as stated in the order, “undermine the security of the Republic, publicly insult the ruling power and the TMR President, are aimed at seizing or appropriating power, obstruction of the legitimate activities of state authorities, contain propaganda of ideological, political, social hostility and intolerance” 62.

At the same time, the Prosecutor's Office does not provide any analysis of statements confirming the signs of a crime, for example, the internationally recognized analysis of “hate speech”, replacing it with the research of a specialist from the Transdniestrian State University.

No signs of an alleged crime allows us to speak about the absence in the order of the grounds for initiating a criminal case, which violates the right of A. Samony “to be immediately and in detail notified in a language that he understands about the nature and basis of the charge against him[[83]](#endnote-83)” (par. 3 (a), Article 6 of the Convention).

Thus, in the absence of signs of any crime committed by A. Samoniy, we have no choice but to talk about the persecution of A. Samoniy for his public position, which violates the right to freedom of expression guaranteed by Article 10 of the Convention.

A. Samoniy was forced to leave Transdniestria.

**Gennady Chorba**

On July 2, 2020, G. Chorba took part in a spontaneous meeting[[84]](#endnote-84) on the bridge over the Dniester river in the city of Rybnitsa as a result of the ban[[85]](#endnote-85) to cross the bridge for Rybnitsa residents working on the right bank. In fact, G. Chorba acted as a representative of people who spontaneously gathered on the bridge and conducted a dialogue on their behalf with the TMR Minister of Internal Affairs R. Mova. The next day, the Rybnitsa District Court ruled out[[86]](#endnote-86) the administrative arrest of G. Chorba for 10 days due to holding an "unauthorized public event (rally)"[[87]](#endnote-87).

The interference with the right to freedom of assembly was expressed in the subsequent arrest[[88]](#endnote-88) of G. Chorba. It was not “provided by law”, since the Law On Meetings, Rallies, Demonstrations, Street Processions and Picketing does not require authorization/approval of meetings, as indicated in the judge’s decision, but only notification about them. At the same time, it is obvious that the requirement to “notify” about holding, in fact, a spontaneous assembly goes beyond reasonable logic. In any case, failure to notify the authorities that an assembly is taking place should not constitute a hidden obstacle to freedom of peaceful assembly.[[89]](#endnote-89).

Judge T. Kizyma imputed G. Chorba that “he [G. Chorba] knew that this event was carried out without notification and agreement” and “has caused interference for vehicles”; “took an active part in holding this rally”; “called on citizens not to leave the place, but to gather”; "expressed claims and demands to authorities”. The court also came to the conclusion “about the leading role” of G. Chorba. However, none of these actions are considered offenses and have no legal consequences under the Law On Assemblies.

At the same time, the judge, concluding that “the actions of Chorba G.P. are subject to legal qualification under paragraph 3 of Article 20.2 of the TMR AOC, that is, a violation by a participant in a public event of the established procedure for holding a rally”, did not indicate the specific provision of the Law On Assemblies that was violated. Judge T. Kizyma took into consideration only “the fact of his [G. Chorba] participation in any form in such [“unauthorized”] event.”

Thus, by not pointing out the specific provision of the law violated by G. Chorba, Judge T. Kyzyma clearly violated the right to a reasoned decision, which is one of the components of the right to a fair trial, guaranteed by par. 1 of Article 6 of the Convention.

It is also important to note that G. Chorba did not have a defense counsel at the hearing, although this right is provided for by par. 3 (c) of Article 6 of the Convention.

On July 11, 2020, it became known[[90]](#endnote-90) that a criminal case was opened against G. Chorba for “publications containing extremist calls” and “calls for extremist activity” (Part 2, Article 276 of the TMR CC).

At the time of this publication, G. Chorba is in custody, and his criminal case is classified for unknown reasons.

**Irina Vasilakiy**

On November 8, 2019, I. Vasilakiy posted a YouTube video “Where did 50 cars of foreign currency come to the TMR from?”, where she claimed that in the 90s I. Nebeygolova killed two Transdniestrian PM. I. Nebeygolova appealed to the law enforcement agencies with a claim against Vasilakiy for liability (slander).

On April 7, 2020, I. Vasilakiy was taken by deception of the district policeman from home to the Oktyabrsky District Department of Internal Affairs in Tiraspol to draw up an administrative offense report. It was unlawful, since there were no obstacles to drawing up this report on the spot, as provided by law[[91]](#endnote-91). At the same time, the detention report was not drawn up, and an entry about the detention was not made in the administrative offense report[[92]](#endnote-92).

Actually, I. Vasilakiy was in the grip of police officers from about 11:00 AM to 03:30 PM, but the detention report was also not drawn up, as required by law[[93]](#endnote-93). Decisions of the European Court of Human Rights have repeatedly emphasized[[94]](#endnote-94) that no official document with information about the date, time and place of detention, as well as the name of the detaining official, should be considered as the most serious omission, incompatible with the purpose of Article 5 of the Convention[[95]](#endnote-95). In addition, such actions of police officers limited the right of I. Vasilakiy to freedom of movement, guaranteed by par. 1 of Article 2 of Protocol No. 4 to the Convention[[96]](#endnote-96).

During the actual detention, the police officers did not let I. Vasilakiy to call her relatives or a lawyer, thereby violating par. 3 (c), Article 6 of the Convention, which guarantees the right to a lawyer.

In addition, the police officers handcuffed I. Vasilakiy in such a way that the wrists of both her hands were pressed hard enough to equate this to inhuman treatment[[97]](#endnote-97) that lasted more than two hours. In addition, police officers treated I. Vasilakiy “toughly” and “inhumanly” (struck her legs[[98]](#endnote-98)), and also humiliated her dignity by illegal filming (in particular, the crying of the victim) on the personal smartphone. These actions of the police officers violated the right of I. Vasilakiy not to be subjected to torture, inhuman or degrading treatment (Article 3 of the Convention[[99]](#endnote-99)).

Later, on the same day, April 7, 2020, I. Vasilakiy was brought to court, but the hearing did not take place, because the judge did not issue a ruling on the bail on attachment[[100]](#endnote-100). Only 3 days later, on April 10, the trial took place, and the judge of the Slobodzeya District Court V. Vanyushin brought I. Vasilakiy to administrative liability in the form of a fine under Article 5.62 of the TMR AOC (Slander).

The police officers' failure to comply with the “legal order” of imposing administrative liability and bringing to court violated the presumption of innocence in relation to I. Vasilakiy (par. 2, Article 6 of the Convention).

It should be noted that the officers of the Tiraspol Internal Affairs Department did not provide at the court hearing evidence that I. Nebeygolova had no criminal record, which means that the information about I. Nebeygolov presented by I. Vasilakiy in the video was not proven to be fake. Thus, the interference with the right of I. Vasilakiy to freely express her opinion was based on an unfair trial, and constitutes an interference that was not “based on the law”, as required by par. 2 of Article 10 of the Convention[[101]](#endnote-101).

In addition, during the trial, Judge V. Vanyushin refused to consider the above violations of police officers when I. Vasilakiy was imposed of administrative sanction. After the cancelation of Vanyushin's decision in a higher court, the case was reviewed by Judge V. Guska, who also did not consider violations of the procedure for imposing of administrative sanction.

At the same time, I. Vasilakiy applied to the Tiraspol City Court with a claim against the illegal actions of the police officers that took place on April 7, 2020. Judge S. Chuvakina formally complied with the law and refused to consider the complaint, indicating that the illegal actions of the police officers should were considered in the relevant case (presided over by judges V. Vanyushin and V. Guska).

Since we cannot admit that judges V. Vanyushin and V. Guska evaded consideration of the legality of imposing I. Vasilakiy of sanction due to incompetence[[102]](#endnote-102), we can only talk about their bias, which violates “the right […] to hearing the case […] by an impartial tribunal”, guaranteed by Article 6 par. 1 of the Convention.

After that, the judge of the TMR Supreme Court A. Baranova returned in her decision the cassation appeal against the decision of judge V. Guska without consideration, pointing to the allegedly missed deadline for filing. However, the return of a cassation appeal in any form is not provided for by law[[103]](#endnote-103). At the same time, the Judge of the TMR Supreme Court O. Filonis left the petition filed by I. Vasilakiy for the restoration of the term for filing a cassation appeal without consideration (without issuing an appropriate ruling).

These actions by the judges of the TMR Supreme Court A. Baranova and O. Filonis did not pursue the legitimate aim of the proper administration of justice and constituted a “blatant denial of justice”, which violated the guarantees of a fair trial in terms of access to justice par. 1, Article 6 of the Convention)[[104]](#endnote-104).

Later, I. Vasilakiy applied to the TMR Prosecutor's Office with a claim about the illegal actions of police officers, which was transferred to the TMR Investigative Committee. The investigating authorities recognized the fact of causing physical harm, but did not assess the proportionality of the use of special means (handcuffs) in relation to the victim, and the observance by the police officers of the procedure for imposing I. Vasilakiy of administrative sanction, as having no evidence of a law violation in the actions of the police officers.

Thus, the investigating agency did not conduct a “thorough and effective official investigation” “capable of leading to the identification of the perpetrators and their punishment” [[105]](#endnote-105), and the Prosecutor’s Office did not exercise its function of supervising the legality of the actions of the police officers. As a result, the provisions of Article 3 of the Convention on the Prohibition of Torture and Inhuman Treatment were violated against I. Vasilakiy.

The decision of the Investigative Committee to refuse to initiate a criminal case was appealed in court. Judge A. Kalko dismissed the complaint, not evaluating the "thoroughness" and "efficiency" of the investigation.

On April 13, 2020, I. Vasilakiy posted a YouTube video “They want to kill me. A big interview”, where she described the actions of the police officers guided by Police Major I. Karamanov, and considered them to have exceeded their powers during the secret detention and delivery of her to the Slobodzeya Court on April 7, 2020. According to the statement of I. Karamanov, who considered himself slandered by this video, a second case for administrative offense was initiated against I. Vasilakiy according to par. 1, Article 5.62 (Slander).

Judge T. Nagornyak delayed the consideration of an administrative offense report and eventually terminated the proceedings due to the expired term of justice procedure. So, neither I. Vasilakiy was brought to justice, nor the control exercised by the courts over the actions of police officers in case of complaints about violations of the procedure for imposing of administrative sanction was carried out. Such actions of the judge, similar to those in the previous proceedings, also showed bias, which, again, violated the right to a trial by an impartial tribunal, guaranteed by Article 6 par. 1 of the Convention.

After I. Vasilakiy appealed against the actions of the police officers to the Tiraspol City Court, a criminal case was initiated against her for using violence against a representative of the authorities (Article 315 of the Criminal Code of the Transdniestrian Moldavian Republic), a police officer who carried out the above unofficial detention. Judge U. Kapralova refused to consider the complaints of I. Vasilakiy about violations by police officers of the procedure for imposing of administrative sanction, which showed her bias, which violated the right to trial by an impartial court, guaranteed by par. 1, Article 6 of the Convention.

When the TMR Supreme Court considered the complaint against the decision of the primary court, S. Popovsky was not allowed to participate in the case either as a representative of I. Vasilakiy, although there was a power of attorney to represent her interests, or as a public defender, although I. Vasilakiy filed a motion. It violated the applicant's right to a fair trial, guaranteed by Article 6 par. 3 (c) of the Convention, to the extent that it guarantees the right “to defend oneself […] through legal counsel upon one's own choice”.

The criminal case against I. Vasilakiy has not been terminated. She was forced to leave Transdniestria.

You can find a more detailed description of the case with supporting documents on apriori-center.org in the material “Statement on Violation of Rights and Freedoms of Irina Vasilakiy”[[106]](#endnote-106).

**Pavel Dogar**

On November 26, 2020, the home of P. Dogar, a Bendery resident, was searched, and a computer, tablet and smartphone were seized. According to P. Dogar, he was not handed the search (seizure) report. During the search, the investigator informed P. Dogar that a criminal case had been initiated against him for public statement on Facebook.

