Cornelia Cozonac, Iacob Guja, Petru Munteanu

Monitoring the Access to Information in the Republic of Moldova

„The right to access to any information of public interest cannot be impeded"
Constitution of the Republic of Moldova, Art. 34, par. (1)

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Introduction

Over four years have elapsed since the Republic of Moldova has adopted a Law on access to information. Much has been written and discussed on the topic. Some, especially from among nongovernmental organisations and lawyers, have addressed the theoretical aspect of this legal institution. Others, especially reporters, have exercised their rights conferred by the law and faced the refusal of public servants to provide the requested information. This experience developed mistrust among reporters and led to their statements that that particular law, like others, would stay dead. In these circumstances it is essential to revert to the aim of the law, more specifically, to the role that may be played by it in the very difficult and lengthy process towards institution of democracy and a new legal order in the Republic of Moldova. The desire is to revert to the potential underlying the law and to the ways and means for its achievement.

The access to public interest information and the transparency of decision-making are two of the most important components of an operating democracy. The right of citizens to request and receive information of public interest is sanctioned in art. 34 of the Constitution of the Republic of Moldova. Since May 2000 the access to information Law was enacted that offers the specific legal tools needed for exercising the right to information.

Against this background, Transparency International – Moldova, in cooperation with the Center for Investigative Reporting (CIR) and the Association for an Independent Press (AIP), has carried out this study on access to information of public interest in the Republic of Moldova, aiming at *evaluating the capacities of the central and local public authorities to provide information in compliance with the procedures stipulated in the law and to provide for genuine involvement of the public, nongovernmental*

organisations and the business community in the decision-making process.

The research was carried out during the period May – September 2004 having the following main objectives:

- evaluating the degree of transparency of central and local public authorities as related to the provision of public interest information;
- finding out the extent to which the public authorities have complied with their obligations as stipulated in the Constitution of the Republic of Moldova (art.34) and the access to information Law, namely: to organize special departments for information and public relations, to nominate persons with responsibilities for this area and to develop operational guidelines to support the provision of public interest information to the citizens;
- examination of the way in which public authorities respond to applications for information from reporters, nongovernmental organisations and citizens and assessing the time spent for the activity;
- analysis of the amount of information provided in compliance with their responsibilities and assessment of the civil servants' degree of receptiveness to telephone requests for information from citizens;
- revealing major problems emerging within the public institution / citizen relationship with regard to access to information;
- evaluation of the citizens' awareness of their right to information and the extent of such awareness.

Rather than making a purely theoretical analysis, article by article of the Law on access to information, the authors of this study proposed to analyze the implementation of this Law. They have relied specifically on their own experience, frequently playing the role of applicants for information and plaintiffs in court demanding the observance of their right to information. Thus, this study is neither an *a posteriori*, not an *a priori* work. The

theoretical issues addressed are not the authors' accidental choice, but an answer to practical needs in exercising their legal rights.

I. Monitoring the degree of transparency of public authorities and the provision of public interest information

The investigation process of the way in which the central and local public authorities observe the right of citizens to information, also, the extent to which the citizens are aware of this right and the way in which they exercise it, was based, in principle, on submission of applications to public authorities and institutions as allowed for in the access to information Law, while adhering strictly to conditions of the law and following the way in which public authorities have responded to such applications. The process was monitored in which the authorities reacted to applications for information depending on the category of the applicant (citizen, nongovernmental organisation, reporter, businessman) and depending on the format of the application (verbal, written, electronic). The applications were sent by post office, submitted in person to the registry office of the authority/institution, sent by E-mail and some information was requested by telephone. Some of the applications for information were addressed on behalf of Transparency International - Moldova, the Association for an Independent Press and the Center for Investigative Reporting, while others were on behalf of ordinary citizens.

1.1 Methodology applied in the investigation process on access to information

The process of investigating access to information had various components: submission of applications to public authorities on

behalf of nongovernmental organisations, reporters and ordinary citizens and pursuing the process of their examination, as well as study of the citizens' awareness of their right to access to information through an opinion poll and through investigation of the information provided by the authorities as part of their responsibilities.

During the first stage Transparency International – Moldova has requested, through a letter addressed to the heads of 95 central and local public authorities and institutions, answers to a number of questions related to observance of the access to information Law.

During the same stage, in order to check the degree of citizens' awareness of their right to access to information and of the way in which they exercise this right, the Center for Investigative Reporting carried out an opinion poll in four rural communities situated in different zones of Moldova and in the city of Chisinau simultaneously with an opinion poll among businessmen.

The second stage of the investigation included examination of the degree of transparency of public institutions in their relations with the public and with mass media. The public authorities were sent 75 applications for information from citizens of communities where the study was being carried out. The citizens had applied for public interest information. Simultaneously, the experience of the reporters at the Center for Investigative Reporting and of the Association for an Independent Press with regard to their applications to state structures for public interest information and the problems faced by the press in the process of obtaining information were analysed.

During the third stage the amount and quality of information provided by different information providers on their web pages was evaluated along with the timeliness of information provided to the public on current activities of the public institutions. Throughout July-August the volunteers at the Center for

Investigative Reporting analyzed the contents of 66 public institution web pages and the frequency of updates of the information provided on web pages, while in early September a telephone opinion poll was carried out in order to examine the availability of civil servants to provide information as part of their official responsibilities.

