AARHUS CONVENTION SHADOW IMPLEMENTATION REPORT MOLDOVA 2021

Review of law, policy and practice

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AARHUS CONVENTION SHADOW IMPLEMENTATION REPORT MOLDOVA 2021
Review of law, policy and practice

MAIN AUTHORS AND EDITORS: Natalia Zamfir, Ph.D., Šárka Havránková, LL.M.
CONTRIBUTORS: Ilya Trombitsky, Martin Skalský

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For more information, please, visit:
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ACCC
Aarhus Convention Compliance Committee
CSO
Civil society organization
EIA
Environmental Impact Assessment
Eco-TIRAS
International Association of River Keepers Eco-TIRAS
MoE
Ministry of Environment
EU
European Union
IPPC
Integrated Pollution Prevention and Control
NDS
National Development Strategy
NGO
Non-governmental organization
PEE
Public environmental expertise
PRTR
Pollution Release and Transfer Register
SCJM
Supreme Court of Justice of Moldova
SEA
Strategic Environmental Assessment
SDGs
Sustainable Development Goals
SHMS
The State Hydrometeorological Service
SoER
State of Environment Report

Executive Summary

- Moldova is yet to fully implement the Aarhus Convention and commitments ensuring from the EU–Moldova Association Agreement, which although a political priority, it still polarizes Moldovan society.

- Political instability, bribery and clientelism, and frequent dissolutions of the Parliament obstruct legislative efforts.

- Reporting on environmental rights related issues is not consolidated. Since 2014, Moldova has not submitted any report on the Aarhus Convention implementation to the AC Secretariat.

- For the past 10 years environmental rights and mechanisms of its protection have not been on the government agenda's priority list.

- The NDS "Moldova 2020" reveals the largest discrepancy with SDGs (vast majority of its objectives were not included in the NDS) within governance and human rights policy area. The NDS "Moldova 2020" revolves mainly around issues of economic development.

- Although the Moldovan Government approved the NDS "Moldova 2030" as the main reference document for sectoral strategies and subsequent policy interventions, it was later annulled and there is currently no other policy document on development.

- Lack of transparency and widespread corruption that permeates central and local levels of government is one of the most pressing issues of public sector. Trust in public institutions is extremely low, which is promising to improve with pro-Western PAS party winning 2021 Parliamentary elections on a platform of fighting corruption and carrying out reforms.

- According to the People's Advocate (Moldovan ombudsman) exaggerated restrictions imposed in public spheres in 2020 led to the violation of freedoms and democratic processes in the country. The COVID-19 crisis has led to greater ignorance of public opinion, rising lack of transparency, inequality, structural and consolidated discrimination and overall deterioration of the human rights situation.[01]

- Environmental governance is highly centralized and the institutional system of environmental protection shows a lack of clear separation of competencies

01 Report on the observance of human rights and freedoms in the Republic of Moldova in 2020, p. 4. Available in English at http://ombudsman.md/wp-content/uploads/2021/06/Raport-2020-FINAL-RED_18-iunie.pdf

between central government authorities and subordinate institutions (agencies).

- Frequent institutional reorganizations lead to lack of continuity; loss of data and institutional memory.

- There is a limited understanding within the government and lead agencies on the need for communication and awareness-raising.

- Decision-makers and government officials lack specialized knowledge to implement the Aarhus Convention.

- Moldovan environmental defenders have their hands tied by not having open access to information. Requests for information are frequently ignored and when responded, they are incomplete and the information provided is limited; some public databases exist, although minority of information is in electronic format, but there is no interconnection between these databases. Online information tools do not practically exist.

- In order to achieve the objectives of the Aarhus Convention, it is necessary to create an efficient and functional mechanism for dissemination of environmental information and places of access to such information.

- To conform to EU environmental acquis, it is necessary to gradually develop *integrated* environmental information systems (such as the PRTR) that would connect all the existent databases (digitize databases stored on paper), enable sharing information between different institutional databases, public access to these databases, and electronic data collection.

- Moldova is yet to develop an efficient sanction mechanism and impose prohibitive fees for accessing information.

- The government has been trying to systematically restrict public participation in environmental decision-making. Public consultations of normative initiatives are largely limited to their publishing on websites without holding actual public hearings and considering comments of the public. As an exception to this norm, albeit sporadically and usually for a very short time period, MoE publishes drafts for discussions.

- It is necessary to develop clear procedure to ensure public involvement in decision-making at all stages, especially in early stages of preparations of projects, plans, and programmes, and enforcement, as well as monitoring its implementation.

- Moldova is yet to implement a full-fledged integrated permitting process where one *integrated environmental permit* will be issued for air, water and soil pollutants, and will consider an overall environmental impact of economic activities.

- Procedures need to be developed to clearly decide when and which plans or programmes require EIA, SEA, (and PEE). Accurate EIA/SEA studies related to relevant operations are rarely conducted and public hearings related to them are rarely organized.

- Majority of environmental impact assessment procedures are not preceded by announcements regarding the organization of public hearings (debates). As a result, even if the procedures are eventually held, it is without the public participating.

- Access to justice is hampered by capricious judicial practices and has become particularly difficult in case of procedures before administrative authorities due to encumbering burden of proof, exaggerated costs of technical expertise, institute of admissibility of action in administrative litigation, or striking down previous petition/submission by higher instance administrative authority that may aggravate the situation without grounds.

Recent political changes in the wake of the 2021 parliamentary elections won by pro-Western forces have sparred hopes for political improvements affecting the above-mentioned spheres. However, as regards environmental matters, the new government priority action plan for the next few years, which was recently discussed during the public consultation organized by MoE, does not include any action plan for the implementation of the Aarhus Convention proposed to be included by NGO association Eco-TIRAS.

Introduction

Moldova ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) on 7 April 1999, becoming the first country to do so and also one to hold the first meeting of signatories in Chisinau between 19 and 21 April 1999.[02]

As an environmental agreement between public authorities and general public the Aarhus Convention imposes obligations on public authorities to provide and facilitate *access to environmental information* to all, to involve the public in *environmental decision-making* processes, and to guarantee *access to justice* for individuals and NGOs in cases of breach of environmental law and/or the Aarhus Convention's provisions. Its significance is also in that it interlinks environmental and human rights by placing a right to clean environment among basic human rights.[03]

To ensure practical implementation of and compliance with the parties' commitments thereunder the Aarhus Convention establishes monitoring and compliance mechanism. In every 3 to 4-year reporting cycle the parties shall produce report on state of the Aarhus Convention implementation, which is then examined by regular Meetings of the Parties (MoP). Since 2014, Moldova has not prepared, nor submitted any report on the Aarhus Convention implementation. Despite requests of the Aarhus Convention Secretariat to present the last two national reports, the period of 2015 until nowadays remains uncovered, which is why Czech NGO Arnika partnered with Moldovan NGO association Eco-TIRAS to fill the loophole by putting together this shadow report. The purpose is not to substitute government's official implementation report but to present an alternative civil society's view on the progress in the Aarhus Convention implementation in Moldova between 2015 and 2021.

Although formal declaration of non-compliance as one of the measures under the Aarhus compliance mechanism has not been issued against Moldova, in 2009, for example, the ACCC (Compliance Committee) sent Moldova a series of recommendations invoking the country's non-execution of the Convention's provisions and prompting the rectification of the situation.[04]

Acknowledging the ACCC's conclusions and recommendations, in 2010, by the Order of the Ministry

02 United Nations Economic Commission for Europe, First meeting of Signatories, not dated, available at https://unece.org/environmental-policy/events/first-meeting-signatories.

03 See Article I of the Aarhus Convention.

04 United Nations Economic Commission for Europe, Re: Draft Report of the Compliance Committee, Compliance by the Republic of Moldova with the obligations under the Aarhus Convention, 16 March 2011, https://unece.org/DAM/env/pp/compliance/C2008-30/correspondence/7%20Jan%202011%20follow%20up/FrRMcommnetsonreport16March11.pdf.

of Environment Moldova established an Inter-Ministerial Working Group, which contributed to producing draft National Programme on access to information, public participation in decision-making and access to justice in environmental matters and the Action Plan for the implementation of the Aarhus Convention for 2011–2015, which was approved by the Government Decision No. 471 of 28 June 2011. Since then, however, no olicy document outlining a clear schedule and concrete steps to implement the Aarhus Convention has been formally approved by the government, let alone fully implemented. The draft Action Plan for the implementation of the Aarhus Convention for 2020–2022[05] remains a mere intent on paper and has never been open for public consultation.