P. Dogar applied to the authorities with a request to issue him a search (seizure) report, which was refused: the TMR Military Prosecutor's Office refused to issue these documents, referring to the fact that they had been issued to him earlier. In addition, P. Dogar turned to the Chairman of the TMR Investigative Committee V. Brynzar, who, leaving the appeal unanswered, actually refused to provide any documents related to the initiation of a criminal case.

Meanwhile, on the website of the TMR Investigative Committee, an entry was made on the investigation completion as to the criminal case[[107]](#endnote-107) “against a resident of Bendery”. According to the press release, “the man is accused of committing crimes under part 2, Article 276 of the TMR CC (public calls for extremist activities via the Internet), part 1, Article 278-3 of the TMR CC (denial of a positive role of peacekeeping mission of the Russian Federation in the Transdniestrian Moldavian Republic). “The investigation has collected a sufficient evidence, the indictment has been approved by the Prosecutor, the criminal [case] has been sent to court.”

The Tiraspol City Court, referring to the secret matter of the case, refused to satisfy the complaint of P. Dogar against the actions of the senior investigator of the TMR Investigative Committee A. Panin in connection with the failure to hand over the search (seizure) report, as well as the decision to initiate a criminal case. Thus, P. Dogar became no guarantee of knowing the violation imputed to him under Article 6, par. 3 (a) of the Convention and the guarantee of a public hearing guaranteed by Article 6, par. 1 of the Convention.

P. Dogar was forced to leave Transdniestria.

**Nadezhda Bondarenko**

On September 17, 2020, the Deputy Head of the Tiraspol Department of Internal Affairs, Police Captain L. Bondarenko issued in relation to N. Bondarenko a “notice of suspicion of committing a crime” [[108]](#endnote-108), which concerned the publication in the newspaper “Voice of the People” edited by N. Bondarenko of the article titled “Appeal of Transdniestrian Opposition Leader, Political Prisoner Oleg Khorzhan to the People of Transdniestria” (Article 316 and Article 316-1 of the TMR CC). The suspicion is based on a linguistic study of the text by specialists from the TransdniestrianState University, according to which “found information humiliates the honor and infringes on the dignity of the head of state V. Krasnoselsky as a representative of the authorities, undermining his reputation in the public eyes”, as well as “humiliating the honor and infringing on the dignity of other officials, namely the Chairman of the TMR Investigative Committee V. Brynzar, TMR Minister of Internal Affairs R. Mova, TMR Prosecutor A. Guretsky, Judges of the TMR Supreme Court V. Cherny, V. Zguryan, I. Bogdanov, Chairman of the TMR Supreme Court A. Penkovsky, Vice-Speaker of the TMR Supreme Council G. Antyufeyeva".

The notification of the initiation of a criminal case does not contain information about such statements, despite the fact that honor and dignity relate to personal non-property rights and, accordingly, only a particular person who feels offended can claim that they have been diminished. At the same time, there are no specific statements that are expressed in an indecent form or contradict the norms of morality, which is contrary to the standards of analysis of the European Court of Human Rights73.

In addition, procedure of the criminal prosecution of N. Bondarenko is not independent, since the Deputy Head of the Tiraspol Department of Internal Affairs, Police Captain L. Bondarenko, is a subordinate of the “insulted” Minister of Internal Affairs R. Mova, and is indirectly subordinate to the “insulted” person - the TMR President V. Krasnoselsky.

The right to a fair and independent hearing guaranteed by Article 6, par. 1 of the Convention is thus violated.

In addition, in a similar case, the European Court of Human Rights condemned such actions by the authorities, stating that “such a sanction may well deter journalists from participating in public discussion of issues affecting the life of society. In addition, it can prevent the media from fulfilling their role as a provider of information and a public observer.” [[109]](#endnote-109) Thus, N. Bondarenko's right to freedom of expression, guaranteed by Article 10 of the Convention, has been violated.

The investigation into the case is ongoing.

**Solo Picketing**

On February 8, 2019, **Dmitry Belousov** went to a solo picket against the legalization of aviary hunting in Russia in front of the Russian Consulate in Tiraspol. The picket was stopped by police officers. D. Belousov was unlawfully brought to the police with no reasons for his detention.

D. Belousov's complaint about the unlawful actions of police officers was satisfied by the Tiraspol City Court.

However, during the second solo picket on February 18, 2019, the police officer strongly recommended the picket be stopped, since this action would be interpreted as a call for a rally.

You can find information about this picket at apriori-center.org in the Our Doors Are Always Open for You article: Belousov was detained while picketing the consulate of the Russian Federation[[110]](#endnote-110).

On August 7, 2020, **Stepan Popovsky** went out to a solo picket[[111]](#endnote-111) in front of the TMR Supreme Council holding posters with wordings: “Freedom for Chorba! Mova's Resignation!" and “Hands Off Our Rights and Freedoms!”

Police officers without any "legal grounds" stopped the picket and took S. Popovsky to the police department of Tiraspol on a fictitious basis: "to conduct a trial on a solitary picket."

Termination of the picket was not “provided for by law”, therefore the forced termination of the picket violated S. Popovsky's right to freedom of expression and freedom of assembly, guaranteed by Articles 10 and 11 of the Convention.

In August 2020, S. Popovsky filed an application with the Tiraspol City Court for misconduct by police officers, which, at the time of publication of this review, has not yet been considered, although the law limited the consideration of such cases to 10 days[[112]](#endnote-112). Such a long consideration of the case violates the “right to a fair [...] hearing within a reasonable time”, guaranteed by Article 6 § 1 of the Convention.

At the same time, the Transdniestrian legislation lacks a legal basis for appealing against the violation of reasonable time limits for the proceedings.

**Giska Village Party**

On September 13, 2020, an abandoned farm near the Giska village hosted a group of young people who were having a private party[[113]](#endnote-113). The data of Bendery Internal Affairs Directorate regarding the number of participants differ significantly: 38, 42, or 47[[114]](#endnote-114). At about 00:30, according to the complainants, 60-80 armored servicemen of Special Forces of the TMR Ministry of Internal Affairs and the TMR Ministry of State Security stopped the party and took all the participants to the Bendery Police Department. Until 5:30-8:30 AM, officers of the Bendery Police Department, initially referring to the violation of part “a” of subpar. 3,par. 7 of the Government Decree No. 209 dated June 15, 2020[[115]](#endnote-115), drew up administrative offence reports against party participants. The reports were drawn up by officers: Police Major I. Plakushchenko, Police Captain P. Kirezy, Police Captain A. Diaferov, Police Lieutenant Junior E. Shpak, Police Lieutenant Senior S. Lnenichka, Police Lieutenant A. Reshetnyak, Sergeant A. Samoilovsky (one report contains no name of the person who compiled it).

Subsequently, in the courts, the police officers began to ground their actions on the provisions of subpar. "c", par. 2[[116]](#endnote-116) of the above Decree, which prohibits meetings of more than 40 people.

It is worth emphasizing that the defense of the party participants requested that all administrative offence reports to be submitted to the court in order to eliminate doubts about the number of participants. However, the court unreasonably dismissed this petition, thus giving without reliable evidence preference to the data on 42 detainees, instead of, for example, 38 detainees. This “objectively testifies to the lack of the court impartiality”, since this preference gave the party the status of an administrative offense58.

Since the freedom of assembly can be limited only in a state of emergency or martial law[[117]](#endnote-117) and only through the Decree of the TMR President[[118]](#endnote-118), the actions of the servicemen of Special Forces of the TMR Ministry of Internal Affairs and the TMR Ministry of State Security were not “provided by law”, because were based on the TMR Government Decree No. 209, which, by virtue of the foregoing, cannot serve as a basis for restricting freedom of assembly. Thus, Article 11 of the Convention, which guarantees the right to freedom of assembly, was violated in relation to the party participants.

During the court proceedings, which were presided over by Judges E. Kostrakovsky, I. Kyshlar, K. Karamysheva, L. Brezinskaya, the party participants described the detention as follows (the judges, however, refused to consider these statements):

* Rude, including usage of obscene language, laying all party participants on the ground in a position with arms and legs wide apart and palms turned to the side of the back, accompanied by kicks on the legs and stepping on hands upon changing this body position, which constitutes inhuman and degrading treatment, prohibited by Article 3 of the Convention[[119]](#endnote-119).
* Directly on the farm, the party participants were subjected to personal searches in the presence of law enforcement officers of the opposite sex.
* Smartphones were confiscated under duress from all party participants, and were subjected to unauthorized (without a corresponding court decision) study by police officers.
* The party participants were transported from the farm to the Bendery Police Department in an extremely crowded vehicle (according to witnesses, one of the detainees became sick due to lack of air).
* After the participants of the party were brought from the abandoned farm to the Bendery Police Department and placed along the wall of the corridor facing the wall with their arms raised, their legs apart and for a long time (up to 3 hours) were kept in this position deprived of rights to bodily functions, which is tantamount to torture (see previous link).
* Subsequently, bodily functions were performed in the presence and under the direct supervision of police officers.
* The biological fluid were collected from the party participants by police officers based on “voluntary” consent, which was given under duress.
* A serviceman of the Bendery Police Department, who introduced himself as Nikolai, took blows to the head of a party participant.
* 4 party participants (3 guys and 1 girl) went to medical institutions to record the body injuries[[120]](#endnote-120).

The above actions were examples of inhuman and degrading treatment by law enforcement officials, i.e. violation of Article 3 of the Convention. Illegal seizure of phones and gaining access to correspondence in them is a violation of the right to respect for private life (Article 8 of the Convention).

The rights violated during seizure and coercion to provide access to telephones and coercion to participate in medical tests (collection of biological fluid) are more specifically given in Articles 24[[121]](#endnote-121)and 21[[122]](#endnote-122)of the TMR Constitution, respectively.

The European Court of Human Rights has found that in cases of violations of Article 3 of the Convention, the state has a positive duty to carry out an effective investigation into the complaint104. It should be noted that 7 participants of the party appealed to the TMR Prosecutor's Office with complaints about the illegal actions of police officers. Based on these complaints, the Bendery Department of the Investigative Committee decided to refuse to initiate a criminal case, not finding violations, without refuting the circumstances indicated in the complaints and without identifying the persons under complaint of the applicants.

In addition, all party participants stayed under control of police officers from 5 to 8 hours, i.e. an unofficial detention, however, the detention reports were not drawn up[[123]](#endnote-123), and the deadlines were exceeded[[124]](#endnote-124). Thus, Article 2 of Protocol No. 4 on Freedom of Movement was violated in relation to the party participants, who were not detained “in accordance with the procedure prescribed by law” and “lawfully” (no grounds) within the meaning of Article 5, par. 1 of the Convention[[125]](#endnote-125).

During the trial, the following procedural violations were also recorded:

* All administrative offense reports were supplemented[[126]](#endnote-126) in the absence of participants by record on violation of subpar. c, par. 2 of the TMR Government Decree No. 209. Thus, the party participants were deprived of the right to know the accusation by the mandatory indication of the violated provision[[127]](#endnote-127) in the report, that is, the party participants were not immediately and in detail notified “[...] of the nature and grounds of the charges against them”, which is an obvious violation § 3 (a) of Article 6 of the Convention.
* Each report indicates that the person under administrative proceedings violated a by-law without a decision to impose a sentence on this person[[128]](#endnote-128), and the courts refused to assess the observance of the legality of the administrative cases, which violated the presumption of innocence guaranteed by § 2 of Article 6 of the Convention.
* The refusal of the courts to satisfy all petitions to verify compliance by law enforcement officers with the procedure for bringing to administrative responsibility actually endowed law enforcement officers with complete immunity from judicial control and testified to the lack of objective impartiality of the courts58. In connection with this, the courts were requested to be recused, but the recusation was refused without motivation, which also indicates a violation of “the right to a fair [...] hearing of the case [...] by an independent and impartial court” (§ 1 of Article 6 of the Convention).
* In all cases, the primary court ruled to terminate the proceedings due to the absence of a “corpus delicti”, although the defense insisted on terminating the proceedings due to the absence of an “offense” [[129]](#endnote-129). The Supreme Court, by its ruling, without legal grounds, considered the power of attorney (written and not notarized) submitted by defense lawyer S. Popovsky's to be inappropriate (violation of § 3 (c) of Article 6 of the Convention), and returned the complaints without consideration, thereby limiting the party participants' access to justice (§1 Article 6 of the Convention), because the return of a cassation appeal in any form is not provided for by the TMR law.