1.2 Researched public authorities and institutions

Within the study the following 95 public authorities and institutions were investigated, out of them 64 being central and 31 – local institutions:

Top administration of the Republic of Moldova:

Presidency of the Republic of Moldova; the Parliament and the Government.

Ministries:

Ministry of Economy; Ministry of Agriculture and Processing Industry; Ministry of Industry; Ministry of Energy; Ministry of Finance; Ministry of Education; Ministry of Culture; Ministry of Health; Ministry of Ecology and Natural Resources, Ministry of Labour and Social Protection; Ministry of External Affairs; Ministry of Justice; Ministry of Domestic Affairs (MDA); Ministry of Defence; Ministry for Reintegration; Ministry of Transportation and Communications.

Departments:

Department for Interethnic Relations; Department for Exceptional Situations; Department for Border Troops; Customs Department; Department for Standards and Metrology; Department for Privatization; Department for Youth and Sports; Department for Statistics and Sociology; Informational Technology Department (DIT); "Moldova-Vin" Department; Department for Development of Tourism; Migration Department.

Agencies, state services and public institutions:

National Agency for Public Purchases (NAPP); National Agency for Control in Energy (NACE); National Agency for Control in Telecommunications and Computer Services (NACTC); Agency for Land Tenure and Cadastre; State Agency for Copyright (AGEPI); Service for Information and Security (SIS); State Agency for Forests "Moldsilva"; State Agency for Protection of Industrial Property (SAPIP); State Administration for Civil Aviation (SACA); Organisation for Export Promotion (OEP); Central State Fiscal Inspectorate; National Chamber for Social Insurance; State Company for Railways "Calea Ferată a Moldovei"; State Registration Chamber; Center for Law Development; License Chamber; State Service for Archives; National Archives of Moldova; State Agency for Material Reserves and Humanitarian Aid; Coordinating Board for TV and Radio; State Service for Cults' ; National Commission for Movable Assets (NCMA), Central Electoral Commission (CEC); National Bank of Moldova (NBM).

Judicial and control authorities:

Constitutional Court; Supreme Court of Justice; Superior Magistrate Board;
Court of Accounts; General Prosecutor's Office; Economic Court; Court of Appeal;
Economic Court of Appeal; Center for Combating Economic Crime and Corruption (CCECC).

Other state institutions:

Academy of Sciences of Moldova; Academy for Public Administration.

Local public authorities:

Mayor's Office of Chişinău; Governor of the Găgăuzia Region.

District executive committees

Districts: Anenii Noi, Basarabeasca, Briceni, Cahul, Cantemir, Căuşeni, Călăraşi, Cimişlia, Criuleni, Drochia, Donduşeni, Edineţ, Făleşti, Floreşti, Glodeni, Hânceşti, Leova, Nisporeni, Ocniţa, Orhei, Rezina, Râşcani, Ungheni, Teleneşti, Soroca, Şoldăneşti, Ştefan Vodă, Străşeni, Sângerei.

1.3 Examination of the execution of Law of access to information by central and local public authorities

The freedom of expression and access to information are the two fundamental rights declared by the society of the Republic of Moldova since gaining independence. However, access to information, as a right of each citizen, is frequently denied. In order to carry out the study, Transparency International - Moldova sent (during the period June 25 through July 7) some 97 applications to central and local institutions requesting the following information:

1. *Number of applications registered by the institution based on the access to information Law since the beginning of the year 2003 (from physical persons, legal entities and mass media);*
2. *Number of applications met and unmet;*
3. *Number of unmet applications for state confidentiality reasons;*
4. *Number of cases in which information was provided with payment;*
5. *Number of court litigations in which the institution was involved following a refusal to submit requested information. Which party has won the respective lawsuits?*
6. *Is there a person responsible for the provision of information within the institution?*

7. *Does the institution have a regulation on the rights and responsibilities of staff members with regard to the process of official documents and information provision?*
8. *In which way does the institution make the public interest information available to the public?*
9. *Were there cases of civil servants that have been penalized for ill performance as related to provision of public interest information as part of their responsibilities or for provision of such information without the permission of the institution's administration?*

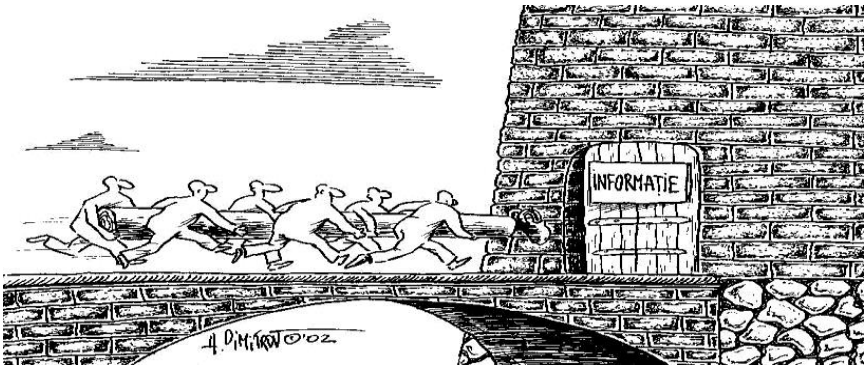
The same application requested:

1. *The Regulation of rights and responsibilities of employees regarding the process of providing official documents and information.*
2. *Copies of decisions on penalizing employees for ill performance in respect to providing public interest information as part of their responsibilities or for provision of such information without the permission of the institution's administration.*