For the past 10 years, environmental (and human rights at large) have not been on the government agenda's priority list. The NDS "Moldova 2030" as the main reference document for the country's development strategies and subsequent policy/sectoral interventions as well as the previous NDS "Moldova 2020" marginalize public role in development processes and environmental (human) rights at the expense of economic development.[06]

On central level the continuing trend of neglecting environmental rights was underscored by merging into one the Ministry of Agriculture, Regional Development and Environment in 2017 thereby causing the environmental ministry to lose much of its original competence.

Lack of transparency and widespread corruption that permeates both central and local levels of government remain one of the greatest issues in public sector development and reform in Moldova. In 2020, for example, Moldova occupied the 115th place among 180 countries on the Corruption Perceptions Index.[07] Despite pressure from major lenders and development partners such as the IMF, EBRD and the EU improving governance and aligning law, policy and practice with requirements ensuing from Moldova's international (and EU) obligations – still considered a burden rather than an asset – remains slow.

In the context of Moldova's approximation to the EU, the related legislation harmonization and compliance with

05 See SHMS website under http://www.meteo.md/index.php/en/about/.

06 Government of Moldova, Report on mid-term evaluation of National Development Strategy "Moldova 2020". Available in English at: https://www.md.undp.org/content/moldova/en/home/library/sdg/raport-de-evaluare-intermediar-a-strategiei-naionale-de-dezvolta.html; despite evidence to the contrary the ombudsman's report on the observance of human rights and freedoms for 2017 stated no violations of the right to healthy environment (and the right to access environmental information and/or to participate in environmental decision-making). In 2018 and 2019 reports, the right to healthy environment was not analyzed at all.

07 The "Corruption Perceptions Index" 2020 gave Moldova 34 out of 100 points. The scale is from 0 (highly corrupt) to 100 (very clean). With this result Moldova ranks 115th, which compared to other countries included in the index is slightly below average; for more information see https://www.transparency.org/en/cpi/2020/index/mda.

EU (including environmental) standards, implementation of the 2014 *Association Agreement between the European Union and the Republic of Moldova*[08] (Association Agreement) is a political priority, even though it polarizes Moldovan society as to whether the country should align itself with the EU or Russia.[09]

The 2012 Action Plan for the harmonization of the legislation with EU directives outlined the process to reform the entire environmental legal framework towards a more integrated approach to environmental protection. Starting 1 January 2016, the provisions of the Association Agreement began to be implemented throughout Moldova.[10] There have been significant delays in harmonization of EU environmental standards that do not allow integration of all components in environmental governance and management.

Yet, despite some serious legislative drafting the approximation process to the European Union environmental *acquis* is still at an early stage largely due to long-term political instability and the parliament's ineffective legislative work.

The methodology for compiling this report was largely based on the review of relevant literature, international legal instruments, and European and national legislation. It also drew on knowledge, experience, and observations of local experts from Moldovan NGO association Eco-TIRAS, well acquainted with local idiosyncrasies and functioning of relevant public institutions.

No surveys or interviews were conducted with public authorities because based on Eco-TIRAS previous experience (confirmed by other local NGOs) the authorities would very likely respond in negligible number of cases, which would not generate representative sample needed to make sufficiently thorough qualitative and quantitative analysis for the purposes of this report. In fact, in previous projects NGOs encountered much reluctance on the part of authorities, in general, and MoE, in particular to consider NGO proposals to better implement the Association Agreement and European Union environmental acquis. No surveys were conducted among NGOs because the experience and relevant results from previous environment-related projects could be also applied to this report.

08 Association Agreement between the Republic of Moldova on one hand and the European Union and the European Atomic Energy Community and their Member States on the other, http://www.parlament.md/LinkClick.aspx?fileticket=gXkOTU94I6Q%3D&tabid=203&language=ro-RO.

09 European Bank for Reconstruction and Development, Strategy for Moldova, p. 5 [not dated], available at http://www.ebrd.com/moldova.html; United Nations Economic Commission for Europe, Environmental Performance Review, p. 7 [2014], available at https://www.ebrd.com/moldova.html.

10 United Nations Economic Commission for Europe, Environmental Performance Review, p. 5 [2014], available at https://unece.org/DAM/env/epr/epr_studies/Synopsis/ECECEP171_Synopsis.pdf.

1.

Legislative framework on the right to access information, public participation in environmental decision-making and access to justice.

1.1 Environmental Governance

Environmental governance in Moldova is vested mainly with central government authorities. Specialized regional environmental bureaus practically do not exist.

The Ministry of Environment (MoE), recently (from 25 August 2021) reformed by division with the Ministry of Agriculture, as the state central authority with the power to develop, promote, and implement policies on environmental protection. It is also responsible for ensuring the implementation, monitoring, evaluation and reporting on implementation of international environmental commitments. MoE further serves as Aarhus Convention National Focal Point.

MoE was preceded by the merged Ministry of the Environment with the Ministry of Agriculture and Regional Development, which was heavily opposed by civil society. The environmental agenda had been marginalized within a ministry that combined competence in wide array of other policy fields such as water management, forestry, fisheries, regional policy, or spatial and urban planning.

Since 2016, the government made a certain progress in implementing the public administration reform by reorganizing the ministries and their subordinate agencies. The following agencies (relevant to the subject of this report) are subordinated to MoE:

- **THE ENVIRONMENTAL AGENCY**

The Environmental Agency was created in 2018 by a Government Decision No. 549 on the establishment, organization and functioning of the Environment Agency with the scope of competence comprising:
(i) implementation of environmental legislation (including that ensuing from the Association Agreement);
(ii) environmental permitting and monitoring;
(iii) administration of the integrated environmental information system (when fully implemented);
(iv) creating and managing the environmental impact assessment mechanism and strategic environmental assessment mechanism.

The Environmental Agency does not currently possess all the necessary tools to accurately operate the integrated environmental information system (monitoring pollution, managing databases and special registers).

Due to the lack of tools and mechanisms to perform the functions, for which they were created,

the subordinated agencies perform some or all of their functions by interim, hastily created and often uncertified institutions. The Environmental Agency, for example, issues permits and evaluates pollution levels by means of Environmental Reference Laboratory that has awaited certification since 2019.[11] The Agency itself received accreditation as late as in March 2021.[12]

• THE ENVIRONMENTAL INSPECTORATE

The Environmental Inspectorate supervises and controls compliance with environmental protection legislation. Before establishment of the Environmental Agency it had double controlling and permitting competence, due to which it was considered rather non-transparent and highly corrupt.

In addition to the above-mentioned agencies directly involved in environmental (integrated) permitting and monitoring, there is a number of other subordinated agencies (with the modification of word Moldova in the title) with wider environmental agenda. The Apele Moldovei Agency, for example, is responsible for the protection of waters. The Moldsilva Agency is responsible for implementing the state policy in the field of forestry and hunting.

Most of these agencies have out-dated websites with scarce information on their activities. For example, the last announcement of the proposal for public consultation placed on the Moldsilva Agency website regarding the initiation of consultation on some normative projects is from July 2018.

Both the MoE and its subordinated agencies reflect the fact that the reform of the central public administration was not thought through and was carried out hastily.[13] It resulted in overlapping jurisdiction of central government authorities, their chaotic structure and organization.

The coordination at the institutional level (both national and local) remains poor with non-systematic information between the authorities and towards the public.

• THE STATE HYDROMETEOROLOGICAL SERVICE

The State Hydrometeorological Service is a specialized central government authority founded in 1998[14], which implements policies in the field of meteorology, hydrology, and related areas, including climatology, agro-meteorology.

11 Analysis of the Moldovan Government Action Plan for 2020–2023, 7 February 2020. Available at https://eap-csf.eu/wp-content/uploads/Analysis-GAP_2020.pdf.

12 It concerned accreditation certificate for the SS EN ISO/IEC 17025: 2018 standards.

13 Report of the Institute for European Policies and Reforms, available at http://ipre.md/2019/10/30/shadow-report-eu-moldova-association-agreement-five-years-of-implementation-progress-constraints-priorities/?lang=en.

14 SHMS was established by the Law on Hydrometeorological Activity No. 1536-XIII of 25 February 1998.

The SHMS is responsible for ensuring the public and central and local public administration bodies have access to hydrometeorological data and information about the quality of the environment.