Thus, the judges of the TMR Supreme Court (V. Koltsa, V. Vanyushin) refused to consider the complaints of the party participants against the decisions of the Bendery City Court, “blatantly denying justice” and violating the right to a fair trial guaranteed by Article 6 of the Convention.

In addition, on December 14, 2020, three party participants filed a complaint with the court about the above violations, which the courts refused to consider as administrative offenses (see above). The defendants in this case were the TMR Minister of Internal Affairs, the Head of the Bendery Police Department and 2 police officers. According to the law111, this application had to be considered within 10 days. However, litigation is ongoing at the time of publication of this review. Such a long delay in the consideration of the case violates “the right to a fair […] trial within a reasonable time […]”, guaranteed by Article 6 § 1 of the Convention.

**Restriction of the right to freedom of movement during the pandemic**

Due to the spread of COVID-19 in Transdniestria, restrictive measures were taken. The Venice Commission of the Council of Europe examined how states implemented these measures, legitimized by the exceptional situation, emphasizing that although the danger is inevitable in this context, the principles of law must prevail[[130]](#endnote-130). The actions of the Transdniestrian authorities contradict this conclusion.

Thus, the Transdniestrian authorities unlawfully restricted the right to freedom of movement[[131]](#endnote-131) after the state of emergency was lifted. In particular, the TMR President V. Krasnoselsky initiated, and the TMR Supreme Council unanimously approved amendments to several laws[[132]](#endnote-132). These amendments do not meet the criterion of “provided by law”, as required by Article 2 of Protocol No. 4 to the Convention, which guarantees freedom of movement: the amendments were adopted in contradiction to paragraph 1 of Article 54 of the TMR Constitution[[133]](#endnote-133).

These amendments allowed the TMR Government to adopt Decree No. 209, which gave the Operational Headquarters the power to deprive the inhabitants of Transdniestria of the constitutional right to freely cross the borders of Transdniestria.

In addition, the procedure of pass issue for crossing the border of Transdniestria involves the adoption of individual decisions by officials of the Operational Headquarters, while there is no exhaustive list of conditions for obtaining a pass in the public domain. As a result, it gives rise to arbitrary decisions of officials, on the one hand, and, on the other hand, creates uncertainty for citizens and the inability to correlate their actions with the current rules. This is evidenced by the statistics of received and approved applications for travel outside Transdniestria: from November 2020 to April 2021, the number of approved applications, according to the website of the TMR Ministry of Internal Affairs, ranged from 50%[[134]](#endnote-134) to 65%[[135]](#endnote-135), which borders on randomness (emotionally, current situation is well illustrated by the users’ comments in the social networks[[136]](#endnote-136)).

**Apriori Information and Legal Center**

In November 2018, as part of an investigation[[137]](#endnote-137), the TMR Prosecutor's Office requested from the Apriori ILC all documentation for 2016-2018. On December 12, it issued a remedial action order, which indicated that in 2016-2017 the Apriori Information and Legal Center had foreign funding, and in 2018 it “organized” two events “shaping social and political views and beliefs”. The prosecutor's office classified as illegal “political activity” (in the sense of par. 7, Art. 2 of the TMR NCO Law) the Media under Pressure of Three Atmospheres: Smirnov, Shevchuk, Krasnoselsky[[138]](#endnote-138) exhibition and the Mixed Electoral System: Analysis and Perspectives for Transndniestria[[139]](#endnote-139) study by the Tiraspol School of Political Studies. While appealing the remedial action order, the court recognized the claims of the Prosecutor's Office regarding the exhibition as unfounded. With regard to the presentation, the court sided with the Prosecutor's Office, despite the fact that the Apriori ILC only provided the premises for the event arranged by the Tiraspol School of Political Studies.

Thus, par. 7, Art. 2 of the Law On Non-Commercial Organizations was applied to the Apriori ILC. Given that this provision of the law is discriminatory and does not meet the requirements of "quality", the right to freedom of expression and the right to freedom of association[[140]](#endnote-140) guaranteed by Articles 10 and 11 of the Convention, as well as the right to non-discrimination, enshrined in Article 14 of the Convention[[141]](#endnote-141), were violated.

The Apriori ILC appealed against this remedial action order. During the proceedings in the regular court and in the TMR Constitutional Court, the guarantees of a fair trial, enshrined in par. 1, Art. 6 of the Convention, were violated:

* “the right to […] a public trial […] by the court” was violated as a result of refusal by Judge E. Kachurovskaya to conduct a trial in the courtroom, if the judge’s office could not accommodate the entire audience, as well as registering the passport data of the audience, which is not provided for by the procedural law;
* “the right to […] a hearing […] by an impartial tribunal” was violated as a result of:
1. the actual investigative actions by Judge E. Kachurovskaya, expressed in the acceptance of documents that did not relate to the prosecutor’s investigation,
2. the identification by the judge, instead of the Prosecutor's Office, of a criteria of the offense missing in the remedial action order of the Prosecutor's Office: the “political activity”,
3. an unmotivated preference for the position of the Prosecutor’s Office, contained in the conclusion about the “shaping social and political views and beliefs”, in the prejudice of the applicant’s position, concluded that the event was of a scientific nature (including according to the witness of the Prosecutor’s Office),
4. a ruling by a judge that the Prosecutor's Office did not violate the right to freedom of assembly of the Apriori ILC because "the event was not held as an assembly", which is contrary to the findings of the ECHR[[142]](#endnote-142);
* the right to access to justice was violated as a result of the refusal by the Constitutional Court to consider the complaint of the Apriori ILC, “due to non-compliance with the requirements of the TMR Constitutional Law on the TMR Constitutional Court”, without specifying a rule, which does not correspond to the goals of the proper course of justice.

The Apriori ILC was forced to declare to the Prosecutor A. Guretsky about the refusal to hold "political" events (according to the TMR NCO Law). Then, the claims from the Prosecutor's Office were exhausted.

**Other Cases**

Besides the above cases, where the Apriori Information and Legal Center provided legal assistance and, as a result, had access to documents, there have been other high-profile cases over the past few years, without mentioning which this review would be incomplete.

The information below was published in the media and was not verified by the Apriori Information and Legal Center (except for B. Babayan); however, we consider it important to mention these cases, because they all have signs of politically charged prosecution:

* spouses T. Belova and S. Mirovich were sentenced[[143]](#endnote-143) to 3 years under Art. 316 of the TMR CC: Insulting President of Transdniestrian Moldavian Republic for Telegram posts criticizing the Transdniestrian authorities[[144]](#endnote-144);
* a similar case happened to the administrator of one of the most massive Viber public pages (40 thousand subscribers) about Transdniestria: based on periodical messages published in it, B. Babayan was detained in April 2020 for “calls for extremism” [[145]](#endnote-145) (later it turned out that B. Babayan was found guilty[[146]](#endnote-146) under the second part of Art. 276 of the TMR CC, he was fined 2,000 effective minimum wages, excluding 1,500 effective minimum wages due to his staying in custody from April 24, 2020 to April 22, 2021);
* prosecution of O. Khorzhan, the former head of the local Communist Party[[147]](#endnote-147);
* there are reasonable doubts about the impartiality of the criminal prosecution of the previous officials[[148]](#endnote-148), due to the selective and secret nature of cases.
1. Outcomes

Probably, this review contains only a part of the cases that have arisen. However, the above compilation is clear evidence of systematic interference by the Transdniestrian authorities in the right to freedom of expression and assembly, which, as shown, is not "based on the law": it has no legal basis and/or is based on the law, which does not meet the requirements of "quality".

For all that, one of the parties to all of the court proceedings presented in the review was represented by representatives of the executive authorities. Almost every case (24 out of 25 cases, including the Giska, Vasilakiy, Popovsky, Malyshev, Apriori cases), revealed evidence of judges' bias, which became an invincible obstacle to the restoration of violated rights and freedoms. Apriori Information and Legal Center faced in several cases a “flagrant denial of justice” (Malyshev, Giska, “Vasilakiy cases). This cannot be rationally explained by anything other than the dependence of the judicial branch on the executive power.

Thus, despite the fact that the ECtHR recognizes the courts of territories with an uncertain status, including Transdniestria, as a means of legal protection[[149]](#endnote-149), it is not possible to protect rights and freedoms in practice, since the Transdniestrian courts do not demonstrate their “effectiveness”[[150]](#endnote-150), as Article 13 of the Convention requires: do not allow "to rectify the situation complained and have a reasonable prospect of success"[[151]](#endnote-151).

1. Recommendations

(a) Since there are significant violations of the rights and freedoms guaranteed by the Convention in the cases considered herein, and there are no effective remedies for their legal protection, we consider it necessary to conduct within the 5 + 2 format a legal examination of the above cases on violations of human rights and fundamental freedoms.

(b) Since an effective system for the protection of rights and freedoms violated on the territory of Transdniestria has not been shaped over the past 30 years, it is obvious that this situation requires a fundamentally different approach.

To resolve a similar issue, the post-conflict Bosnia and Herzegovina developed the Chamber for Human Rights[[152]](#endnote-152), as a conceptual model which is meant to be an optimal and systemic solution of lacking effective remedy in Transdniestria.

Due to the formation of the Chamber by the international community with the participation of Transdniestria, this body will be sufficiently independent in its decisions, in the sense given by § 1 of Article 6 of the Convention, and will guarantee the observance of human rights and freedoms.

1. Postface

As a conclusion, we want to remind you that ensuring human rights and freedoms is not only the responsibility of the national authorities, but, as the experience of the Second World War showed, requires the involvement of the international community, and therefore human rights violations are not an internal matter of a single country.

We hope that this review will allow no influencer to stay indifferent and help the victims of human rights violations in Transdniestria in order to avoid the multiplication of such fates and counteract the emerging trend.

List of endnotes

**Additional information**

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1. Article 10 Convention (Freedom of expression):

«1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or formaintaining the authority and impartiality of the judiciary». [↑](#endnote-ref-2)
2. Article 11 Convention (Freedom of assembly and association):