Table 1 (reflecting the results of this stage of the study) shows that the majority of the public authorities and institutions had replied to the application of Transparency International – Moldova for observance of the access to information Law. Out of a total of 95 public authorities, 26 institutions did not respond to the application of Transparency International – Moldova (28.4%), out of them 14 are of a central level and 12 of a district level. Among the non-responding institutions are the following: Parliament, the Government of the Republic of Moldova, the ministries of Industry, Education, Ecology and Natural Resources, Defence, Central State Fiscal Inspectorate, the Chisinau Mayor's Office, and the Governor of the Găgăuzia Region. The Supreme Court for Justice had sent a response dated August 01, 2004 that was sent by post office on September 20,

2004. The National Archives of Moldova replied to the application of Transparency International – Moldova that it can offer the requested information with payment, while the Railway State Company „Calea Ferată a Moldovei" offered an indefinite answer, so that none of the received information could be used. The time taken to respond to the application varied from 2 days (Center for Law Development) and 80 days (Department for Tourism Promotion), although the access to information Law states that the institution should respond to requests for information within 15 days. This term stipulated in the law was observed by 39 institutions (41%), which is less than half of the studied institutions. When evaluating the term of the responses, the fact was taken into consideration that a part of the applications and most of the responses had been sent by post office. However, the fact is noticeable that the public authorities provided the public interest information after major delays. The average time for response was over 20 days. The fact that most of the addressed institutions had sent responses on letterhead with address and contact data of the institution should be mentioned as positive. The executor of the response as well as his/her contact data were shown in 48 of the responses.

The analysis of the content of the responses (Table 2) denotes that the employees of many central and local institutions do not observe the provisions of the access to information Law, although



four years have already passed since the Law was adopted. Only 48 of the public authorities and institutions (50%) have provided a complete response to the application for information. Regarding the content of the responses a note needs to be made, that while Transparency International – Moldova had solicited the number of requests for information by citizens under the access to information Law, many institutions offered the total number of petitions, complaints and other types of applications received by them from citizens. Thus, the Information Technology Department shows in its response that it provided answers to some 349,820 applications for information, the respective number offered by Ministry of Domestic Affairs being 117,314, by the Migration Department – 22,000. It is obvious that not all these applications requested information under the access to information Law; the applications were rather requests for provision of various documents, examination of petitions, complaints, etc. The majority of the institutions state that they have met all the requests for information received from citizens or legal entities. Only a few responses, those from OEP, Department for Standards and Metrology, DIT, SIS, Court of Accounts, General Prosecutor's Office and the Customs Department, mention that they failed to meet a certain number of applications, offering also the reason for which the provision of information was denied. Another part of the institutions mentioned that no applications for information were received in writing from citizens. The analysis of other components of the study showed that this situation was not exactly true. Thus, the Ministry of Energy states in its response to Transparency International – Moldova that no applications for public interest information were registered, while Table 4, presenting the experience of the Center for Investigative Reporting and the Association for an Independent Press, shows that in January, 2004, the latter organisation had sent to the Ministry of Energy an application for information on the number of ministry employees

laid off or fired over the period 2001-2004 and the reason for such action, making reference to the Constitution of the Republic of Moldova and the access to information Law, with the request never being answered.

Simultaneously, it was studied whether the public institutions observe the provisions of art. 11 of the access to information Law stating, among others, that "in order to assure free access to official information the information provider …b) shall nominate and train responsible officers for carrying out the procedures for official information provision; c) shall develop regulations on rights and responsibilities of staff within the process of providing official documents and information." In respect to the Regulation on rights and responsibilities of staff within the process of providing official documents and information it was found that many authorities have no such Regulation yet. Only 18 institutions out of the total 66 admitted having developed a Regulation on the way to provide public interest information and only 4 of those have attached the copy of the regulation: the State Administration for Civil Aviation, the State Agency for Protection of Industrial Property, the National Bank of Moldova and the Department for Tourism Promotion. The Ministry of Economy had attached an Order „On organisation of the process for public information within Ministry". From the responses received from heads of districts it was stated that none of the district authorities has a regulation on rights and responsibilities of staff within the process of providing official documents and information. Here, the fact shall be noted that some chairmen of the district authorities (Nisporeni, Rezina, Căuşeni) indicated their desire for cooperation in the area and requested assistance in development of a regulation in compliance with the access to information Law. The Central Electoral Commission also requested assistance in the development of the respective Regulation. However, a worrying fact was identified in that some of the correspondents stated that no regulation was necessary for

their institution. Thus, the management of the Academy of Sciences of Moldova, when answering the question of whether the institution had a regulation, said that the access to information Law was sufficient, although the Law itself provides for the development of such regulation. One information provider (the case of the Ministry of Health) stated that „... in this respective area the ministry is guiding its activity by the effective legislation and has no such regulation..." These facts show unawareness of the Law, since the respective law demands that the information providers develop such documents.

Regarding the existence of a person responsible for public interest information provision within the institution, it was found that 11 institutions had no such person. Some managers explain the lack of such person stating that „operational responsibilities provide for no such activity" (as in the case of the State Agency for Material Reserves and Humanitarian Aid) or that there were no available staff members or that there was no need for such staff (as in the case of the Academy of Sciences of Moldova), while the access to information Law explicitly stipulates in article 11 that "the information provider (…) shall designate responsible staff for carrying out procedures for official information provision". In many cases, the person

responsible for public relations is in fact the spokesperson of the institution or the head of the media service. Out of the 84 institutions having mentioned that they had persons responsible for provision of official information, only three: the Ministry of Reintegration, the Drochia Executive authority and SAPIP showed the name of the respective person without their contact data, while only one institution, SACA, showed the name and contact data for the person responsible for public relations.