- **THE INSTITUTE OF ECOLOGY AND GEOGRAPHY**

The Institute of Ecology and Geography of the Academy of Sciences of the Republic of Moldova was founded in accordance with the Republic of Moldova Government Decision "on the measures for optimization the infrastructure of science and innovation sphere"[15] by merging the National Institute of Ecology of the Ministry of Ecology and Natural Resources and the Institute of Geography of the Academy of Sciences of the Republic of Moldova.

The Institute of Ecology and Geography is a public law research and innovation organization, which conducts basic and/or applied research activities, implements scientific results and innovations, and elaborates on scientific informational base regarding natural and anthropic risk factors.

One of the main tasks of the Institute of Ecology and Geography comprises the creation of informational database for integrated environmental monitoring.[16]

15 Government Decision No. 1326 of 14 December 2005.

16 Oddly enough there is a lack of clarity as to, which institution should be responsible for the creation of informational database and actively inform the public.

- **THE ENVIRONMENTAL PROJECTS IMPLEMENTATION UNIT**

The public institution "Environmental Projects Implementation Unit" (EPIU) was founded in 2018[17] to support the MoE and its subordinate agencies in implementing financial and technical assistance projects in the field of environmental protection and use of natural resources.

1.2 Environmental Policy

According to the "Environment" Chapter of the Association Agreement[18] Moldova is obliged to implement a number of EU directives in the field of environmental protection, including the Directive 2003/4/EU on public access to environmental information[19] and Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control, IPPC)[20].

17 Government Decision No. 1249 of 19 December 2018.

18 Annex to the Environmental Chapter of the Association Agreement contains 25 EU directives regrading various sectors such as environmental governance, industrial pollution and risks, or air and water quality.

19 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32003L0004.

20 Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0075-20110106.

The approximation process of Moldovan environmental legislation to the EU law is carried out according to the National Strategy for 2014–2023 and the Action Plan for the implementation of the National Strategy for 2014–2023, which constitutes Annex No. 1 thereto as approved by Government Decision No. 301 of 24 April 2014.[21]

The process envisages a number of legislative, technical (e.g., definition of facilities requiring integrated permit, creation of a pollutants register), and organizational (in particular, framework for enabling public access to information and participation in environmental decision-making) changes.

The development of legislative/normative framework in the environmental field started with the adoption of the Law on Environmental Protection, no. 1515-XII of 16 June 1993 even before Moldova ratified Aarhus Convention and signed the Association Agreement. This was a general, framework law, under which about 35 more specialized laws and other subordinate regulations (instructions, government decisions, etc.) have been developed. Yet, despite the existence of regulation that covers virtually every environmental sector, they still not to fully comply with Moldova's international commitments especially those ensuing from Aarhus Convention and Association Agreement.

The following policies are in force until 2030:

- The Environmental Strategy for 2014–2023 and its implementation Action Plan[22] ensures the coherence of the long-term strategic planning with the EU regulation and provides context for the development and approval of climate change adaptation strategies.
- Moldova has an evolving climate change adaptation policy framework with many complementarities and references to the crosscutting sustainable development policy framework. The Low Emission Development Strategy of the Republic of Moldova, in force since 2017 until 2030, identifies key actions for different sectors of the national economy in order to reduce GHG emissions compared to the levels recorded in 1990 (base year in the process of assessing trends in GHG emissions). Measures and principles of the green economy like energy efficiency, development of renewable sources, application of high-performance technologies for industrial production (cement, glass), conservative agriculture, afforestation,

21 Government Decision No. 301 of 24 April 2014 on the approval of the Environmental Strategy for the years 2014 – 2023 and of the Action Plan for its implementation, available in English at https://www.fao.org/faolex/results/details/en/c/LEX-FAOC159048/.

22 Government Decision No. 301 of 24 April 2014 regarding the approval of the Environmental Strategy for the years 2014–2023 and its implementation action plan, Official Gazette no. 104–109, available at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=352740.

efficient waste management, etc. constitute priority actions under the Strategy.

- Waste Management Strategy of the Republic of Moldova for 2013–2027[23] promotes a new way of collecting household and industrial waste, recovery of reusable materials, and achieving a unitary street sanitation programme that will help reduce the amount of disposed waste by establishing appropriate waste management system for each type of waste.

1.3 Environmental Law – Access to Information

Access to information constitutes the first pillar of the Aarhus Convention – effective public participation in environmental decision-making process, as well as the exercise of the right to justice in environmental matters largely depend on access to complete and accurate information.

The provisions of the ***Law on information***, No. 982-XIV of 11 May 2000, are fully applicable also to access to environmental information. The law contains the main guarantees regarding the exercise of the constitutional right to information, sets a (relatively short) deadline for responding to requests for information, provides the right to seek judicial remedies in case of refusal or lack of cooperation (failure to respond).

Subsequently, by the Decision of the Government of the Republic of Moldova for the approval of the ***Regulation on public access to environmental information*** No. 1467 of 30 December 2016 mechanism was created to ensure the right of access to environmental information held by public authorities and the conditions and ways of exercising this right established. The Regulation on public access to environmental information No. 1467/2016 transposes the EU Directive No. 2003/4/EU on public access to environmental information. Additional statistical data may be provided upon request in accordance with provisions of the Law on "Official Statistics" No. 93 of 26 May 2017.[24]

The above-mentioned regulations on public access to environmental information lack express provisions on different categories of information, which should be disclosed. This results in the public having to make repeated requests or making from-the-onset-redundant

23 Government Decision No. 248 of 10 April 2013.

24 According to Article 23 (1), (2) and (6): "The official statistics authorities must disseminate statistical data to users", "the dissemination of the statistical data provided in the statistical works programme to all categories of users shall be free of charge and under equal conditions of access in terms of volume, quality and terms", and "data collected from legal persons or from individual entrepreneurs regarding the economic situation or the environment may be disseminated, if it is necessary to inform the public about the major issues and the statistical works programme foresees the dissemination thereof.

requests for information. Under the Regulation on public access to environmental information it has proven difficult, for example, to trace information on public ecological expertise on normative acts, or the results of public consultations during the procedure to approve draft laws.

Although the current ***Law on Access to Information*** 982/2000 and the ***Regulation on public access to environmental information*** 1467/2016 ensure the realization of the right to access information an issue that has arisen is in the applicability of this provisions in practice by those requesting information, their holders as well as by courts.

The problem in the application of the legislation on access to information appeared in the Moldova's Supreme Court of Justice (SCJM) decision, in case no. 3ra-554/20 *Tataru Ana and the Public Association "Lawyers for Human Rights" vs Public Services Agency*, in which the Court ruled on the issue of continuity of the law (Law on access to information no. 982 of 2000) in time. It acknowledged the principle that the law continues to remain in force and effect as long as it is not repealed, i.e. the legal effects of the law do not depend on the frequency or continuity of its application. However, there were cases in Moldova when laws, even though duly enacted and in effect, were arbitrarily declared invalid and obsolete due to the lack of application over a long period as a result of changes in the conditions that initially existed when such laws were adopted, but never officially repealed or re-enacted.
In this case being one of them, the Court concluded that although the legislator did not expressly repeal the Law on access to information it became inapplicable, due to entry into force of the Administrative Code on 1 April 2019, without the Administrative Code expressly stating that enacting this law repeals other acts such as the Law on access to information.
The SCJM decision may lead to a dubious judicial practice of unjustifiably striking down valid laws to impede their applicability and thus deprive civil society of an effective mechanism to contest authorities' refusal to provide (environmental) information.

In addition to the Aarhus Convention on 24 April 2013 Moldova ratified the PRTR Protocol[25] that foresees to establish a "coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting".[26] PRTRs represent an integrated system of information about release and transfer of

25 The UNECE Protocol on Pollutant Release and Transfer Registers (PRTRs), also called as "PRTR Protocol", adopted on 21 May 2003 in Kiev, Ukraine was signed by 32 countries and the European Union. It came into force on 8 October 2009.

26 See Article 5 point 9 of the Aarhus Convention.

potentially hazardous substances and pollutants into air, water and soil.

In order to facilitate access to environmental information, the following databases (not yet fully electronic) were created:

- **Automated Waste Management Information System** containing unified databases and information on waste management, list of authorized waste management operators, list of notifications on cross-border transport waste services, as well as other related information[27];
- **Information System "National Register of Emissions and Pollutants Transfer" (E-PRTR)**, which is a source of information on environmental pollution, emissions into air, water, soil and diffuse sources and the transfer of waste and pollutants[28];
- **Automated Information System for the Management and Issuance of Permit Documents** and the electronic system for issuing the permit for sport, amateur and recreational fishing, e-Fishing[29];
- **Statistical database** – an advanced system for viewing environmental indicators on the website of the National Bureau of Statistics.