«1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.». [↑](#endnote-ref-3)
3. https://www.coe.int/ru/web/compass/human-rights-activism-and-the-role-of-ngos [↑](#endnote-ref-4)
4. Article 10 Constitution of Transdniestrian Moldovan Republic: «[…] The generally recognised principles and rules of international law […] are the basis of relations with other States and an integral part of the legal system». [↑](#endnote-ref-5)
5. <http://mfa-pmr.org/ru/tdt> [↑](#endnote-ref-6)
6. § 1 Article 32 Convention (Jurisdiction of the Court): «1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47. …». [↑](#endnote-ref-7)
7. Article 1 Convention (Obligation to respect Human Rights): «The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention». [↑](#endnote-ref-8)
8. § 1 Article 56 Convention (Territorial application): «1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible. …». [↑](#endnote-ref-9)
9. Case of *Mozer v. Moldova and Russia* [GC], №11138/10, judgment of 23 February 2016, §110. [↑](#endnote-ref-10)
10. Case of Vardanean v. Moldova and Russia, №22200/10, judgment of 30 May 2017, §21. [↑](#endnote-ref-11)
11. https://tass.ru/politika/11399319 [↑](#endnote-ref-12)
12. Further observations of the. Government of the Russian Federation and comments on the applicant’s claims for just satisfactions on the case «Rîbac and Rodina-Agro S.A. v. the Republic of Moldova and Russia», № 28857/14, §114: «The Government of the Russian Federation state that the failure of the alleged victims or their representatives on the national level to apply to the courts of the Republic of Moldova amounts to non-exhaustion of the effective domestic remedies within the meaning of Article 35 § 1 of the Convention and to inadmissibility of the application». [↑](#endnote-ref-13)
13. Case of *Aksoy v. Turkey*, № 21987/93, judgment of 18 December 1996, §95: «[…] the remedy required by Article 13 (art. 13) must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State». [↑](#endnote-ref-14)
14. For example, case of *Mozer v. Moldova and Russia* [GC], №11138/10, judgment of 23 February 2016, §85: «…The Moldovan Government maintained that they still had no jurisdiction over the Transdniestrian territory in the sense of authority and control; nevertheless, they continued to fulfil the positive obligations […] and were intensifying their diplomatic efforts in that regard». [↑](#endnote-ref-15)
15. <https://newsmaker.md/rus/novosti/vsp-priznala-nezakonnym-prigovor-osnovatelyu-kompartii-pridnestrovya-olegu-horzhanu/> [↑](#endnote-ref-16)
16. Case of *Thlimmenos v. Greece* [GC], № 34369/97, EHRR 2000—IV, §44: «The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification […] However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different». [↑](#endnote-ref-17)
17. <https://mid.gospmr.org/ru/tsk> [↑](#endnote-ref-18)
18. Law of the Republic of Moldova On the Judicial System dated July 6, 1995 No. 514-XIII [↑](#endnote-ref-19)
19. Case of *Cyprus v. Turkey*, № 25781/94, 2001—IV, 35 EHRR 731, §96: «It is to be noted that the International Court's Advisory Opinion, read in conjunction with the pleadings and the explanations given by some of that court's members, shows clearly that, in situations similar to those arising in the present case, the obligation to disregard acts of de facto entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the de facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled». [↑](#endnote-ref-20)
20. mutatis mutandis, case of *Cyprus v. Turkey*, № 25781/94, 2001—IV, 35 EHRR 731, §88: «[…] Article 26 [35] of the Convention, remedies available in northern Cyprus were to be regarded as “domestic remedies” of the respondent State and that the question of their effectiveness had to be considered in the specific circumstances where it arose». [↑](#endnote-ref-21)
21. Case of *Yaşa v. Turkey* (63/1997/847/1054), judgment of 2 September 1998, §112: «The Court observes that Article 13 of the Convention guarantees the availability at a national level of a remedy to enforce the Convention rights and freedoms, as secured in the domestic legal order. The effect of this Article is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief […]. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State […].». [↑](#endnote-ref-22)
22. Article 13 Convention (Right to an effective remedy): «Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.». [↑](#endnote-ref-23)
23. Case of Amann v. Switzerland, № 27798/95, judgment of 16 February 2000, §88: «The Court […] that Article 13 of the Convention requires that any individual who considers himself injured by a measure allegedly contrary to the Convention should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress […]. That provision does not, however, require the certainty of a favourable outcome […].». [↑](#endnote-ref-24)
24. Article 276 of the Criminal Code of the TMR: “1. Public calls to engage in extremist activity are punishable by a fine in the amount of 1,000 (one thousand) to 2,000 (two thousand) minimum wages, or imprisonment for up to 3 (three) years, with deprivation of the right to hold certain positions or engage in certain activity for the same period.

2. The same acts committed with the use of mass media or information and telecommunication networks, including the global Internet shall be punishable by a fine in the amount of 2,000 (two thousand) to 2,500 (two thousand five hundred) minimum wages, or imprisonment for a term of 3 (three) to 5 (five) years, with deprivation of the right to hold certain positions or engage in certain activities for up to 3 (three) years.

3. The acts provided for by the first and (or) second part of this article, committed by a person using his official or official position shall be punishable by a fine in the amount of 2,500 (two thousand five hundred) to 3,500 (three thousand five hundred) minimum wages, or imprisonment for a term of 5 (five) to 7 (seven) years, with deprivation of the right to hold certain positions or engage in certain activity for up to three years. [↑](#endnote-ref-25)
25. Article 278 of the TMR Criminal Code: “1. Actions aimed at inciting national, racial, religious hatred, humiliation of national dignity, as well as propaganda of the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, nationality or race, if these acts are committed publicly or using the media or information - telecommunication networks, including the global Internet, are punishable by a fine in the amount of 1,700 (one thousand seven hundred) to 3,000 (three thousand) minimum wage levels, or by compulsory works for a term of up to 180 (one hundred and eighty) hours, or corrective labor for up to 1 (one) year, or imprisonment for up to 3 (three) years.

2. The same acts committed: a) with the use of violence or with the threat of its use; b) by a person using his official position; c) by an organized group – shall be punished by imprisonment for a term of up to 5 (five) years.” [↑](#endnote-ref-26)
26. Articles 278-3 of the TMR Criminal Code: “1. Public actions or statements, including using the media or information and telecommunication networks, including the global Internet, expressing clear disrespect for the peacekeeping mission of the Russian Federation in the Transdniestrian Moldavian Republic and aimed at distorting the positive role of the peacekeeping mission of the Russian Federation or belittling merits of the Russian Federation in maintaining peace, security and stability in the Transdniestrian Moldavian Republic – shall be punishable by a fine in the amount of 500 (five hundred) to 1,000 (thousand) minimum wages or by imprisonment for up to 3 (three) years.

2. The same acts committed: a) by a person using his official position; b) by a group of persons by prior agreement, are punishable by a fine in the amount of 1,000 (thousand) to 1,500 (thousand five hundred) minimum wages, or imprisonment for a term of 5 (five) to 7 (seven) years, with deprivation of the right hold certain positions or engage in certain activities for up to 3 (three) years. [↑](#endnote-ref-27)
27. Article 315 of the TMR Criminal Code: “1. The use of violence not dangerous to life or health, or the threat of violence against a representative of authority or his relatives in connection with the performance of his official duties shall be punishable by a fine in the amount of 700 (seven hundred) to 1700 (one thousand seven hundred) minimum wage wages or compulsory works for a period of 180 (one hundred and eighty) to 240 (two hundred and forty) hours, or correctional labor for a period of up to 2 (two) years, or imprisonment for up to 5 (five) years.

2. The use of violence dangerous to life or health in relation to the persons specified in the first part of this article is punishable by imprisonment for a term of 5 (five) to 10 (ten) years.

Note: in this article and other articles of this Code, an official of a law enforcement or regulatory body, as well as another official endowed in the manner prescribed by law with administrative powers in relation to persons who are not in his official dependence, is recognized as a representative of power in this article and other articles of this Code. [↑](#endnote-ref-28)
28. Article 316 of the TMR Criminal Code: “Publicly insulting a representative of power in the course of the performance of official duties or in connection with their performance is punishable by a fine in the amount of 200 (two hundred) to 350 (three hundred and fifty) minimum wages or compulsory works for a period of 120 (one hundred twenty) to 180 (one hundred and eighty) hours, or correctional labor for a period of 6 (six) months to 1 (one) year. [↑](#endnote-ref-29)
29. Article 316-1 of the TMR Criminal Code: “Public insult to the President of the Transdniestrian Moldavian Republic in the performance of official duties or in connection with their performance is punishable by a fine in the amount of 350 (three hundred and fifty) to 700 (seven hundred) estimated levels of the minimum wage or compulsory work for a term of 180 (one hundred and eighty) to 240 (two hundred and forty) hours, or by corrective labor for a term of 1 (one) year to 2 (two) years, or by deprivation of liberty for a term of up to 5 (five) years. [↑](#endnote-ref-30)
30. Article 5.62 of the TMR Administrative Offense Code: “1. Defamation, that is, the dissemination of knowingly false information that discredits the honor and dignity of another person or undermines reputation entails the imposition of an administrative fine on citizens in the amount of 10 (ten) to 30 (thirty) minimum wage, on officials - from 50 (fifty ) up to 100 (one hundred) minimum wage.

2. Slander contained in a public speech, publicly demonstrated work or mass media - entails the imposition of an administrative fine on citizens in the amount of 50 (fifty) to 100 (one hundred) minimum wage, on officials - from 100 (one hundred) to 200 (two hundred) minimum wage.

3. Defamation combined with the accusation of a person of committing a grave or especially grave crime entails the imposition of an administrative fine on citizens in the amount of 100 (one hundred) to 200 (two hundred) minimum wage, on officials - from 200 (two hundred) to 500 (five hundred) minimum wage.

4. Failure to take measures to prevent slander in a publicly displayed work or mass media entails the imposition of an administrative fine on officials in the amount of 50 (fifty) to 100 (one hundred) minimum wage, on legal entities - from 100 (one hundred) to 200 ( two hundred) minimum wage. [↑](#endnote-ref-31)
31. Article 19.3 of the TMR Administrative Offense Code: “1. Failure to comply with the legal requirements of officials of public authorities, as well as creating obstacles in the implementation of their activities entails the imposition of an administrative fine in the amount of 70 (seventy) to 100 (one hundred) minimum wage or administrative arrest for up to 15 (fifteen) days.

2. Failure to comply with the lawful demands of persons performing the duties of protecting and guarding the state border of the Transdniestrian Moldavian Republic, as well as performing official or public duty to protect public order and combat crime, as well as creating obstacles in the implementation of their activities, including resisting them entails the imposition of an administrative fine in the amount of 70 (seventy) to 100 (one hundred) minimum wage or administrative arrest for up to 15 (fifteen) days. [↑](#endnote-ref-32)
32. Article 10 – Freedom of expression

	1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
	2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. [↑](#endnote-ref-33)
33. Article 11 – Freedom of assembly and association

	1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
	2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. [↑](#endnote-ref-34)
34. Article 18 of the TMR Constitution: “Restriction of the rights and freedoms of a person and a citizen is allowed only in cases provided for by law, in the interests of state security, public order, protection of morality, public health, rights and freedoms of others. No one can enjoy benefits and privileges that are contrary to the law.” [↑](#endnote-ref-35)
35. <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech-russ/16808b5b07> [↑](#endnote-ref-36)
36. Evaluation by the European Commission For Democracy through Law (Venice Commission) of the Federal Law of the Russian Federation On Counteracting Extremist Activity. “Practical aspects of the petition of the Law on Combating Extremist Activities. Religious extremism” (A. A. Naida, lawyer, Kazakov and Partners Law Office, http://sutyajnik.ru/documents/4992.pdf): “The very concept of “extremism”, which is the Law [of the Russian Federation, containing the concepts identical to the concepts of the TMR Law “On Countering Extremist Activity”,] in Article 1 introduces into jurisprudence, it does not define: the characteristic features of extremism are not highlighted, the essence of this social phenomenon is not disclosed, but only its forms are listed. In other words, the concept of "extremism" is dictated by the law through a list of extremist actions and equates it with the concept of "extremist activity.