Only in two cases ("Moldova-Vin" Department and the Central Electoral Commission) was the answer signed by the person responsible for public relations, while the majority of responses were signed by the heads of the institutions. This means that the persons responsible for provision of public interest information are not authorized to sign replies to requests for information. Consequently, they do not have genuine rights to provide official information, the information being provided only upon validation by the head of the institution.

From the answers to the question about the number of court litigations in which the institution was involved following refusal to submit requested information, the conclusion was made that over 2003-2004 only 11 court proceedings took place related to obstruction of access to information. In 3 cases the public institutions, namely General Prosecutor's Office, Center for Combating Economic Crime and Corruption and State Agency for Copyright had lost the cases. In another 3 cases the plaintiffs had withdrawn their application during court proceedings, while in 4 cases the applications were taken out of the court roll. In one case the state institution had provided the requested information during the court proceedings, while two other cases are still under investigation. It should be mentioned that the information submitted by the public institutions does not reflect the current state of affairs, if we take into consideration the fact that a big number of central institutions have refused to respond to the applications of Transparency International – Moldova. The data

of Table 4 show that currently at least 6 lawsuits are on file against central public institutions with the reasons stated being obstruction of access to public interest information. The Center for Investigative Reporting has checked the situation and has found out that in addition to the abovementioned cases, over the last three months more lawsuits against central institutions were pending related to obstruction of access to public interest information. Thus, the publications "Молдавские Ведомости" and „Glasul Naţiunii" are in the process of court litigations with the Presidency for obstruction of access to information; for the same reason, the publication "Timpul" has brought to court the State Chancellery and the National Agency for Public Purchases. Upon analysis of the data of Tables 3 and 4, it can be ascertained that in many cases the public institutions have refused to meet the applications for information from citizens, which is a serious violation of the Constitution of the Republic of Moldova, of the access to information Law and of the European Convention on Fundamental Human Rights and Freedoms.

As we see, during the studied period over 10 lawsuits were on file in court following violations of the right to access to information. Notwithstanding, practically all the respondent institutions stated that no violations of the legislation on access to information were committed and that no employee had been penalized for nonprovision of public interest information. The General Prosecutor's Office, however, informed Transparency International – Moldova that one employee was penalized and fired for provision of certain information to the press. This was done in spite of the fact that Article 7 of the access to information Law states, among others, that "nobody may be penalized because of making public limited accessibility information, when disclosure of such information does not and cannot affect a legitimate interest of national security or when the public interest for information prevails over the possible impact of information disclosure".

The conclusion derived from the analysis of the responses to Transparency International – Moldova's application from studied institutions is that the citizens are not aware that they have the right to request information from central and local institutions, hence the very low number of applications based on the access to information Law cited by the studied institutions. On the other hand, the citizens do not know that they have the right to dispute in court the refusal of institutions to provide requested information. Article 23 of the access to information Law states that "in case the person believes his/her legitimate rights to access to information were violated and in case the person is not satisfied by the solution offered by the management of the information provider or through a superior institution, he/she may challenge the action or inaction of the information provider directly through a competent court". The fact should be mentioned that none of the web pages of the central public institutions offer information on the ways to challenge actions obstructing the citizens' access to official information, although this is mandatory for each public institution, as stipulated in the access to information Law.

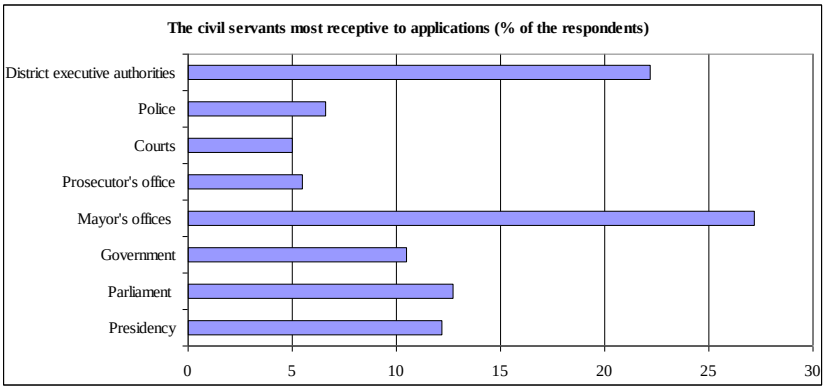
Thus, the conclusion at this stage is that, on the one hand, a considerable part of the civil society is not aware that it has certain rights to apply for information which allows them to exercise another right, the one for participation in governing, while, on the other hand, a significant part of the civil servants do not know the provisions of the effective legislation, namely, that they have the responsibility to provide information at the request of the public, to timely and correctly inform the society about the activity of their institution which is funded from public funds.