27 Government Decision No. 682 of 11 July 2018.
28 Government Decision No. 1373 of 24 April 2018.
29 Government Decision No. 1551 of 13 June 2018.

Although at the meeting of state secretaries on 26 September 2019 by a Decision on approving the Integrated Environmental Information System the government approved the creation and operation of integral information space, the national PRTR still awaits harmonization with Regulation (EC) No. 166/2006 establishing a European Pollutant Release and Transfer Register.[30]

In order to conform to PRTP Protocol and PRTR Regulation the PRTR register needs to comply with the following:

- PRTR data shall be easily publicly accessible through electronic means for anyone without having to state interest (Article 11, par. 1);
- Where electronic access is not available, data should be provided by other effective means upon request within a reasonable period of time (one month) (Article 11, par. 2);
- Electronic access to the register should be facilitated in publicly accessible locations, (for example in public libraries, offices of local authorities or other appropriate places), in case there is no easy electronic public access (Article 11, par. 5);

30 Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, available at https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:32006R0166.

- Ensure that access is free of charge or that any charges do not exceed a reasonable amount (Article 11, par. 3);
- Information may be held confidential only if it adversely affects certain legitimate interests (such as international relations, national defence or public security; course of justice; commercial and industrial information; intellectual property rights and personal data), Article 12, par. 1
- Interpret in a restrictive way the grounds for confidentiality, taking into account the public interest served by disclosure and whether the information relates to releases into the environment (Article 12, par. 1 and 2)
- Disclose information that is considered confidential, including provision of generic chemical information and the reason the other information has been withheld (Article 12, par. 3)

However, the current pollutant registers are not publicly available databases; merely closed databases where data is available upon request, but where very few operators ever submit any information.

1.4 Environmental Law – Public Participation in Environmental Decision-Making

The concept of public participation in (environmental) decision-making – the second pillar of Aarhus Convention – is based on two underlying principles:

1) People have the right to participate in formulating decisions affecting their lives;
2) Involving public in decision-making can increase the quality of political and administrative decisions.

The ***Law on environmental protection*** No. 1515-XII of 16 June 1993 – the main act providing the legal basis for the development of subsequent normative acts and instructions on specific environmental issues – recognized the right to participate in consultations on normative and policy proposals aimed (directly or indirectly) at environmental protection and the use of natural resources and the right to consultation on construction, zoning, and urban planning and restoration projects with negative effects on the environment.

By Decision No. 72 of 25 January 2000 the government approved the ***Regulation on involving the public in the elaboration and adoption of environmental decisions***, in which the involvement of the public in the process of elaboration and adoption of environmental decisions is defined as "a social act, according to which the right and access is ensured to decision-making, to express the opinions on the adoption and implementation of draft laws and project documentation regarding the objects and activities envisaged, which influence or may influence the environment".

The ***Regulation*** does not make a clear distinction between public participation in the elaboration of environment-related plans, programmes and policies and the decision-making process in the elaboration of the draft laws and other normative acts. Consequently, it makes it difficult to achieve the Regulation's function of implementing mechanism for ensuring public participation, which is provided by the Law on environmental protection (Article 30 (b)).

The notion of "public involving" as applied in national legislation rather than "public participation" may cause interpretation and application problems. These terms might have different meaning depending on process stakeholders. If "public participation" is to be interpreted as a right to be involved in environmental decision-making processes, while the "public involving" merely as an obligation of the authorities to consult the public in the decision-making processes, then the regulation is innately restrictive.

Certain general aspects related to attracting the public to the decision-making process, including environmental issues, were introduced by the ***Law on transparency in the decision-making process*** No. 239 of 13 November 2008 that sets the requirements to ensure transparency in decision-making of all public authorities.

Transparency in the decision-making process is based on the following principles:

a) to inform the public (including individuals and registered associations) about the initiation of the elaboration of respective decisions and about the public consultation on respective draft decisions;
b) to ensure equal opportunities for their participation in the decision-making process.

In accordance with the Law on transparency in the decision-making process (Article 6) citizens, registered associations and other interested parties have the right to:
a) participate in any stage of the decision-making process;
b) request and obtain information regarding the decision-making process, including to receive the draft decisions in accordance of provisions of the Law on access to information;
c) propose to the public authorities the initiation of the elaboration and adoption of decisions;
d) present to the public authorities recommendations regarding the draft decisions.

In order to transpose the provisions of EU Directive 2003/35/EC (on public participation in respect of the drawing up of certain plans and programmers relating to the environment)[31] Moldova enacted the ***Law on***

31 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of

Environmental Impact Assessment on 29 July 2014 and the ***Law on Strategic Environmental Assessment*** on 2 March 2017 respectively. These laws provide regulation related to informing the public about procedures evaluating the likely environmental impacts of proposed plans, schemes, strategies and concepts prior to deciding on moving forward with it and participation in them.

The Law on normative acts No. 100 provides the E-legislation electronic system (Art. 22) to ensure transparency of the legislative process and to include all versions of legislative drafts and additional materials from different stages of this process. The portal should have been functional already in 2019 but it has not been launched yet.

Although laws requiring EIA and SEA (and public environmental expertise as the third environmental assessment instrument currently in effect) exist, they do not incorporate provisions on procedures to clearly decide when and which plans or programmes require EIA, SEA, (and PEE). Thus, accurate EIA and SEA studies related to relevant operations are rarely conducted and public hearings related to them organized.

Under the principles of EU Directive 2010/75/EC (Industrial Emissions Directive) Moldova should adopt relevant legislation and introduce an *integrated permitting process*. Currently, the process of environmental permits is disintegrated based on single-medium approaches, which means that separate environmental permits are issued for air, water and soil pollutants, and does not consider an overall environmental impact of economic activities. As a result, operators of an economic activity may need to obtain a range of environmental authorizations, usually from different public authorities. The same permitting system is used for all enterprises regardless of their size and pollution potential.

The Industrial Emissions Directive is based on the premise that not all operations require environmental permit, but only those with the highest pollution potential that fall within the emission limit values for substances set in the Directive.[32]

Determining the conditions for the operation of the installation grounds on which the emission values are set for a particular facility in the permit, if any is issued at all, is currently highly arbitrary. According to the European legal framework, emission limit values in environmental permits shall be based on the best available techniques

the drawing up of certain plans and programmers relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0035.

32 See Annex II to the Industrial Emissions Directive.

(BAT) as a framework indicator reflecting the most efficient and advanced stage of development of particular technology, activities, and their method of operation, which indicate their practical suitability for preventing or reducing emissions and its impact on the environment.[33]

Despite the fact that Moldova ratified the Almaty (2005) amendment to the Aarhus Convention related to public participation in GMO issues, it is not adequately reflected in legislation. The new governmental GMO draft law from January 2021 does not refer to this amendment. Moreover, it does not even use the term "participation", rather it operates with the term "consultations".[34]

The current national environmental legislation on industrial emissions lacks a systematic approach and focuses on regulating the protection of the environment in all sectors separately. An integrated approach to environmental compliance is still under development.

33 For definition of BAT see Article 3 of the Industrial Emissions Directive.

34 See https://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/5392/language/rRO/Default.aspx?fbclid=IwAR2qqsGJok4OjR_%20dAogNlagPfE0bL9ePqGUuV9KdVTtJ4qoT48bkSk41ecw.

1.5 Environmental Law – Access to Justice

Certain aspects to ensure access to justice in environmental matters (from substantive point of view) were provided before ratification of the Aarhus Convention by the ***Law on environmental protection No. 1515 of 1993*** (Article 30), according to which the state recognizes the right to a healthy environment for all persons, for the purpose of which it shall ensure the following rights in accordance with the legislation in force:

e) to petition state courts for temporary or definitive suspension of an economic agents' activity that causes irreparable damage to the environment;

h) to bring directly or through organizations, parties, movements, associations, environmental, administrative or judicial authorities ceasing of activities that cause damage to the environment, regardless of whether the economic agents will be or not directly harmed;

i) to compensation for damage suffered as a result of pollution or other results of economic activities affecting the environment, as well as for damage to human health.

The Code of Civil Procedure of 26 December 1964 provided in Article 4 the right of every person to effective remedies from the courts against acts that violate their rights, freedoms and legitimate interests (access to justice).