However, the fragmentation and concretization of the list of extremist actions should take place as an addition, as a practical component of a holistic general concept of what essentially is extremism, which is not in the law. This is nothing more than a lack of legal technique. And the disadvantage is significant, since now in practice everyone understands extremism in their own way and everyone sees it in the words and actions of other people in their own way, more and more often and sometimes unreasonably bringing the latter to justice. […]

Since 2003, the UN Human Rights Committee, the Venice Commission have repeatedly made remarks to the Russian authorities that it is recommended to revise this law in order to make key concepts more specific in order to exclude any possibility of arbitrary interpretation and petition. It was stated that an activity to be defined as extremist must be "associated with violence or incitement to violence" in order for "inciting social, racial, national or religious hatred" to be considered "extremist activity", the definition must explicitly mention the element of violence which is not in our law. Many other shortcomings were also noted, for example, the vagueness of the concept of "extremist activity", which must be eliminated. [↑](#endnote-ref-37)
37. Article 1 of the TMR Law On Counteracting Extremist Activities (basic concepts used in this Law): “For the purposes of this Law, the following basic concepts apply:

a) extremist activity (extremism):

1) the activities of public and religious associations or other organizations, or mass media, or individuals in planning, organizing, preparing and performing actions aimed at:

a) forcibly changing the foundations of the constitutional order and violating the integrity of the Transdniestrian Moldavian Republic;

b) undermining the security of the Transdniestrian Moldavian Republic;

c) seizure or appropriation of power;

d) creating illegal armed formations;

e) terrorist activities or publicly justify terrorism;

f) incitement of racial, national or religious hatred, as well as social hatred and intolerance associated with violence or calls for violence;

g) humiliating national dignity;

h) mass riots, acts of hooliganism and acts of vandalism based on ideological, political, racial, national or religious hatred or hostility, as well as on the grounds of hatred or hostility against any social group;

i) promoting the exclusivity, superiority or inferiority of citizens on the basis of their attitude to religion, racial, national, religious, social or linguistic affiliation;

j) propaganda of ideological, political, racial, national or religious, social enmity and (or) intolerance;

k) preventing citizens from exercising their electoral rights and the right to participate in a referendum or violating the secrecy of voting, combined with violence or the threat of its use, as well as coercion to participate or not participate in an election campaign, a referendum campaign;

l) to obstruct the lawful activities of state authorities, election commissions, as well as the lawful activities of officials of these bodies, commissions, combined with violence or the threat of its use;

m) public slander against a person holding a public position of the Transdniestrian Moldavian Republic or a public position in local authorities and local self-government bodies of the Transdniestrian Moldavian Republic, in the performance of his official duties or in connection with their performance, combined with the accusation of the said person of committing acts specified in this article, provided that the fact of slander is established in court;

n) an encroachment on the life of a statesman or public figure, committed in order to stop his state or other political activities or out of revenge for such activities. For the purposes of this article, statesmen are understood to mean heads of public authorities, civil servants and other persons whose activities are clearly political in nature. Public figures for the purposes of this article are recognized as leaders and prominent representatives of political parties, other public associations, professional, religious organizations, mass media;

o) violation of the rights and freedoms of a person and a citizen, causing harm to the health and property of citizens in connection with their beliefs, race or nationality, religion, social affiliation or social origin;

p) mass distribution of obviously extremist materials, as well as their production or storage for the purpose of mass distribution;

q) propaganda and public demonstration of Nazi paraphernalia or symbols or paraphernalia or symbols confusingly similar to Nazi paraphernalia or symbols, or public demonstration of paraphernalia or symbols of extremist organizations;

2) propaganda and public demonstration of Nazi paraphernalia or symbols or paraphernalia or symbols confusingly similar to Nazi paraphernalia or symbols;

3) public calls for the implementation of the activities specified in subparagraphs 1), 2), 4) of subparagraph a) of this article, as well as public calls and speeches encouraging the implementation of such activities, substantiating or justifying the commission of acts specified in this article;

4) financing of the activity specified in subparagraphs 1), 2), 3) of subparagraph a) of this article or other assistance in its implementation or commission, including by providing financial resources, real estate, educational, printing and material and technical base, telephone, facsimile and other types of communication, information services, other material and technical means;

b) extremist organization - a public or religious association or other organization in respect of which, on the grounds provided for by this Law, a court has made a decision to liquidate or ban activities in connection with the implementation of extremist activities, which has entered into legal force;

c) extremist materials - printed, audio, audiovisual and other materials intended for publication, calling for the implementation of extremist activities or substantiating or justifying the need for such activities, including the works of the leaders of the National Socialist Workers' Party of Germany, the Fascist Party of Italy, publications, substantiating or justifying national and (or) racial superiority or justifying the practice of committing military or other crimes aimed at the complete or partial destruction of any ethnic, social, racial, national or religious group. [↑](#endnote-ref-38)
38. Evaluation by the European Commission for Democracy through Law (Venice Commission) of the Federal Law "On Countering Extremist Activity" - №660/2011 20.06.2012. Strasbourg, §36. [↑](#endnote-ref-39)
39. Case of *Maestri v. Italy*[GC], № 39748/98, judgment of 17 February 2004, to be reported in ECHR 2004-I, §30:

«…The Court reiterates that the expressions “prescribed by law” and “in accordance with the law” in Articles 8 to 11 of the Convention not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail […].

For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention […].» [↑](#endnote-ref-40)
40. <http://president.gospmr.org/pravovye-akty/ukazi/ob-utverjdenii-strategii-protivodeystviya-ekstremizmu-v-pridnestrovskoy-moldavskoy-respublike-na-2020-2026-godi.html> [↑](#endnote-ref-41)
41. Case *Chauvy and Others v. France*, № 64915/01, judgment of 29 June 2004, §69, ECHR 2004-VI: «69. The Court considers that it is an integral part of freedom of expression to seek historical truth and it is not the Court’s role to arbitrate the underlying historical issues, which are part of a continuing debate between historians that shapes opinion as to the events which took place and their interpretation». [↑](#endnote-ref-42)
42. https://www.un.org/ru/documents/decl\_conv/conventions/aggression.shtml [↑](#endnote-ref-43)
43. Case of *Eon v. France*, № 26118/10, judgment of 14 March 2013, §22 the ECtHR refers to the reasoning of the bill to decriminalise the offence of insulting the president, in which the sponsor of the Bill (Mr Masson) stated: «[…] in so far as all citizens can use the provisions of ordinary law concerning the offences of proffering insults or defamation, the offence of insulting the President has no purpose. Moreover, the offence is abnormally extensive in that it may apply to a mere political slur or rather harsh criticism. For these reasons, nearly all modern democracies have removed the notion of insulting the head of State from their criminal codes. Luxembourg, for example, abolished the criminal offence of ‘malicious attacks against the Grand Duke’ in 2002, replacing it with the provisions of ordinary law.”». [↑](#endnote-ref-44)
44. http://president.gospmr.org/pravovye-akty/zakoni/zakon-pridnestrovskoy-moldasvskoy-respubliki-o-vnesenii-izmeneniy-i-dopolneniya-v-ugolovniy-kodeks-pridnestrovskoy-moldavskoy-respubliki-.html [↑](#endnote-ref-45)
45. Article 5.61 of the TMR Administrative Offense Code: “Insult is the humiliation of the honor and dignity of a person, expressed in an indecent or otherwise contrary to the norms of morality and ethics.” [↑](#endnote-ref-46)
46. Case of *Pakdemirli v. Turkey*, N 35839/97, judgment of February 22, 2005: «45. As for the limits of admissible criticism, the Court has already repeatedly recognized that they are broader with respect to a politician, acting in his capacity as a public figure, than with respect to a private individual. The politician is inevitably and consciously exposed to close scrutiny of his actions, both by journalists and by the general public, let alone by a political opponent. He must show greater tolerance, especially when he himself makes public statements that may be open to criticism […]». [↑](#endnote-ref-47)
47. Subparagraph “a” of paragraph 4 of Article 5 of the Law On Assemblies, Rallies, Demonstrations, Street Processions and Picketing: “submit to the state administration of the city (district) of the corresponding settlement on the territory of which it is planned to be held, a notice of holding a public event in the manner established by Article 7 of this Law". [↑](#endnote-ref-48)
48. Case of *Navalnyy v. Russia* [GC], № 29580/12 и № 36847/12, 11252/13, 12317/13, 43746/14, judgment of November 15, 2018, §136: «136. The Court has reiterated above that the purpose of the notification procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see paragraph 99 above). Regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turkey*, no. [16999/04](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2216999/04%22%5D%7D), § 35, 27 January 2009, and *Berladir and Others v. Russia*, no. [34202/06](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2234202/06%22%5D%7D), § 39, 10 July 2012), and a distinction must be made between content-based restrictions on freedom of assembly which should be subjected to the most serious scrutiny by this Court and restrictions of a technical nature (see *Primov and Others*, cited above, § 135)». [↑](#endnote-ref-49)
49. Case of *Muchnik and Mordovin v. Russia,* № 23814/15 и № 2707/16, judgment of 12 February 2019, §50: «50. The Court reiterates at this juncture that there is a pertinent distinction to be drawn between public event organisers and participants. It is important for associations and others organising demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force, in particular those relating to the prior notification procedure (see *Oya Ataman v. Turkey*, no. [74552/01](https://hudoc.echr.coe.int/eng#%7B%2522appno%2522:%5B%252274552/01%2522%5D%7D), § 38, ECHR 2006‑XIII, and *Barraco v. France*, no. [31684/05](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2231684/05%22%5D%7D), § 44, 5 March 2009). States may impose sanctions on those who do not comply with this procedure. At the same time, as regards the participants in rallies in particular, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subject to a sanction – even one at the lower end of the scale of, for instance, disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as that person does not himself commit any reprehensible act on such an occasion (see *Ezelin v. France*, 26 April 1991, § 53, Series A no. 202, and, as a recent authority, *Kudrevičius and Others v. Lithuania* [GC], no. [37553/05](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2237553/05%22%5D%7D), § 149, ECHR 2015, with the cases cited therein). More generally, it is normally not sufficient that the “interference” was imposed because its subject matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms; instead, what is required is that the “interference” was “necessary in a democratic society” in the specific circumstances of a given case (see *Perinçek v. Switzerland* [GC], no. [27510/08](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2227510/08%22%5D%7D), § 275, ECHR 2015 (extracts), and *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 65 *in fine*, Series A no. 30; see also *Novikova and Others*, cited above, § 199). In other words, an unlawful situation, such as the staging of (or participation in) a demonstration without prior authorisation, does not by itself justify an interference with a person’s right to freedom of assembly; the absence of prior authorisation and the ensuing “unlawfulness” of the action do not give *carte blanche* to the authorities, who remain restricted by the proportionality requirement of Article 11 (see *Kudrevičius and Others*, cited above, §§ 150‑51)». [↑](#endnote-ref-50)
50. Case of *Taranenko v. Russia*, № 19554/05, judgment of 15 May 2014, §66: «66. However, Article 11 of the Convention only protects the right to “peaceful assembly”. That notion does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. [29221/95](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2229221/95%22%5D%7D) and [29225/95](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2229225/95%22%5D%7D), § 77, ECHR 2001‑IX, and *Galstyan v. Armenia*, no. [26986/03](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2226986/03%22%5D%7D), § 101, 15 November 2007). Nonetheless, even if there is a real risk of a public demonstration resulting in disorder as a result of developments outside the control of those organising it, such a demonstration does not fall outside the scope of Article 11 § 1, but any restriction placed on such an assembly must be in conformity with the terms of paragraph 2 of that Article (see *Schwabe and M.G. v. Germany*, nos. [8080/08](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%228080/08%22%5D%7D) and [8577/08](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%228577/08%22%5D%7D), § 103, ECHR 2011 (extracts))». [↑](#endnote-ref-51)
51. Clause 7 of Article 2 of the Law On Non-Commercial Organizations:

A non-profit organization that receives funds and other property from foreign states, their state bodies, international and foreign organizations, foreign citizens, stateless persons or persons authorized by them and (or) from legal entities registered on the territory of the Transdniestrian Moldavian Republic receiving funds and other property from these sources (with the exception of open joint-stock companies with state participation and their subsidiaries) (hereinafter referred to as foreign sources), it is prohibited to participate, including in the interests of foreign sources, in political activities carried out on the territory of the Transdniestrian Moldavian Republic.

A non-profit organization, with the exception of a political party, is recognized as participating in political activities carried out on the territory of the Transdniestrian Moldavian Republic, if, regardless of the goals and objectives specified in its constituent documents, it carries out activities in:

a) state building;

b) protection of the foundations of the constitutional order of the Transdniestrian Moldavian Republic;

c) protecting the sovereignty and ensuring the territorial integrity of the Transdniestrian Moldavian Republic;

d) ensuring the rule of law, law and order, state and public security, national defense, foreign policy.