– Access to information? Wait, a minute, you will have it…

1.4 Examination of the right to information awareness within the public

The *sine qua non* condition for successful implementation of a normative act is the awareness of it among those that it addresses, the owners of the right, on the one hand, and those whose responsibilities pertain to the execution of the right. Towards this aim, an opinion poll was carried out in four rural communities - Bălăşeşti (Sângerei), Şestaci (Şoldăneşti), Căzăneşti (Teleneşti), Budeşti (Chişinău) – and in the Chisinau municipality. A sample comprised of 180 respondents was interviewed as follows: 90 – from rural communities and 90 – from the Chisinau municipality. Out of them 40.6% have university education and 59.4 % have graduated from secondary or secondary vocational schools. Out of the total, 30.5% respondents were of the ages between 18-29, 57.2 % – between 30-59 and 12.2 % - over 60.

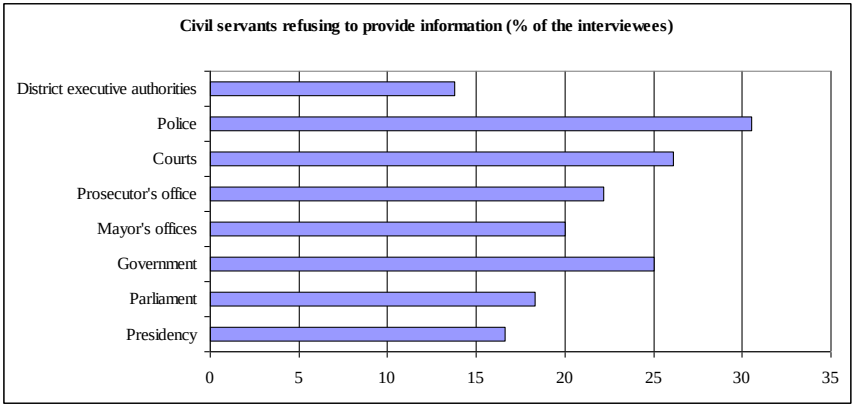
Being asked if they were aware of their right to apply for public interest information to authorities, two thirds of the respondents (66.6%) answered that they did, while 33.4 stated they were not aware of the right.



Another set of questions included in the questionnaire were related to exercising the right to information and the degree of transparency of central and local public authorities. When asked if they had ever requested information based on the access to information Law, every second respondent answered in the affirmative. Out of the total of the respondents that have solicited information, about two thirds admitted to having received answers, the rest (39.8%) stating that their right to access to information had been violated, the authorities providing no answer. Almost every second of those that have obtained an answer to their request for information (44.4%) said that the reply was delayed. Timely responses were received by 56.6% of those that have requested information. Over two thirds (72.3%) of those that had received answers, whether on time or delayed, mentioned that the reply was either incomplete or confusing, or downright incompetent.

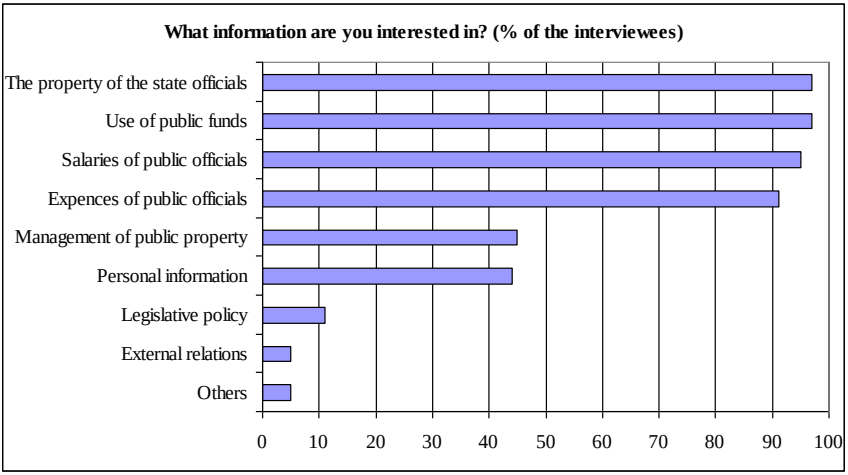
Being asked to evaluate the behaviour of the civil servants when addressed with direct verbal applications for public interest information 80.7 % stated that the officials they discussed with were polite, while 9,8% said that an impolite tone was used. It is worth mentioning that 9.5 % of those asking for information directly from authorities said that the officials refused to discuss with them.

When asked to evaluate the receptiveness of the central and local public authorities to citizens' requests, the participants in the study had evaluated mayors' offices as being the most receptive (27.2%), followed by the authorities of district executive offices (22.2%). The most open of the central institutions to citizens, in the opinion of the interviewees, were the Parliament and the Presidency with 12.7 % and 12.2%, respectively. The "top" refusals to reply were found among the police and court authorities with 30.5 % and 26.1 %, respectively, followed by the Government with 25.0% and prosecutor authorities with 22.2 %.



In order to identify the information of highest interest for the society the question "Which type of information would you like to find out from public authorities?" was included, the respondents being allowed to select a number of options.

Since businessmen are among the most active social groups, a small study was carried out among business representatives in order to find out whether they were aware of the law in question and, an important issue, whether they have exercised their right to access information. No attempt was made at this stage to pursue deep sociological research, just to find out some of the trends.



Since within companies the legal consultants were the ones preparing any official applications, they were the ones that were interviewed in most cases.