Certain aspects to ensure the right to access to justice in environmental matters (from procedural point of view) were provided by the ***Law on administrative litigation*** no. 793/2000 of 10 February 2000, which grants everyone who considers themselves injured in their rights by a public authority, by an administrative act or failure to respond to a request within the statutory deadline, the right to apply to the administrative court for annulment of an act, recognition of the claimed right and reparation of the damage caused (Article 1 (2) (partly related to the contestation of administrative acts, issued by authorities, which affect rights and interests, including those related to environment).

Since entry into force of the ***Administrative Code***, the ***Law on Administrative Litigation*** No. 793 of 10 February 2020 and the ***Law on Petitions*** No. 190 of 19 July 1994 have been repealed.

As regards the third pillar of Aarhus Convention – access to justice – at national level ***Administrative Code*** No. 116 of 19 July 2018, regulates administrative procedure and judicial control over it.

The ***Code of Civil Procedure*** of 30 May 2003 stipulates that any person has the right to apply to the court to defend their violated or contested rights, freedoms and legitimate interests (Article 5).

A legislative novelty in the field of access to justice was introduced by ***Law on mediation*** No. 137 of 3 July 2015, which determines, among others, the principles and particularities of mediation as an alternative dispute resolution method. This law is also applicable to environmental matters and ecological issues.

In order to ensure the quality of justice, efficiency of the judiciary, a balanced distribution of caseload between courts, and creation of environment for increasing judges' specialization the reform on judges' specialization was implemented by the Law on the reorganization of the courts No. 76 of 21 April 2016.

In order to ensure comprehensive implementation of the Association Agreement the National Action Plan for the Implementation of the EU-Moldova Association Agreement (PNAIAA) was approved by Government Decree No. 1472 of 30 December 2016 (updated for the years 2017–2019), containing actions for reforming of the judicial system.

The reform to be undertaken to ensure the independence of the justice comprises, among others, the following priorities: impartiality, integrity, professionalism and efficiency of judicial authorities that should be free from any unjustified, political or other interference with no tolerance for corruption and with transparent and merit-based procedures for the recruitment of judges and prosecutors by an independent authority.

Due to the reform commenced at the end of August 2019 the justice sector has made progress in areas such as case management, approval of the selection,

promotion, appointment and sanctioning. At the same time, the justice sector was affected by the involvement of a significant number of actors in the Russian "money-laundering scheme"[35] and in the controversial decision to cancel the new elections in Chisinau, held in June 2018. A number of actions to ensure independence in the justice sector did not succeed, even though over 86% of the actions planned in the Sector Reform Strategy were reported as being implemented. Some institutional improvements were achieved with the adoption of the Law on the Prosecutor's Office and the Law on specialized prosecutors' offices, but the appointment of the Prosecutor General raised doubts. Furthermore, the Prosecutors' Inspection remained under the subordination of the Prosecutor General, which fuelled numerous suspicions related to the lack of independence and political control over the Prosecutor's offices and the courts.[36]

35 The Russian money-laundering scheme refers to an initiative to move tens of billions of US dollars out of Russia between 2010 and 2014 through a network of global banks, many of them in Moldova and Latvia; see https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/.

36 Eastern Partnership Civil Society Forum, Analysis of the Moldovan Government Action Plan for 2020–2023 [7 February 2020]. Available at: https://eap-csf.eu/wp-content/uploads/Analysis-GAP_2020.pdf.

2.

Practical implementation of three pillars of Aarhus Convention

2.1 Access to Information

It applies to both international agreements and national legislation that their negotiation and adoption is hardly ever accessible to the public. The public representatives, for example, did not participate at the negotiating process of the Association Agreement and were not informed about the progress of these negotiations. Similarly, for example, the decision to approve the Regulation on public access to environmental information No. 1467/2016 instead of the Law on access to environmental information was taken without considering public opinion.

Some ministries and government institutions have separate databases with information relevant to their field of activity. They often have a different format; some information is stored on paper and is not publicly available. There is no interconnection between these databases, so the information exchange does not take place, as it should. MoE, for example, maintains website but it is not regularly updated and so is the website of agency Moldsilva, for example. Although other agencies, Apele Moldovei, for example sometimes announce consultations on normative acts, the results of these consultations are hard to trace. What also makes public access to information difficult is poor communication between that the ministries and its subordinate agencies.

An integrated environmental information system that would make it possible to connect all the existent databases, digitize data stored on paper, share information between databases of different institutions, and electronic data collection does not exist.

MoE experiences major difficulties while dealing with the use of obtained environmental data and of information, because of the lack of a system that would be able to collect, receive, process and generate environmental reports.[37]

Certain progress has been achieved in terms of public access to statistical data, including environment-related data. Statistical data are available free of charge on the website of the National Bureau of Statistics (NBS). Since 2010, a publication containing environment-related statistics for the country, “Natural resources and

37 The Government Decision No. 301 of 24 April 2014 on the approval of the Environmental Strategy for the years 2014–2023 and of the Action Plan for its implementation, p. 19, available in English at http://extwprlegs1.fao.org/docs/pdf/mol159048.pdf.

the environment", has been prepared annually by the NBS and is available online.[38]

The Aarhus Convention embraces the concept that if information is to be truly accessible it must also be affordable. It also stipulates (Article 4 (8)) that any fees charged for information must be reasonable. However, national legislation in force does not follow the Convention-recommended guidelines on **(a)** a schedule of charges; **(b)** criteria for when charges may be levied or waived; **(c)** criteria for when the supply of information is conditional on the advance payment of a charge. By the same token, the Regulation on public access to environmental information No. 1467/2016, for example, provides unclear and wide rule, as to which environmental information the public authorities shall apply (reasonable charges).

Except for administrative fees to generate information from the systems, public authorities should provide information free of charge in order to maintain access to information in maximum extent possible. In reality, however, obtaining information that is already available means having to pay literally hundreds of thousands of Moldovan lei. Cases when government agencies requested exorbitant sums for information are not a rarity. In 2017, for example, local NGO Eco-TIRAS reported that the State Hydrometeorological Service requested 35 thousand dollars for information about the river with the length of 27 km. This also illustrates arbitrariness and a complete lack of methodology in calculating costs and fees for the provision of public information. In 2020, for answers to ACCC case questions the government required the costs for the requested information of 3.7 times lower, which still makes information unaffordable and inaccessible to the public.

Back in 2008, Eco-TIRAS reported difficulties in access to information to the ACCC. Subsequently, the Meeting of the Parties adopted recommendations in 2011 obliging Moldova to elaborate a clear plan of filing these loopholes in the Convention implementation. The government adopted a plan, but nothing has changed in reality.

In light of the Compliance Committee's reasonable costs communication ACCC/C/2017/147 Moldova has not initiated the procedure to modify the Government Regulation No. 330 of 4 March 2006 on the Approval of the List of Services Provided for Free and Charges by the State Hydrometeorological Service and the Guidelines on the Use of Special Means of the State Hydrometeorological Service contested by Eco-TIRAS International Association of River Keepers.

The authorities are generally very reluctant to provide information. Practice of NGO Eco-TIRAS shows that about

38 United Nations Economic Commission for Europe, Environmental Performance Review, p. 7 [2014], available at https://unece.org/environment-policy/environmental-performance-reviews.

half of all requests for information are usually ignored. The rest is returned incomplete or made conditional. The authorities often refuse requests submitted electronically if not signed, requiring to "comply with the requirements for electronic documents" to contain electronic signature (in the Moldovan context, however, this constitutes a significant obstacle).[39]

> The response, if any, is usually provided within 30 days and not 15 days, as provided by the Regulation on public access to environmental information No. 1467/2016, which is the result of arbitrary interpretation of normative acts. It also due to the fact that the Law on information No. 982-XIV/2000 is not adapted to today's realities and does acknowledge alternatives to traditional means of communication between individuals and public authorities such as an e-mail and does not contain terms to request different types of information.

The authorities often justify the refusal to provide information by the provisions of Law on personal data protection and Law on access to information. The term "official information", as applied in the Law on access to information, in particular creates confusion.

The classification of requests as "official information" rather than "public information" gives Moldovan authorities leeway to conveniently justify refusals to provide information by classifying them as state or trade secrets. Thus, more appropriate term would certainly be "information of public interest" or "public information", as any information that refers to the public authority's activities or results of these activities, regardless of the environment, form, or way of expressing information.[40]

There are no official and clear licensing mechanisms for reuse of the data made available by public authorities in conformity with the PSI Directive (now Open Data Directive).[41]

Finding the existing information is practically quite complicated. The Environmental Agency simply publishes environmental permits sampled together month by month without any differentiation by topics or geographical sorting, which does not enable to find those relevant.