The activities specified in subparagraphs a)-d) of part two of this paragraph shall be carried out in the following forms:

a) participation in the organization and conduct of public events in the form of meetings, rallies, demonstrations, processions or pickets or in various combinations of these forms, organization and conduct of public debates, discussions, speeches;

b) participation in activities aimed at obtaining a certain result in elections, a referendum, in monitoring the conduct of elections, a referendum, the formation of election commissions, referendum commissions, in the activities of political parties;

c) public appeals to state authorities of the Transdniestrian Moldavian Republic, local governments, their officials, as well as other actions that influence the activities of these bodies, including those aimed at the adoption, amendment, repeal of laws or other regulatory by-laws;

d) dissemination, including with the use of modern information technologies, of opinions on decisions made by public authorities and their policies;

e) the formation of socio-political views and beliefs;

f) involvement of citizens, including minors, in the said activities;

g) financing of the specified activity. [↑](#endnote-ref-52)
52. GUIDELINES ON POLITICAL PARTY REGULATION BY OSCE/ODIHR AND VENICE COMMISSION (Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010)):

«…Principle 6: Freedom of expression and opinion

31. Associations shall have the right to freedom of expression and opinion through their objectives and activities.67 This is in addition to the individual right of the members of associations to freedom of expression and opin- ion. Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.

Principle 7: Freedom to seek, receive and use resources

32. Associations shall have the freedom to seek, receive and use financial, mate- rial and human resources, whether domestic, foreign or international, for the pursuit of their activities. In particular, states shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources. This freedom shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transpar- ency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards. …». [↑](#endnote-ref-53)
53. Case of *Zechev v. Bulgaria*, № 57045/00, judgment of 21 June 2007, §§ 53-56:

«53. The Court has already expressed certain misgivings in relation to these holdings … [The Court] … will examine whether its application with regard to the applicant led to results compatible with the Convention (see Gorzelik and Others, cited above, § 100).

54. The Court must ... verify whether it is necessary in a democratic society to prohibit organisations, unless registered as political parties, from pursuing “political goals”. In so doing it must examine whether this ban corresponds to a “pressing social need” and whether it is proportionate to the aims sought to be achieved (ibid., §§ 94‑105).

55.  The first thing which needs to be noted in this connection is the uncertainty surrounding the term “political”, as used in Article 12 § 2 of the Constitution of 1991 and as interpreted by the domestic courts. For instance, in the present case these courts deemed that a campaign for changes in the constitution and the form of government fell within that category. In another recent case these same courts had, more questionably, stated that the “holding of meetings, demonstrations, assemblies and other forms of public campaigning” by an association campaigning for regional autonomy and alleged minority rights also amounted to political goals and activities within the meaning of Article 12 § 2 of the Constitution of 1991. The Court found this holding unwarranted (see *The United Macedonian Organisation Ilinden and Others*, cited above, §§ 17, 19, 21 and 73). The Constitutional Court has, for its part, adopted a different definition of “political”, which was centred on “participation in the process of forming the bodies through which ... the people exercise[d] its power” (see paragraph 22 above). Against this background and bearing in mind that this term is inherently vague and could be subject to largely diverse interpretations, it is quite conceivable that the Bulgarian courts could label any goals which are in some way related to the normal functioning of a democratic society as “political” and accordingly direct the founders of legal entities wishing to pursue such goals to register them as political parties instead of “ordinary” associations. A classification based on this criterion is therefore liable to produce incoherent results and engender considerable uncertainty among those wishing to apply for registration of such entities.

56.  If associations in Bulgaria could, when registered as such, participate in elections and accede to power, as was the case in *Gorzelik and Others* (cited above), it might be necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and transparency (see paragraph 20 above). However, under Bulgarian law, as it stood at the material time and as it stands at present, associations may not participate in national, local or European elections (see paragraph 21 above). There is therefore no “pressing social need” to require every association deemed by the courts to pursue “political” goals to register as a political party, especially in view of the fact that, as noted above, the exact meaning of that term under Bulgarian law appears to be quite vague. That would mean forcing the association to take a legal shape which its founders did not seek. It would also mean subjecting it to a number of additional requirements and restrictions, such as for instance the rule that a political party cannot be formed by less than fifty enfranchised citizens (see paragraph 19 above), which may in some cases prove an insurmountable obstacle for its founders. Moreover, such an approach runs counter to freedom of association, because, in case it is adopted, the liberty of action which will remain available to the founders of an association may become either non‑existent or so reduced as to be of no practical value (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, Series A no. 44, p. 23, § 56; *Sigurður A. Sigurjónsson v. Iceland*, judgment of 30 June 1993, Series A no. 264, pp. 15‑16, § 35; and *Chassagnou and Others v. France* [GC], nos. [25088/94](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2225088/94%22%5D%7D), [28331/95](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228331/95%22%5D%7D) and [28443/95](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228443/95%22%5D%7D), § 114 *in fine*, ECHR 1999‑III).». [↑](#endnote-ref-54)
54. The supporting document is at the disposal of the Apriori ILC. [↑](#endnote-ref-55)
55. Paragraph 1 of Article 7-2 of the TMR Law On Appeals of Citizens, Legal Entities, and Public Associations: “Received appeals are subject to mandatory acceptance, registration, accounting and consideration. Refusal to accept an petition is prohibited. [↑](#endnote-ref-56)
56. The algorithm for analysing restrictions on the rights and freedoms guaranteed by Articles 8-11 of the Convention applied by the European Court of Human Rights involves determining whether the interference was "provided by law", pursued the legitimate aim or aims set out in § 2 of those Articles, and was "necessary in a democratic society" for their achievement (see the *Sunday Times* v. the United Kingdom (no. 1) judgment of 26 April 1979, Series A no. 30, p. 31, § 49; the Larissis and Others v. Greece judgment of 24 February 1998, *Reports* 1998-I, p. 378, § 40; *Hashman and Harrup v. the United Kingdom* [GC], no. [25594/94](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2225594/94%22%5D%7D), § 31, ECHR 1999-VIII; and *Rotaru v. Romania* [GC], no. [28341/95](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228341/95%22%5D%7D), § 52, ECHR 2000-V; Hasan and Chaush v. Bulgaria, no. [30985/96](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2230985/96%22%5D%7D), 26 October 2000, § 84). [↑](#endnote-ref-57)
57. See among others, сase of *De Haes and Gijsels v. Belgium*, no. [19983/92](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2219983/92%22%5D%7D), 1997-I, 25 EHRR, §53: «The Court reiterates that the principle of equality of arms - a component of the broader concept of a fair trial - requires that each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent (see, among other authorities, the Ankerl v. Switzerland judgment of 23 October 1996, Reports 1996-V, pp. 1565-66, para. 38)». [↑](#endnote-ref-58)
58. Case of *Poppe v. the Netherlands*, no. [32271/04](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2232271/04%22%5D%7D), judgment of 24 March 2009, §25: «As regards impartiality from an objective standpoint, it must be determined whether, quite apart from the judge’s conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. In this respect even appearances are of importance since justice must not just be done but must be seen to be done. What is at stake is the confidence which the courts in a democratic society must inspire in the public. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the perception of the accused is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see Schwarzenberger v. Germany, N 75737/01, §42; *Ferrantelli and Santangelo*, § 58, and *Rojas Morales*, § 32; De Cubber v. Belgium, N 9186/80, §§27-30)». [↑](#endnote-ref-59)
59. Part two of paragraph 3 of Article 25.2 of the TMR Administrative Offence Code: “When considering a case on an administrative offense entailing administrative arrest or administrative expulsion from the Transdniestrian Moldavian Republic of a foreign citizen or stateless person, or compulsory work, the presence of the person against whom the proceedings are being conducted, is mandatory." [↑](#endnote-ref-60)
60. Case of *Othman (Abu Qatada) v. UK*, N 8139/09, judgment of 17 January 2012, §260: «[…] “flagrant denial of justice” is a stringent test of unfairness. A flagrant denial of justice goes beyond mere irregularities or lack of safeguards in the trial procedures such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article». [↑](#endnote-ref-61)
61. Case of *Krasulya v. Russian Federation*, No 12365/03, judgment of 22 February 2007, §50: «[…] for the proceedings to be fair as required by Article 6 § 1, the “tribunal” must conduct a proper examination of the submissions, arguments and evidence adduced by the parties, without prejudice to its assessment of whether they are relevant to its decision […]». [↑](#endnote-ref-62)
62. Such value judgments in judgments/minutes in such an affirmative form, without due reservations, constitute a declaration of guilt in the absence of a final court verdict and violate the right to be presumed innocent (Article 6, par. 2 of the Convention).

Fedorenko v. Russia, № 39602/05, §§90-94, «90. […] the Court considers that the wording ... statement that the applicant “[had] committed a serious criminal offence” amounted to a declaration of the applicant’s guilt, in the absence of a final conviction, and breached his right to be presumed innocent»

The European Court of Human Rights has repeatedly noted (case of *Ismoilov and Others v. Russia*, № 2947/06, judgment of 24 April 2008, §§161, 166) that:

«161. […] The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see Allenet de Ribemont v. France, judgment of 10 February 1995, Series A no. 308, § 35). It prohibits the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law (see Minelli v. Switzerland, judgment of 25 March 1983, Series A no. 62, where the Assize Court hearing the criminal case found the prosecution time-barred but went on nonetheless to decide whether, if it had continued, the applicant would probably have been found guilty for the purposes of costs orders). It also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see Allenet de Ribemont, § 41, where remarks were made by a minister and police superintendent to the press naming without qualification the applicant, arrested that day, as an accomplice to murder; see also Daktaras v. Lithuania, no. 42095/98, §§ 41 to 43, ECHR 2000‑X; and Butkevičius v. Lithuania, no. 48297/99, § 49, ECHR 2002‑II (extracts)).

166. […] the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence […]. [↑](#endnote-ref-63)
63. Case of *Menchinskaya v. Russia*, N 42454/02, judgment of 15 January 2009, §35: «35. The parties to civil proceedings are plaintiff and defendant, who have equal rights, including the right to legal aid. Support by the Prosecutor’s Office of one of the parties may undoubtedly be justified in certain circumstances, for example the protection of rights of vulnerable groups – children, disabled people and so on – who are assumed unable to protect their interests themselves, or where numerous citizens are affected by the wrongdoing concerned, or where State interests need to be protected». [↑](#endnote-ref-64)
64. Article 6 – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(а) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court. [↑](#endnote-ref-65)
65. <https://apriori-center.org/program/prezentacija-knigi-god-molodosti/> [↑](#endnote-ref-66)
66. <https://apriori-center.org/otkrytoe-obrashhenie-larisy-kalik-k-prezidentu-pmr-otvet-v-n-krasnoselskogo-i-voennoj-prokuratury/> [↑](#endnote-ref-67)
67. Article 5 of the TMR Law On TMR Legislation (Priority legal force of the provisions of international law on the territory of the TMR): “1. The generally recognized principles and provisions of international law are an integral part of the legal system of the Transdniestrian Moldavian Republic. The petition of the generally recognized principles and provisions of international law on the territory of the Transdniestrian Moldavian Republic must be duly declared in accordance with the procedure established by the current legislation of the Transdniestrian Moldavian Republic by the relevant state authorities, whose exclusive competence includes making decisions on the petition of generally recognized principles and provisions of international law on the territory of the Transdniestrian Moldavian Republic.