A first conclusion is that most of the respondents were aware of the access to information Law. Regretfully, the number of those that have read the law was smaller. When asked whether they had applied for information related to the law of interest, the majority of the interviewees answered in the negative. When asked "Why not?" the gist of the answers, worded in a variety of ways, was that all the necessary information was available to them. The ones that did request information stated that the information was received past the legal deadline and was incomplete. Almost all those interviewed said that the information of greatest interest for them was related to business, especially related to taxes, duties and interpretation of some normative acts.

Right at the beginning of the democratic reforms, the idea frequently reiterated was that the payment of taxes and duties from private businesses promotes the taxpayers to become interested in the way public money is managed by the state. The

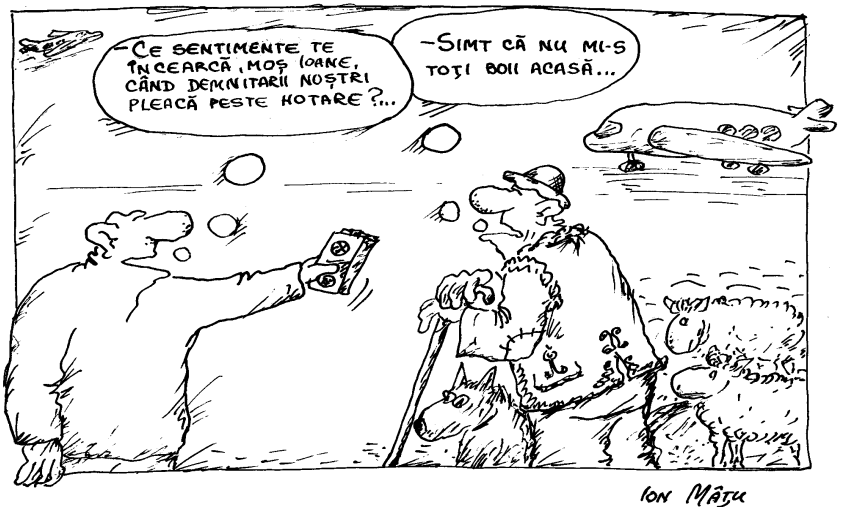
correctness of this assumption was checked. Regretfully, the interest towards this issue proved to be low. None of the business representatives denied the importance of the efficient management of public funds. Some even referred to the council members of the elected local public authorities called upon to supervise the process. However, as one of the respondents stated, "Our main task is to pay the taxes, we have no time to pursue how the funds are being expended".

1.5 An experiment of citizens' applying to central public authorities for public interest information

The experiment consisted in sending a set of letters requesting diverse information of public interest to 25 public institutions, out of them 24 being central authorities and one a local authority (the Chisinau Mayor's Office). Over the period of June 28 to July 12, 2004, 75 requests for information were sent on behalf of citizens. This exercise was aimed at assessing the capacity of the studied subjects to efficiently and promptly react to applications for information in compliance with the principles of the Constitution of the Republic of Moldova and of the access to information Law. The applications for information were sent from 5 communities in Moldova: Bălăşeşti (Sângerei), Şestaci (Şoldăneşti), Căzăneşti (Teleneşti), Budeşti (Chişinău) and from the Chisinau municipality, where the study was carried out. The citizens were encouraged by the volunteers of the Center for Investigative Reporting to request information from central authorities, with the volunteers rendering them assistance to correctly prepare the applications for official information.

Within this experiment the degree of transparency of public institutions, the competence of the civil servants, as well as the extent of compliance with the provisions of the access to information Law and the observance of citizen's rights were assessed. The time taken by the authorities to respond to the citizens' applications was assessed along with the content of the

reply. Table 3 includes information about the localities from which the applications were sent, the time taken by authority to reply, the party that signed the reply, if the reply was sent on letterhead paper and whether the contact data of the institution were included. The Table also evaluates the content of the replies to the 75 applications from the citizens.



– What kind of feelings do you have, uncle John, when you see our officials going abroad?..
– I feel like not all of my bulls are at home…

Each institution was sent 3 applications for information: one accommodating, to which the institution would be pleased to respond, another neutral, requiring information that had to be provided by the institution as part of its official responsibilities and yet another, with inconvenient questions or a question posing some difficulty, to which the institution would not be interested to respond. The questions qualified as inconvenient were the ones requesting information and documents about cases of corruption among the staff of the institution, infringement of

professional obligations, use of public funds, etc. The examples below as well as the data of Table 3 show that the authorities either did not reply to these types of questions, or offered evasive or even incompetent answers, while some institutions even tried to intimidate or question the applicants for information.

Out of the total 75 applications for information, 17 (23 %) were left without an answer. The Central State Fiscal Inspectorate did not care to answer any of the 3 applications, The Ministry of External Affairs received 2 applications, the Government, the Ministry of Economy, the Ministry of Education, The Ministry of Internal Affairs, the Ministry of Health, CCECC, the Academy of Sciences of Moldova, the Information Technologies Department – all left one application unanswered each. The analysis of the replies reveals the disrespectful attitude of the officials towards the requirements of the citizens. Only 33 of the 75 applications got a complete answer. Twenty of the answers invoked various pretexts to avoid providing the requested information or documents in full. In 12 cases the replies were worded in an incorrect manner. To a major extent the responses from authorities were evasive. For example, in some cases the citizen is told to look for the required information in the Official Monitor newspaper, two of the replies show the number of the OM newspaper, while the rest just refer the applicant to OM. However, in a rural community it is impossible to find a complete set of the OM. All central state institutions have free access to the governmental electronic network or to legislation software and have free access to the effective legislation. Thus, it is not at all difficult for an official to make a copy of the respective provision of the law and to attach it to the reply letter. None of the replies had a copy of the solicited documents attached, while the access to information Law states that public authorities have to provide upon request either public interest documents or documents related to the activity of the institution, especially

those related to management of public funds, including the budget of the institution.