39 The Environmental Authority makes reverence to the Law on petition, which was repealed by the Administrative Code; http://www.mediu.gov.md/ro/content/peti%C8%9Bii-online.

40 There are many gaps in implementation of the Aarhus Convention provisions on access to information mentioned in the draft Environmental information communication strategy 2020–2022 published on Environmental Agency web site, but it is difficult to trace clear information at what stage of approval it is and whether and when consulted with the public; http://mediu.gov.md/sites/default/files/document/attachments/proiect.pdf.

41 Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the reuse of public sector information, text available under: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.172.01.0056.01.ENG.

2.2 Public Participation

Public consultations of normative initiatives and draft legislation are largely limited to their publishing on websites (www.particip.gov.md and www.justice.gov.md) without holding public discussions.

In 2016 and 2017, several CSOs submitted a number of proposals to the Moldovan Parliament, recommending improving the Law on transparency in decision-making, Parliament's Rules of Procedure, the Law on access to information, etc. These efforts did not induce any actions on the part of public authorities to announce and hold public discussions/consultations and thus the proposals have not led to any tangible results.[42]

In August 2020, Eco-TIRAS addressed the State Chancellery with a legislative proposal to include funding in the state budget for activities related to protected natural areas, including scientific nature reserves. The State Chancellery redirected the Eco-Tiras request to the Ministry of Finance.

The Ministry of Finance informed that the scientific nature reserve as a scientific research institution could participate in public tenders and competitions and benefit from public funding. The office of ombudsman found the answer of the Ministry of Finance to legislative proposal of Eco-TIRAS illegal, admitting the violation of the legislation in force. The ombudsman's response also revealed that MoE, responsible for the implementation of international environmental conventions, including the Biodiversity Convention, has addressed the Ministry of Finance many times with the request for funding that the Ministry of Finance always ignored.

The government has been trying to systematically restrict public participation in (environmental) decision-making. The Activity Programme of the Government of the Republic of Moldova of 6 December 2019, for example, included only one action related to the civil society: "Strengthen the watch-dog role of civil society organizations and prohibit their involvement in political activities". As mentioned in the declaration of members of the Moldovan National Platform of the Eastern Partnership Civil Society Forum, prohibiting the involvement of the CSOs in political activities is a restriction that goes against the international standards and denies their rights

42 Declaration of the Moldovan National Platform of the Eastern Partnership Civil Society Forum Regarding the Activity Program of the Government of the Republic of Moldova, 6 December 2019, https://www.eapcsf.md/en/ro-declaratia-platformei-nationale-a-republicii-moldova-a-forumului-societatii-civile-din-parteneriatulestic-cu-privire-la-programul-de-activitate-a-guvernului-republicii-moldova/.

to actively engage in public debates on topics of public interest and thus influence public policies.[43]

As of the date of this report the Environmental Agency has not initiated and published on its website any draft strategies, action plans, or normative acts proposed for public debate with the exception of the Table of Divergences in the draft National Set of Environmental Indicators[44] and posting announcement for public consultation of the Draft Environmental Communication Strategy 2020–2022 and the Draft Government Decision for the amendment of some government decisions. However, it is not clear from these rare announcements who, when, and under which conditions informed about the initiation of the decision-making process, the nature of the proposals, objections, what kind of public comments were sent, etc.

The last announcement of Apele Moldovei Agency's public consultation regarding a normative proposal dates back to 30 July 2018. The Moldsilva Agency and the SHMS have not published any information (on its website or otherwise) on public consultations on planned or ongoing regulatory proposals.

As a result of media coverage of suspicious activities related to the forest fund, the Moldsilva Agency approved an administrative Order *on enhancing communications and preventing tendentious interpretations of forestry activities in progress*. The Order has not been made available for public consultation. The Moldsilva Agency argued that it is enough that the Order was consulted with the local authorities. At the moment, the Eco-Contact Association has been preparing an action for annulment of the administrative act adopted by the Moldsilva Agency, arguing with the violation of rules on transparency in the decision-making process.

In the June 2019 report on the Environmental Agency's website Eco-TIRAS read about the elaboration of the Institution Order for creating the Working Group for coordinating the process of drafting the National Report on the State of the Environment (SoER) 2020.[45] It was published in 2020 and covered the period 2015–2018 and the previous report was published in 2011 and covered the period 2007–2010. As evident, there has been five years between 2010 and 2015 when the provision of the state of environment information was completely omitted.

43 Declaration of the Moldovan National Platform of the Eastern Partnership Civil Society Forum Regarding the Activity Program of the Government of the Republic of Moldova, 6 December 2019, https://www.eapcsf.md/en/ro-declaratia-platformei-nationale-a-republicii-moldova-a-forumului-societatii-civile-din-parteneriatulestic-cu-privire-la-programul-de-activitate-a-guvernului-republicii-moldova/.

44 Two local environmental NGOs have formulated their position to these drafts.

45 For more information go to: http://mediu.gov.md/sites/default/files/document/attachments/Raport%20Agentia%20de%20Mediu%2010.06.2019%20-14.06.2019_0.pdf.

The authorities have curtailed the right to participate in the decision-making processes by not taking in account the opinion of the civil society representatives.

The Eco-Contact Association has recently addressed the Chisinau Court regarding annulation of the National Ecological Fund decisions approved without the participation of a designated civil society representative who had not been informed of and invited to the meetings.

To increase transparency in the decision-making process the Environmental Agency also created Environmental Impact Assessment Register (for 2019 and 2020) on its website[46], in which it records its activities' projects.

However, of all the activities' projects registered in the Register (a total of 87 projects), only two announcements are placed:

1. The announcement of 5 June 2020 of public consultation on the set of national environmental indicators (36 environmental indicators established in accordance with the UNECE) evaluated during the process of drafting the National Report on the state of the environment in the Republic of Moldova for 2015–2018.

2. Public announcement of 11 June 2020 on the consultation of the documentation on environmental impact assessment and participation in the public debate on the possibility of consulting the content of the documentation on environmental impact assessment for the location of the project Eoliană Vulcănești on the administrative territory of Colibași village, Cahul district and Brînza village, Cahul district.

The examples show that majority of environmental impact assessment procedures are not preceded by announcements regarding the organization of public hearings (debates) and the project documentation is rarely made available to the public, which constitutes breach of the public's right to participate in decision-making process under Aarhus Convention (Article 6).

Although these breaches of the right to participate in environmental decision-making would justify court remedies, there are a number of obstacles in a way. First, the public is usually passive and ambivalent towards public affairs, does not trust public authorities and institutions (including courts), and thus disinterested in seeking judicial relief. Second, the costs of litigation including court fees are so high that they discourage from resorting to courts. Third, respective legislation (both substantive and procedural) is not sufficiently developed to support petitions of individuals (and CSOs) to courts

46 See http://mediu.gov.md/ro/.

for breaches of Aarhus Convention (and respective national legislation).

According to the decision of the plenum of the Supreme Court of Justice of the Republic of Moldova "on the practice of application by courts of provisions of environmental legislation in the examination of civil cases no. 3 of 24 December 2010", as amended by the decision of the plenum of the Supreme Court of Justice of the Republic of Moldova no. 31 of 4 December 2017, the courts were informed only of the fact that, in case of disputes related to the results of the state ecological expertise (and/or, possibly, opinions on environmental impact assessment), the case regarding contestation will be submitted to the administrative court in conformity with the Law on administrative contentious no. 793-XIV of 10 February 2000 (current Administrative Code), but without indicating the possible justification for contestation), and thus about a likely lack of jurisprudence in such cases.

The consultation process of the government decision no. 635 approved on 19 August 2020, which regulates the irrigation using groundwater, represents an important case on violation of the public's right to participation in the context of Article 8 of the Aarhus Convention (public participation in the process of drafting legislative and normative acts). It also illustrates how the government frequently omits informing the public about final decisions.

Moldova is facing conditions of water stress during the period of irrigation in agriculture as it is situated in a region with insufficient humidity and low precipitation. Permitting irrigation using groundwater that plays a special role in the surface water balance in the RM and constitutes an important part of the hydrological cycle is a vital decision and requires a thorough analysis of all possible risks.
Initially, the draft regulation (about 70 points) and an environmental impact assessment were presented for public discussion. Subsequently, a preliminary analysis of the regulatory impact was prepared in the State Chancellery, after which the text of the regulation was changed and significantly reduced. The new draft was made available for public consultation (Friday) but the deadline for an actual consultation was only 3 days (until Monday). It should be emphasized that the aspects of environmental impact assessment and ecological expertise were excluded and the opinion of civil society and their arguments were ignored.