2. The direct effect of the universally recognized principles and provisions of international law means their direct use in the law-making activities of state authorities and administration, local self-government bodies in the development of legislative acts of the Transdniestrian Moldavian Republic (which the developed provisions must follow), as well as in law enforcement practice, if there are no similar provisions in legislative acts of the Transdniestrian Moldavian Republic" [↑](#endnote-ref-68)
68. <https://apriori-center.org/zajavlenie-larisy-kalik-na-imja-ministra-gosbezopasnosti-pmr/> [↑](#endnote-ref-69)
69. <https://fb.watch/4i5K66UxO1/> [↑](#endnote-ref-70)
70. The supporting document is at the disposal of the Apriori ILC. [↑](#endnote-ref-71)
71. [↑](#footnote-ref-1)
72. Article 116 of the TMR Criminal Code (Murder threat or causing grievous bodily harm): “Murder threat or causing grievous bodily harm, if there were grounds to fear the implementation of this threat, is punishable by a fine in the amount of up to 1500 (one thousand five hundred) minimum wages or mandatory works for a term of 180 (one hundred and eighty) to 240 (two hundred and forty) hours, or corrective labor for a term of up to 2 (two) years, or imprisonment for a term of up to 2 (two) years. [↑](#endnote-ref-72)
73. Paragraph 1 of Article 166 of the TMR Civil Code (Intangible Benefits): “Life and health, personal dignity, personal integrity, honor and good name, business reputation, privacy, personal and family secrets, the right to free movement, choice of place of stay and residence, the right to a name, the right of authorship, other personal non-property rights and other intangible benefits belonging to a citizen from birth or by virtue of law, are inalienable and non-transferable in any other way. [↑](#endnote-ref-73)
74. Case of *Alves da Silva v. Portugal*, № 41665/07, judgment of 20 Octobre 2009, §28: «28. Given the nature and content of the remarks in question and the context - the carnival festivities - in which the applicant's action took place, it was difficult to take the applicant's accusations against the complainant literally. Even if this were the case, as a politician the applicant should have shown greater tolerance of criticism, especially when it took the form of satire (see Vereinigung Bildender Künstler, cited above, § 34).». [↑](#endnote-ref-74)
75. Case of *Lingens v. Austria*, № 9815/82, judgment of 8 July 1986, §42: «42. […] (c) As for the limits of admissible criticism, they are wider for a politician, acting in his capacity as a public figure, than for a private individual. A politician inevitably and consciously exposes himself to close scrutiny of his actions by journalists, non-governmental organizations such as the applicant, and the general public, and must show greater tolerance in this regard.[…]». [↑](#endnote-ref-75)
76. Case of *Vereinigung Bildender Künstler v. Austria*, 2, judgment of 25 January 2007, № 68354/01, §33: «33. However, it must be emphasised that the painting used only photos of the heads of the persons concerned, their eyes being hidden under black bars and their bodies being painted in an unrealistic and exaggerated manner. It was common ground in the understanding of the domestic courts at all levels that the painting obviously did not aim to reflect or even to suggest reality; the Government, in their submissions, have not alleged otherwise. The Court finds that such portrayal amounted to a caricature of the persons concerned using satirical elements. It notes that satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with an artist's right to such expression must be examined with particular care». [↑](#endnote-ref-76)
77. Case of Alves da Silva v. Portugal, № 41665/07, judgment of §26, §§29-30:

«26. An interference is contrary to the Convention if it does not meet the requirements of article 10, paragraph 2. It is therefore necessary to determine whether the interference was "prescribed by law", whether it was aimed at one or more of the legitimate aims set out in that paragraph, and whether it was "necessary in a democratic society" for the attainment of that aim or aims. It is not disputed that the interference was prescribed by law - the relevant provisions of the Criminal Code - and was aimed at a legitimate aim, namely the protection of the reputation or rights of others, within the meaning of Article 10 § 2. However, the parties disagree as to whether the interference was "necessary in a democratic society".

[…]

29. The Court considers that penalizing conduct such as that of the applicant in the present case may have a dissuasive effect on satirical interventions on social issues, which can also play a very important role in the free debate of matters of general interest, without which there can be no democratic society.

30. In short, having weighed the interest of society in the applicant's criminal conviction following his satirical speech, on the one hand, and the effect of such a conviction on the applicant, on the other, the Court finds that the criminal penalty imposed by the Portuguese courts was disproportionate to the aim pursued and was therefore not necessary in a democratic society.». [↑](#endnote-ref-77)
78. <https://apriori-center.org/pervoe-v-pmr-ugolovnoe-delo-so-statej-ob-otricanii-polozhitelnoj-roli-ms-rf/> [↑](#endnote-ref-78)
79. The indictment is at the disposal of the Apriori ILC. [↑](#endnote-ref-79)
80. <https://apriori-center.org/stepan-popovskij-zajavlenie-o-narushenii-v-pridnestrove-prava-na-svobodu-i-lichnuju-neprikosnovennost/> [↑](#endnote-ref-80)
81. Article 95 of the TMR Criminal Procedure Code (Procedure for initiating a criminal case): “If there is a reason and grounds for initiating a criminal case, the head of the investigative body, the investigator, the body of inquiry, are obliged to initiate a criminal case within their competence.

The prosecutor, the head of the investigative body, the investigator, the body of inquiry shall issue a decision on the initiation of a criminal case. The resolution must indicate: the time, place, by whom it was drawn up, the reason and grounds for initiating the case, the article of the criminal law on the basis of which it is initiated, as well as the further direction of the case. [↑](#endnote-ref-81)
82. Article 90 of the TMR Criminal Procedure Code (Reasons and grounds for initiating a criminal case): “The reasons for initiating a criminal case are:

a) a statement about a crime;

b) surrender;

c) a message about a crime committed or being prepared, received from other sources;

d) a decision to send the relevant materials to the investigative body or the body of inquiry to resolve the issue in the manner and within the timeframe provided for in Article 93 of this Code, on the facts of violations of the criminal legislation of the Transdniestrian Moldavian Republic revealed by the prosecutor.

The basis for initiating a criminal case is the availability of sufficient data indicating the signs of a crime. [↑](#endnote-ref-82)
83. Case of *Deweer v. Belgium*, № 6903/75, judgment of 27 February 1980, §46: «[…] The "charge" could, for the purposes of Article 6 par. 1 (art. 6-1), be defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence […]. [↑](#endnote-ref-83)
84. <https://novostipmr.com/ru/file/stihiynyy-miting-v-rybnice-podrobnosti> [↑](#endnote-ref-84)
85. https://www.mvdpmr.org/vazhnaya-informatsiya/31835-pridnestrovtsy-rabotayushchie-v-rm-privozyat-covid-19.html [↑](#endnote-ref-85)
86. <https://newsmaker.md/rus/novosti/v-pridnestrove-oppozitsionnogo-aktivista-arestovali-na-10-sutok-za-protest-chto-esche-izvestno-ob-etom-dele/> [↑](#endnote-ref-86)
87. Paragraph 3 of Article 20.2 of the TMR Administrative Offense Code (Violation of the legislation on meetings, rallies, demonstrations, processions and pickets): “Violation by a participant in a public event (including those related to the implementation of missionary and preaching activities) of the established procedure for holding a meeting, rally, demonstration, procession or picketing - entails the imposition of a fine in the amount of 20 (twenty) minimum wages or administrative arrest for up to 15 (fifteen) days. [↑](#endnote-ref-87)
88. Case of *Ezelin v. France*, № 11800/85, judgment of 26 April 1991, §39, сase of *Kasparov and Others v. Russia*, judgment of 3 October 2013, N 21613/07, §84: «84. […] the interference does not need to amount to an outright ban, legal or de facto, but can consist in various other measures taken by the authorities. The term “restrictions” in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly and those, such as punitive measures, taken afterwards […]». [↑](#endnote-ref-88)
89. Case of *Navalnyy v. Russia* [GC], № 29580/12 и № 36847/12, 11252/13, 12317/13, 43746/14, judgment of 15 November 2018, §136: «136. … the purpose of the notification procedure [of the meeting] is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering (see paragraph 99 above). Regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Samüt Karabulut v. Turkey*, no. [16999/04](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2216999/04%22%5D%7D), § 35, 27 January 2009, and *Berladir and Others v. Russia*, no. [34202/06](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2234202/06%22%5D%7D), § 39, 10 July 2012) […]». [↑](#endnote-ref-89)
90. <https://novostipmr.com/ru/news/20-07-16/arestovan-gennadiy-chorba-organizovavshiy-2-iyulya-miting-v> [↑](#endnote-ref-90)
91. Paragraph 1 of Article 28.2 (Delivery): “1. Delivery, that is, forcible transfer of an individual for the purpose of drawing up a report on an administrative offense if it is impossible to draw it up at the place where the administrative offense was detected, if the drawing up of a report is mandatory […]”. [↑](#endnote-ref-91)
92. Paragraph 3 of Article 28.2 of the TMR Administrative Offense Code (Delivery): “3. A report is drawn up on the delivery or a corresponding entry is made in the report on an administrative offense or in the report on administrative detention. The time of delivery must be indicated in the report on delivery or in the report on an administrative offense or in the report on administrative detention. A copy of the delivery report is handed over to the delivered person at his request. [↑](#endnote-ref-92)
93. Article 28.4 of the TMR Administrative Offense Code (Report on Administrative Detention): “1. A report is drawn up on administrative detention, which indicates the date and place of its compilation, position, surname and initials of the person who drew up the report, information about the detained person, time, place and motives for detention. [↑](#endnote-ref-93)
94. Case of *Shchebet v. Russia*, № 16074/07, judgment of 12 June 2008, §63: «[…] 63. ... the Court's constant view that the unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see Fedotov v. Russia, no. 5140/02, § 78, 25 October 2005, and Menesheva v. Russia, no. 59261/00, § 87, ECHR 2006‑…)». [↑](#endnote-ref-94)
95. Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

	1. the lawful detention of a person after conviction by a competent court;
	2. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
	3. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
	4. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
	5. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
	6. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation. [↑](#endnote-ref-95)
96. Protocol No. 4, Article 2 «Freedom of movement»:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society. [↑](#endnote-ref-96)
97. Case of Ireland v. the United Kingdom, № [5310/71](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%225310/71%22%5D%7D), 18 January 1978, § 162: «162. [...] ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (art. 3). The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.».». [↑](#endnote-ref-97)
98. See "Appendices" in the material "Statement of violation of the rights and freedoms of Irina Vasilakiy" at apriori-center.org [↑](#endnote-ref-98)
99. Article 3 of the Convention «Prohibition of torture»: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. [↑](#endnote-ref-99)
100. Par. 2 of Article 28.15 of the TMR Administrative Offense Code: “The arrest is carried out by the internal affairs body (police) on the basis of a judge’s decision […]”. [↑](#endnote-ref-100)
101. Case of *Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom*, nos. [3002/03](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%223002/03%22%5D%7D) and [23676/03](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2223676/03%22%5D%7D), 10 March 2009, § 37: «37. [...] interference breaches Article 10 unless it was “prescribed by law”, pursued one or more of the legitimate aims referred to in Article 10 § 2 and was “necessary in a democratic society” to attain such aim or aims». [↑](#endnote-ref-101)
102. We are guided by the general legal principle “jura novit curia” (“the court knows the law”), since the selection procedure for the position of a judge requires that a candidate for the position of a judge has a legal education, professional work experience and passing a special qualification exam. [↑](#endnote-ref-102)
103. Article 31.7 of the TMR Administrative Offense Code: “Decision on a complaint against a decision in a case on an administrative offense:

1. Based on the results of consideration of a complaint against a decision in a case on an administrative offense, one of the following decisions shall be issued:

a) on leaving the decision unchanged, and complaints - without satisfaction;

b) on changing the decision, if this does not increase the administrative penalty or otherwise worsen the situation of the person in respect of whom the decision was made;

c) on the cancellation of the decision and the termination of the proceedings in the presence of at least one of the circumstances provided for in Articles 2.16, 24.5 of this Code, as well as in the absence of evidence of the circumstances on the basis of which the decision was made;

d) on the cancellation of the decision and on the return of the case for a new consideration to the judge, body, official authorized to consider the case, in cases of significant violation of the procedural requirements provided for by this Code, if this did not allow a comprehensive, complete and objective consideration of the case, as well as in due to the need to apply the law on an administrative offense, entailing the appointment of a more severe administrative penalty, if the victims in the case filed a complaint about the leniency of the applied administrative penalty;

e) on the cancellation of the decision and on sending the case for consideration according to jurisdiction, if during the consideration of the complaint it is established that the decision was issued by an unauthorized judge, body, official.

2. The decision based on the results of consideration of a complaint against a decision in a case on an administrative offense must contain the information provided for in Article 30.12 of this Code.