In only three cases the contact data of the institution were not included (Parliament, the Ministry of Defence and the Center for Law Development), the rest of the reply letters were sent on letterhead paper with the contact data of the institution that provided the information.

1.6 Instead of information – intimidation

In several cases the citizens were questioned and even interrogated by the officials of the institutions to which the application for information were sent. This was done notwithstanding the fact that the access to information Law states that any person requiring information has no obligation to justify the interest for the required information. The several cases of such treatment clearly show that some institutions, instead of providing the information, proceeded to intimidate the citizens that tried to exercise their constitutional right.

A citizen from the Chisinau municipality had requested from the Ministry of Education information on the number of disputes regarding graduation examinations; from the Center for Law Development, information on the procedure for preliminary expert evaluation of a law draft. Shortly after the request, two persons who did not present themselves telephoned during the daytime at the domestic address of the information applicant, questioning the children about their mother's name and whether she had applied for information. It should be noted that the respective person has not shown her domestic telephone number in the application for information. The Center for Law Development had submitted the respective information after several days, while the Ministry of Education never replied to the request, although the requested information was essential for the respective person, her children having disputed several marks on

the graduation examinations. It was a rather unpleasant case if we take into account that minor children were questioned with no legal basis.

– That kind of journalism I can understand….

Another case was registered in the village Cazanesti (Telenesti district). One lady had applied to the Customs Department for information on the number of staff within customs offices that were dismissed from jobs for professional infringements over the period 2002-2004, as well as to the number of lawsuits initiated against customs officials and the number of convicted ones from among the latter. Instead of the requested information, the women received a visit on July 21, 2004 at her work by an official of the respective institution. The official first checked her identity along with her maiden name that he had on file, proceeding then to questioning her in respect to the requested information: who wrote the application for her, who made her ask for such information, whether she ever had any problems with customs, etc. The citizen explained that she had heard frequently on TV about information on the involvement of many officials in

corruption cases, on fighting corruption and that she wanted to know what was being done in that respect at Customs. The official convinced the lady to sign a report on the case stating that she did not need an answer to her application. In a few days she received a written answer from the Customs Department stating that "the solicited data were information with limited accessibility and were classified as service secret; and, in order to maintain the confidential system within the customs service bodies (approved through the Instruction on maintaining the confidential regime and commercial secrecy while working with customs documents) it was impossible to submit the requested data". In addition to the fact that the requested information is not a state secret and the citizens have the right to know about cases in which the officials (remunerated from public funds) violate the law and are involved in corrupt activity, it should be noted that abuses were admitted thereto. First, an official has no legal right to make a report when no illegal behaviour has been registered, and even in the case of illegal behaviour a report is not necessary in every case. Since when does the exercise of a right make an object for a report? In this specific case, the report was signed with no witnesses present, while the person made to sign it got no copy of the report as is required by the law. The rights of the person were not cited before demanding her signature, etc. Obviously the respective official had lost a whole working day to go to Cazanesti, his remuneration and expenses being paid by the taxpayers.

It was found out that in the case of public order authorities, the citizens that have applied for public interest information were also checked out prior to submission of responses to their applications. For example, a citizen from the village Busesti, who had requested information from the Ministry of Domestic Affairs (MDA) had written on the application only his first and last name. The reply letter addressed him including his middle name, which shows that the person was checked in the MDA database, while the answer provided by the respective institution

was evasive. The question "How many staff members of the MDA were dismissed for professional violations, how many criminal proceedings were initiated against policemen and how many of the latter have been convicted?" was answered as follows: "We inform you that the information you refer to in your letter has been dealt with repeatedly in periodicals, provided to participants in press conferences that were periodically organized by the media center of the MDA, as well as in National TV programmes, the access to this information being guaranteed to each citizen".

One happy case was registered during the survey. A handicapped person from the village Sestaci (Soldanesti district) had requested information on sources of funds for purchasing in the spring of the current year wheelchairs provided to some disabled people and participants in wars, as well as the criteria for their distribution. The citizen has justified his interest as being handicapped himself, whose life was of no interest to anyone. A few days later, the Presidency informed him that his application was sent to the Government for consideration, while three days later the State Chancellery informed him that his application was sent for consideration to the Ministry of Labour and Social Protection. After that an official from the latter ministry had made inquiries about this disabled person's situation and had a wheelchair delivered to his home.