The above-mentioned groundwater case also illustrates that preliminary analysis of the regulatory impact (AIR), if made at all, does not usually analyse the proposed regulatory initiatives from human rights perspective, but looks at general environmental and social policies with more attention being paid to the impact on the state budget and economic interests.

The government decision no. 23 of 8 January 2019 on methodology of preliminary analysis of the regulatory

impact does not regulate analysis of impact on environmental rights; only recommends considering objections obtained during the public consultations process.

2.3 Access to Justice

According to the World Justice Project's 2019 Rule of Law Index Moldova ranked 83rd out of 126 countries. In this ranking, Moldova obtained poor scores, among others, in correct application of laws – 107th place and civil justice – 87th place.[47]

The provisions of the Article 6 of the Law on environmental expertise about obligatory expertise regarding draft legislation and other normative acts (and various instructions, methodologies, and standards) relating to the state of the environment and / or regulating activities potentially hazardous to the environment 851/1996 do not usually apply at all. This procedure is limited only to feedback that the Environmental Agency provides during the internal discussions; however, there is no public discussion held during the environmental expertise.

Government corruption is still perceived as the main problem; the corruption perception index has worsened since the provisional entry into force of the Association Agreement.[48]

Fighting high-level corruption, though, has been mostly characterized by selective judicial practices, which happens despite certain improvements of the normative and institutional framework. But the de-politicization of law enforcement agencies and their proximity to citizens remains a backlog.[49] The justice sector reform process deviates from the requirements regarding transparency and integrity.

Access to justice is hampered mainly by high costs of conducting technical environmental expertise and protracted examination of matters by courts and authorities. General distrust in the judicial system leads to people avoiding access to justice in practically any matter (including environmental) that might fall under judicial or administrative review. The Civil Procedure Code does not contain clear time periods; rather it contains a very wide term "consideration within a reasonable time frame."

In 2005, the Eco-Contact Association had action brought to the court involving the State Ecological Inspectorate

47 Evaluarea implementării Acordului de Asociere. IDIS „Viitorul"; http://www.viitorul.org/files/Evaluarea%20implement%C4%83rii%20Acordului%20de%20Asociere%20In%202.pdf.

48 From a score of 35 to 33, according to Transparency International; Ibidem.p.11

49 Ibidem.p.14

and the Fruit Limited Liability Company and Limited Liability Company «Eco Garant» regarding the obligation to recover environmental damage. The applicant claimed that the factories producing concentrated juice have operated without the necessary permits. The applicant also pointed out that the Fruit Limited Liability Company without the consent of the public authorities drilled into the ground and built an artesian well for using groundwater in the Edinet Industrial Park, which eventually raised the issue of environmental and groundwater pollution for the inhabitants of the city of Edinet.
The action was under examination at first instance for 2 years and in July 2017 an action filed by the Eco-Contact rejected. The first instance decision was later contested before the Court of Appeal and the action of the Eco-Contact was partially admitted by this court in February 2018.
The State Ecological Inspectorate contested the decision of the Court of Appeal before the Supreme Court of Justice. In January 2019, the Supreme Court of Justice rejected an action filed by the State Ecological Inspectorate.
The results of the dispute are still pending as of the date of this report.

On the basis of a decision of the plenum of the Supreme Court of Justice of the Republic of Moldova of 24 December 2010, as amended by the decision of the plenum of the Supreme Court of Justice of the Republic of Moldova no. 31 of 4 December 2017, the ordinary courts have been warned that an incorrect examination of environmental cases may affect the fundamental rights of individuals and legal entities, protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms, especially by Article 2 (the right to life, which implies respect for life and physical integrity and the right to a healthy environment) and Article 8 (the right to respect for private life).[50]

Frequent court practice in deciding cases of violation of the right to healthy environment and ensuing compensation of non-pecuniary damage comprises awarding negligible damages by national courts that do not reflect the gravity of the harm caused.[51]

The courts have the right to rule on the cessation of economic agents' activity or refuse to acknowledge such an activity, if it contravenes environmental legislation. While examining these cases, the courts often focus

50 In this context, in the case of Guerra and others against Italy, the ECHR has noted, that the courts, when examining civil cases regarding the violation of ecological legislation, are entitled to apply the ECHR jurisprudence directly.

51 Compare, for example, the ECHR case of Otgon vs Moldova where the ECHR, although it acknowledged the courts provided remedy in the form of establishing the guilt of the supplier and awarding compensation, it found the compensation for physical and metal suffering caused to the applicant (and her family) due to drinking contaminated water from public supply system in the amount of 5,000 lei too small and compensated the applicant with EUR 4,000 as non-pecuniary damage.

merely on establishing whether an offence has been committed and see cessation of activity that negatively affects the environment in closure of an object, rather than remedial actions comprising elimination of the source of negative influence: carrying out repairs, reconstruction, installation of new stations for wastewater treatment, equipment and application of new technologies, etc.

Access to justice in environmental matters has become particularly difficult in case of procedures before administrative authorities that are governed by the Administrative Code:

- The Administrative Code provides for fees, which are intended to cover the expenses of the administrative authority, they are unfavourably high for the petitioners, and thus obstruct initiating administrative procedure[52];
- The burden of proof is fully on each participant, who is to prove the facts, on which they base their claim (not only on public authority as under the previous Law on administrative litigation);
- Hierarchically superior (appellate) administrative authority may decide in the sense of aggravating the situation of the participant who submitted the prior request;
- The institute of admissibility of action in administrative litigation was introduced;
- The obligation to present the administrative file was introduced, which may lead to prolongations of terms for examining the action and thus unnecessary delays in examining the file.

The case of the residents of Sergio Rădăuțanu str. versus Chisinau City Hall and the Mayor of Chisinau Municipality of 2020 regarding the annulation of the Mayor Disposition examined by the Chisinau Court, Riscani well illustrate these deficiencies.

The case revolves around a new part of road to be built in the residential area located on Academician Sergiu Rădăuţanu str., Riscani district, Chisinau (about 100 meters) to connect Bucovinei str. and Sergiu Rădăuţanu str. The residents requested to see permits for the construction workers realised by Regia "Exgrup". In order to obtain information about the workers and copies of the supporting documents, on 30 April 2020,

52 The previous regulation – the Law on administrative litigation, which was replaced by the Administrative Code, did not provide for the collection of any payments from petitioners. The current regulation under the Administrative Code (Article 116), which stipulates that the participants in the administrative procedure pay the costs for the petition and for participating in the procedure, while the public authority leading the procedure pays the remaining costs, may practically lead to situations when, if the case ends up at court, upon request of the petitioner, the court orders the appointment of any technical expertise, the costs of the expertise as well as the costs of carrying out a study to determine the level of pollution will be all borne by the petitioner.

a collective request was submitted to the Chancellery of the Chisinau City Hall, in which the residents of Sergiu Rădăuţanu str. requested, among others, Mayor's Order to unblock Academician Sergiu Rădăuţean str. and initiate the construction works, feasibility study or City Hall records on consultations with the public.
Through annulment of an administrative act (Mayor's disposition) the residents sought stopping any works and suspending any decisions related to this access path at least until all relevant issues are discussed and clarified.
On 21 May 2020, the court adopted a decision rejecting the request to suspend the construction initiated by the order of the Mayor of Chisinau. The rejection was justified mainly by the provision of Article 172 (2) of the Administrative Code, where the suspension of the execution of the contested administrative act (Mayor's Disposition) was found to be an exceptional measure, for which none of the required conditions were met: the presence of reasonable suspicions regarding legality the contested administrative act and the existence of the imminent danger of irreparable damage.

The fact that the case was not put on file constitutes an impediment to convene the court examination, to debate the issue of disposition, and perform technical expertise. Recently, cases of illegal construction in green areas have become more frequent. These construction projects are usually carried out without building permits, without previous public consultations and access to the result of EIA.