3. When considering a complaint against a decision in a case on an administrative offense, a ruling is issued to transfer the complaint for consideration according to jurisdiction, if it is found that its consideration does not fall within the competence of the given judge, official. [↑](#endnote-ref-103)
104. Case of *Golder v. the United Kingdom,* № [4451/70](https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%224451/70%22%5D%7D), 21 February 1975, § 35: «35. […] It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings»*.* [↑](#endnote-ref-104)
105. Case of *Gäfgen v. Germany* [GC], 2010-; 52 EHRR 1, §116: «116. […] In cases of willful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible […]. Secondly, an award of compensation to the applicant is required where appropriate [...] or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment [...].». [↑](#endnote-ref-105)
106. <https://apriori-center.org/zajavlenie-o-narushenii-prav-i-svobod-iriny-vasilakij/> [↑](#endnote-ref-106)
107. http://sk.gospmr.org/index.php/ru/novosti-komiteta/3189-k-ugolovnoj-otvetstvennosti-privlechen-zhitel-g-bendery-za-sovershenie-dejstvij-ekstremistskogo-kharaktera [↑](#endnote-ref-107)
108. The supporting documents is at the disposal of the Apriori ILC. [↑](#endnote-ref-108)
109. mutatis mutandis, Barthold v. Germany, №8734/79, §58, Series А №90; Lingens v. Austria, §42, Series A, №103 [↑](#endnote-ref-109)
110. <https://apriori-center.org/nashi-dveri-dlja-vas-vsegda-otkryty-belousova-zaderzhali-pri-piketirovanii-konsulstva-rf/> [↑](#endnote-ref-110)
111. <https://apriori-center.org/pravozashhitnik-stepan-popovskij-zaderzhan-vo-vremja-odinochnogo-piketa-za-svobodu-cherbe-i-otstavku-move/> [↑](#endnote-ref-111)
112. Paragraph 1 of Article 288 of the TMR Civil Procedure Code (consideration of the petition to the court): “The petition is considered by the court within 10 (ten) days from the date of its submission to the court with the participation of the applicant, the head or representative of the public authority, local government, other body, organization, endowed with by law by separate state or other public authorities, an official, a civil servant, a non-normative by-law, the decision, action (inaction) of which is disputed. [↑](#endnote-ref-112)
113. <https://newsmaker.md/rus/novosti/chezanej-vyzanimaetes-vzhizni-kak-vpridnestrove-rassleduyut-izbienie-uchastnikov-rejv-vecherinki-silovikami/> [↑](#endnote-ref-113)
114. The supporting documents is at the disposal of the Apriori ILC. [↑](#endnote-ref-114)
115. Part "a" of subparagraph 3 of paragraph 7 of Government Decree No. 209 of 06/15/2020: "a) observe social distance and use personal protective equipment (masks) when visiting trade and service organizations.» [↑](#endnote-ref-115)
116. Sub-point "v" of point 2 of the PMR Government Decision: "holding mass events on the territory of the Transnistrian Moldovan Republic, except for cases when their holding is allowed based on a decision of the Operational headquarters for prevention and prevention of spread of viral infection. Note: for the purposes of this Decision, a mass event means an event and assembly with participation of more than 40 (forty) people". [↑](#endnote-ref-116)
117. Paragraph 1 of Article 54 of the TMR Constitution: “In a state of emergency or martial law, in accordance with the constitutional law, the constitutional rights and freedoms of a person and citizen, established by Articles 4, 20, 24, 25, 27, 28, 31, 32, 33, 35, 36, 37 of this Constitution. Restrictions on the constitutional rights and freedoms of a person and citizen specified in this article may be established with an indication of the limits and duration of their validity. No other constitutional rights and freedoms of a person and citizen are subject to restriction.” [↑](#endnote-ref-117)
118. Paragraph 1 of Article 3 of the Law On Special Legal Regimes: "Special legal regimes in the Transdniestrian Moldavian Republic may be introduced solely on the grounds provided for by this Constitutional Law, and only by decrees of the President of the Transdniestrian Moldavian Republic.» [↑](#endnote-ref-118)
119. Case of *Ireland v. UK*, A 25 (1978), 2 EHRR 25, §167: «The five techniques [(a) wall-standing for a long time (torture with an uncomfortable posture); (b) "hooding"; (c) acoustic overload of hearing; (d) sleep deprivation; (e) deprivation of food and drink — see см. § 96] were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3). The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance». [↑](#endnote-ref-119)
120. The supporting documents is at the disposal of the Apriori ILC. [↑](#endnote-ref-120)
121. Article 24 of the TMR Constitution: “Everyone has the right to protection of a good name, protection from encroachments on honor and dignity, interference in private life, personal and family secrets, and the inviolability of home. No one has the right to enter a dwelling, conduct a search or inspection, violate the secrecy of correspondence and telephone conversations, except in the case and in the manner prescribed by law. [↑](#endnote-ref-121)
122. Article 21 of the TMR Constitution: "No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment, as well as without consent to be subjected to medical and other experiments.» [↑](#endnote-ref-122)
123. Article 28.4 of the TMR Administrative Offence Code (Report on Administrative Detention): “1. A report is being drawn up on administrative detention [...]”. [↑](#endnote-ref-123)
124. Article 28.5 (Terms of administrative detention): “1. The term of administrative detention shall not exceed 3 (three) hours […]”. [↑](#endnote-ref-124)
125. Case of *Tsirlis and Kouloumpas v. Greece*, №№19233/91, 19234/91, §56: «56. It must therefore be established whether Mr Tsirlis’s detention between 30 April 1990 and 30 May 1991 as well as Mr Kouloumpas’s detention between 30 May 1990 and 29 May 1991 were "in accordance with a procedure prescribed by law" and "lawful" within the meaning of Article 5 para. 1 of the Convention (art. 5-1). The Court reiterates that the Convention here essentially refers back to domestic law and states the obligation to conform to the substantive and procedural rules thereof; but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5 (art. 5), namely to protect individuals from arbitrariness …». [↑](#endnote-ref-125)
126. The supporting documents is at the disposal of the Apriori ILC. [↑](#endnote-ref-126)
127. Paragraph 2 of Article 29.3 of the TMR Code of Administrative Offenses: “The report on an administrative offense indicates the date and place of its compilation; position, surname and initials of the person who drew up the report; information about the person against whom an administrative offense case has been initiated; last names, first names, patronymics (if there is information about patronymics), addresses, places of residence of witnesses and victims, if there are witnesses and victims; place, time and event of an administrative offense; article of this Code, providing for administrative liability for this administrative offense […]”. [↑](#endnote-ref-127)
128. Case of *Ismoilov and Others v. Russia*, № 2947/06, §§161, 166: «166. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court emphasises the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence ....». [↑](#endnote-ref-128)
129. <http://www.kodap.ru/kommentarii/razdel-4/glava-24/st-24-5-koap-rf>; “No event of offense”, in contrast to the “No crime” allows to file a lawsuit in court to recognize the actions of police officers as groundless, and also, in accordance with Article 1104 of the TMR Civil Code to file a claim for compensation for harm (including moral), caused by illegal official actions. [↑](#endnote-ref-129)
130. Opinion on the Protection of Human Rights in Emergency Situations adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006) (CDL-AD(2006)015-e), §13: «Even in genuine cases of emergency situations the rule of law must prevail […]». [↑](#endnote-ref-130)
131. <https://apriori-center.org/stepan-popovskij-zajavlenie-o-narushenii-v-pridnestrove-prava-na-svobodu-peredvizhenija/> [↑](#endnote-ref-131)
132. The Law On Procedure for Entry into the Transdniestrian Moldavian Republic and exit from the Transdniestrian Moldavian Republic, the Law On Sanitary and Epidemiological Health of Population, the Law On People’s Right to Freedom of Movement, Choice of Place of Stay and Residence within the Transdniestrian Moldavian Republic». [↑](#endnote-ref-132)
133. Paragraph 1 of Article 54 of the TMR Constitution: “In a state of emergency or martial law, in accordance with the constitutional law, the constitutional rights and freedoms of a person and citizen, established by Articles 4, 20, 24, 25, 27, 28, 31, 32, 33, 35, 36, 37 of this Constitution." [↑](#endnote-ref-133)
134. <https://www.mvdpmr.org/novosti/glavnaya-tema-koronavirus/33631-bez-rassmotreniya-ne-ostajotsya-ni-odno-obrashchenie.html> [↑](#endnote-ref-134)
135. <https://www.mvdpmr.org/vazhnaya-informatsiya/34678-rabota-krizisnykh-tsentrov-2.html> [↑](#endnote-ref-135)
136.  [↑](#endnote-ref-136)
137. <https://apriori-center.org/opiti-na-apriori/> [↑](#endnote-ref-137)
138. https://apriori-center.org/nedelja-svobody-slova-2018/ [↑](#endnote-ref-138)
139. Announcement of the event: <https://apriori-center.org/program/prezentacija-issledovanija-smeshannaja-izbiratelnaja-sistema-analiz-i-perspektivy-dlja-pridnestrovja/>

Video of the event: https://www.facebook.com/watch/live/?v=2243264209254566&ref=watch\_permalink [↑](#endnote-ref-139)
140. Article 34 – Individual applications

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right. [↑](#endnote-ref-140)
141. Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. [↑](#endnote-ref-141)
142. Case of *Djavit An v. Turkey*, № 20652/92, 20 February 2003, §56: «56. The Court observes at the outset that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see G. v. Germany, no. 13079/87, Commission decision of 6 March 1989, DR 60, p. 256; Rassemblement jurassien and Unité jurassienne, cited above, p. 93; and Rai and Others v. the United Kingdom, no. 25522/94, Commission decision of 6 April 1995, DR 81-A, p. 146). As such this right covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly (Rassemblement jurassien and Unité jurassienne, cited above, p. 119, and Christians against Racism and Fascism v. the United Kingdom, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138, at p. 148).». [↑](#endnote-ref-142)
143. <https://newsmaker.md/rus/novosti/v-pridnestrove-dvuh-pensionerov-prigovorili-k-trem-godam-tyurmy-za-oskorblenie-krasnoselskogo/> [↑](#endnote-ref-143)
144. <https://bloknot-moldova.md/news/zhenshchina-iz-pridnestrovya-oskorbila-prezidenta--1140029> [↑](#endnote-ref-144)
145. [https://invite.viber.com/?g2=AQBCaSx9qTocIkoBdhxuI%2BgcKUtydKlg0bAVjskj%2BNnGgstFgsrdCfjVJkQHtS68](https://invite.viber.com/?g2=AQBCaSx9qTocIkoBdhxuI%252BgcKUtydKlg0bAVjskj%252BNnGgstFgsrdCfjVJkQHtS68) [↑](#endnote-ref-145)
146. The supporting documents is at the disposal of the Apriori ILC. [↑](#endnote-ref-146)
147. <https://newsmaker.md/rus/novosti/beznakazannost-v-pridnestrove-rozhdaet-monstrov-advokat-vyacheslav-tsurkan-o-dele-kuzmicheva-i-borbe-za-prava-cheloveka-v-pridnestrove-intervyu-nm/> [↑](#endnote-ref-147)
148. https://newsmaker.md/rus/novosti/shevchuk-iego-komanda-chto-stalo-slyudmi-eks-glavy-pridnestrovya/ [↑](#endnote-ref-148)
149. Case of *Cyprus v. Turkey*, [GC], 2001—IV,35 EHRR 731, §96: «[…] in situations similar to those arising in the present case, the obligation to disregard acts of de facto entities is far from absolute. Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by thede facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities […] cannot be simply ignored by third States or by international institutions, especially courts, including this one. To hold otherwise would amount to stripping the inhabitants of the territory of all their rights whenever they are discussed in an international context, which would amount to depriving them even of the minimum standard of rights to which they are entitled». [↑](#endnote-ref-149)
150. Case of *Kudla v. Poland*, [GC], № 30210/96, §157: «As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief […]. […] the “authority” referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective […]». [↑](#endnote-ref-150)
151. Case of Mozer v. the Republic of Moldova and Russia [GC], № 11138/10, ECHR-2016, §116: «[…] To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success […]». [↑](#endnote-ref-151)
152. Annex 6 «Agreement on Human Rights» to the «The General Framework Agreement for Peace in Bosnia and Herzegovina» of 21 November 1995, Paris. [↑](#endnote-ref-152)