We observe some identical impediments in access to justice in the following cases – illegal construction on address on "Dimo 7/3" str., "Coca 7" str., "Maria Cebotari 20" str. (Cafe Guguță):

- High costs of technical expertise; the court admits only the result of technical expertise made by State Expertise Institution, which, however, makes expertise for the entire country; the staff is limited and the lack of technical capacity result in long time frame for examination of cases;
- No use of the construction suspension tool; the long period of examination of cases poses a risk that in the event of construction suspension the developer can appeal the suspension and demand compensation for material damage. Due to long term of case examination the construction can be finalized earlier and there might be fewer possibilities to obtain the desired environmental rights protection, clashing with private property rights.

3.

Conclusions and Recommendations

Without further delay the Moldovan government should promote the adoption by the Parliament of relevant environmental laws to fully implement EU environmental acquis ensuing from the Association Agreement. Moldova would, in general, greatly benefit from de-politicizing public institutions and creating more space for people to participate in public affairs and influence public policies.

The strategy "Moldova 2030" should lay down roadmap for sustainable development, preventing pollution and degradation of environment, and involving the public in endeavours to achieve these goals.

It can be argued that quite favourable, yet general legal framework has been created for the development of measures to protect human rights, but certain constraints in sustainable development can be observed. There is a multitude of strategies, programmes, activity plans and the lack of a special legal framework. The responsibilities of state actors in this field are fragmented, which leads to disintegrated management and policies that are unattainable and frequently not endorsed by their own drafters. Despite certain good practices that have been developed over the years competent authorities do not have sufficient tools at their disposal to prevent human rights violations and mechanisms for removing the negative consequences thereof.

The Action Plan on the implementation of the Aarhus Convention at least until 2025 should be elaborated (and approved by the Governmental Decision) based on clear methodology analysing the factors, which did not allow the realization of the previous 2011–2015 plan.

It is highly recommendable that adoption of each policy (enacting every law) is preceded by a thorough analysis of the regulatory impact of the proposed policies and normative acts (explanatory memorandum), laying down grounds for the proposed regulation and explaining the necessity to adopt it. It should be made available to the public. In this sense, the government should amend the Government Decision No. 23 of 8 January 2019 to introduce this obligation that is to filter out unsuitable or potentially environmentally damaging initiatives.

New approaches in the development of environmental policy and legislation should be used, including convergence with key principles governing the EU framework legislation, and identify ways of overcoming the gaps between strictly single-media oriented environmental laws. Guidance documentation, best practice notes or other information on appropriate working methods should be also developed.

Once the respective environmental protection strategies are adopted the Government should revise

the structure of the central environmental authorities (and their subordinate agencies) to avoid the overlapping of functions and to make the institutional structure more effective by, in particular, separating the permitting and inspection functions and creating an executive agency (body) for monitoring, information exchange and permitting under MoE.

The institutional reform should also focus on reducing the expenses for operating public institutions, increasing capacity building and accountability within public institutions, and improving the quality and accessibility of public services.

In order to implement the obligations arising under the Aarhus Convention and the Association Agreement Moldova needs to undertake namely the following:

1) Fully transpose the Almaty Amendment on GMOs (2005) to Aarhus Convention to national legislation;

2) Fully transpose as a normative act the Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention[53] and Industrial Emissions Directive.

Enacting a new law on environmental protection that introduces an *integrated* permitting system for installations having significant impact on the environment with emission limit values set directly in the legislation, following the approach of the Industrial Emissions Directive as a benchmark, is long overdue. The integrated permits need to include self-monitoring requirements for enterprises. A simplified permitting scheme for other installations that due to their pollution emission levels do not fall under the Industrial Emissions Directive should be also introduced. Best available techniques (BAT) need to be introduced as a basis for permitting. It is also recommended to make summaries of the applications for permits and issued permits available to the public.

As regards access to information as a first pillar of Aarhus Convention Moldova should:

1) Transpose as a normative act the Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the reuse of public sector information and in this regard elaborate the licensing terms to promote the environmental data use and reuse;

2) Amend the legislation on access to information, in particular, Law no. 982/2000 on access to information; Law no. 133/2011 on the protection of personal data; Law no. 171/1994 on trade secrets; Law no. 245/2008 on

53 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

state secret and formulate and delimitate clear provisions regarding categories of information of public interest;

3) Draft a Government Decision regarding environmental data categories establishing the type of data that the state may collect and is obliged to provide to the public;

4) Improve of the Regulation on public access to environmental information No. 1467 by including information registers for the public interested and clarifying definition on reasonable costs;

5) Revise regulations on costs for providing information such as Law 1536/1998 on the hydrometeorological activity or Government Decision No. 330 for the approval of the types of services provided free of charge and against payment to the State Hydrometeorological Service to make sure providing information itself is free of charge, while allowing administrative costs (data search, copying) for generating the information to be charged;

6) Develop and quality control mechanisms to determine accuracy and relevance of environmental data;

7) Create publicly accessible online portal with environmental information and related (interconnected) electronic systems of environmental authorities.

Establish database of polluters, an equivalent of the European Pollutant Release and Transfer Register (PRTR) conforming to the PRTR Regulation.

To ensure open access to information an efficient enforcement mechanism should be introduced (including sanctions) to prevent public authorities from arbitrarily violating legislation on access to information and on petitioning (Contravention Code No. 218/2008).

As regards public participation as a second pillar of Aarhus Convention Moldova should:

1) Develop and adopt a new Government Decision on public participation in environmental decision-making in conformity with EU legislation in order to increase its applicability and efficiency;

2) Progress in fully implementing the 2000 Government Regulation on Public Participation in the Elaboration and Adoption of Environmental Decisions and supplement the Law on Environmental Protection and include relevant detailed provisions on public participation in environmental permitting, environmental standards setting, and design ways of including civil society representatives into governmental commissions or committees on environmental policy and sustainable development;

3) Amend the Law on Environmental Impact Assessment of 29 July 2014 and the Law on Strategic Environmental Assessment of 2 March 2017 in such a way so as to enable the public to participate in the early stages of a decision-making process and not only the last stages when it is no longer possible to make any significant changes.

Moldova should further improve the functioning of the mechanism for public participation in environmental impact assessment (EIA) by: **(a)** establishing a detailed procedure, including a public consultation procedure, for review by the public of the EIA documentation on proposed activities; **(b)** ensuring that the public comments and opinions are taken into account in the decision-making process.

It should further improve the use of the three existing environmental assessment instruments (SEE, EIA and PEE) by linking them closer to the principles to the EU EIA Directive and to other compliance assurance mechanisms and increasing public involvement in environmental assessment decisions.

As regards access to justice as a third pillar of Aarhus Convention Moldova should:

1) Amend Law no. 198 of 26 July 2007 on state-guaranteed legal aid in terms of conditions and principles regarding partial or full compensation of qualified (legal) assistance (lawyer or mediator) in mediation as well as conventional forms of examination of environmental cases.

Exorbitant costs of litigation, the shortage of environmental lawyers and lack of legal assistance remain pressing issues obstructing access to environmental justice in Moldova. The state compensating even a part of the costs of litigation might encourage people to seek legal assistance and bring environmental matters before courts.

Given their unique nature and, in particular, technical complexities, due to which they are not well suited for judicial determination, it is advisable to develop the institute of mediation in environmental cases, which might thereby be examined faster and for a fragment of cost. It can start with awareness-raising campaigns between ordinary public and NGOs focused on:

- Motivating NGOs to mediation promotion activities;
- Elaborating and disseminating complete informative materials to explain the advantages of mediation in environmental cases and information on institutions providing such services.

2) Thoroughly review judicial practices especially those of the European Court of Human Rights, which should be applied to the national context, in particular with regard to cases involving individuals holding public offices.

Arnika – Citizens Support Centre (Czechia)

Established in 1996, Citizens Support Centre has long experience promoting access to information, supporting public participation in decision-making, and enforcing environmental justice. Its experts assist various civil society organizations, municipalities, and individuals in solving cases related to industrial pollution, rivers and waters, landscape protection, urban planning and right to the local communities to live in healthy environment. Arnika works in international projects together with its partners in Central and Eastern Europe, Caucasus, and several countries of Asia. Arnika is a member of the Association of environmental NGOs of Czechia – Green Circle, European Environmental Bureau, European ECO Forum, International Pollution Network, and International Rivers Network.

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CONTACTS:

Arnika
Dělnická 13,
170 00 Prague 7
Czechia
Tel./fax: +420
e-mail: cepo@arnika.org

More information:
http://arnika.org/en/moldova

Eco-TIRAS
Str-la Teatrala 11A,
Chisinau 2012
Moldova
Tel./Fax: +373 22 225615
E-mail: ecotiras@mail.ru

More information:
http://eco-tiras.org