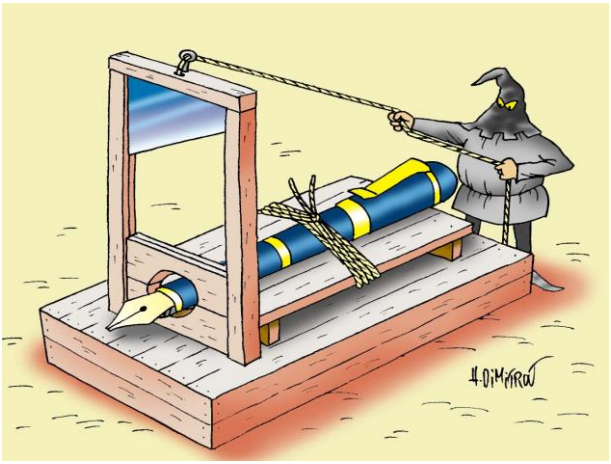
1.7 The experience of the Center for Investigative Reporting and of the Association for an Independent Press related to access to information

At the same stage of the study the experience of accessing information by reporters from the Center for Investigative Reporting and from the Association for an Independent Press was analyzed. The applications for information sent to 26 public institutions over 2003-2004 were studied along with the responses received from the public institutions. The reporters

from the above organisations have carried out a number of investigations during 2003-2004 regarding the involvement of some officials in corrupt activities, irrational use of public funds, etc. The requested information referred to specific cases of public interest, which were under investigation at the time. Over the cited period the reporters have requested information through 82 written applications addressed to 26 public authorities (Table 4). Only 47 of the applications were answered. Four of the responses were, in fact, a written refusal of the institutions to provide information. Three of the refusals were issued by the Customs Department, which requires payment for provision of information. The fourth case was a refusal of the Ministry of Labour and Social Protection to provide information about the number of staff dismissed during recent years. The reason for the refusal was that the ministry had no such information, although other ministries provided full information in response to the same question.

Among the institutions that provide timely and, to a great extent, complete responses are the Court of Accounts and the Ministry of Reintegration. Among the institutions that ignore applications for information is the State Chancellery that until now has not answered the 6 applications for information, all of them requesting public interest information and the government being the institution with responsibility to put into practice the access to information Law. The State Chancellery failed to respond to the application even after a lawsuit was initiated by the Association for an Independent Press. Currently, there are three lawsuits on file at the Court of Appeals against the State Chancellery for impeding access to information. Another three lawsuits on impeding access to information that are under investigation refer to the General Prosecutor's Office, Center for Combating Economic Crime and Corruption and the Ministry of External Affairs. Over the autumn of 2003, the Association for an Independent Press has, for the first time, won two lawsuits related

to access to information initiated against the General Prosecutor's Office and the Center for Combating Economic Crime and Corruption. However, both institutions have performed according to the court decision obligating them to provide the requested information with great delay.



The conclusions drawn form the experience of AIP and the Center for Investigative Reporting are that: while early in 2003 the state institutions were practically not aware that they are obligated to respond in writing to reporters' applications, after two institutions lost lawsuits for impeding access to information, the attitude of the officials towards the issue has changed. The applications for information are answered in a timely manner. Before, the state structures were providing the information within 30 days, as required by the Law on petitions and this tendency is still noticeable. Over time, the lawyers of the state institutions have consulted the access to information Law and now, the state structures are trying to provide answers within 15 days. The institutions which appeared in court regarding access to information are also providing timely responses, as well as more fully documented and more competent responses. Certainly, there are still many cases in which the requested information is classified as state secret. The provision of information is denied regarding staff involved in corruption cases, as well as information regarding the income of officials and their families.

The reporters have also come to the conclusion that over the last two years the information provided by state structures is filtered and provided only with the permission of top officials. This tendency is more distinct over the last two-three years.

The impression is that the officials fear talking to reporters. The fear is not because they lack information, but because a strict control system was instituted within state structures concerning the circulation of official information, especially documents. The people suspected of having provided (by legal methods) information that reveals illegal actions of the officials to reporters may be dismissed for no reason. The press is provided only that information which is convenient to the state officials. For this reason, the staff of the state institutions refuses to talk to reporters on the telephone; thus it takes much effort to obtain or check certain information. In the majority of cases, when information is requested on the telephone, the officials reply that only official applications (that are sent to the address of the head of the institution) will be answered. Many times, the reporters are sent from one official to another, finally realizing that they are unable to obtain the needed information. This practice affects the timeliness of the public interest information provided to the population. Also, the fact is revealed that the civil servants are not aware of the provisions of the access to information Law, while the higher ranking officials, either do not know the respective provisions, or consciously ignore them.

The state of affairs in the area of justice has deteriorated. While the first two lawsuits on impeding access to information were completed within two weeks (with the courts deciding in favour of the reporters) the lawsuits that followed are proceeding in a more difficult manner. For example, the four lawsuits against the State Chancellery initiated in April, May, June and July, 2004, were still under examination at the date of this study's finalisation (September 2004). The same goes for the lawsuit initiated by AIP against CCECC, which started in May 2004 and is still under

examination. It should be mentioned that one of the lawsuits against CCECC refers to the income of the staff and to salaries, which should not be qualified as state secrets. In another case the State Chancellery had refused to provide information on the management of funds collected during a fundraiser for the restoration of the Capriana monastery. Thus, in all cases the requested information is public interest information. It should be mentioned that since early in 2004, all the lawsuits related to impeding access to information that are on file with the Court of Appeals refer to only two judges who are assigned to examine all cases of impeding access to information. Until now, the reporters have won none of the cases, while these cases refer to violations of rights provided not only by national, but also by international laws.

The analysis of some legal problems encountered by the reporters of AIP and CRI both during the process of requesting information and within court proceedings related to impeding access to information are presented in Chapter III of this Study.

1.8 Analysis of the amount of information provided in compliance with official responsibilities by public institutions

The access to information Law explicitly states that each public institution should provide as part of its responsibilities a set of public interest information. As a starting point for the study, the provisions in the access to information Law were used, which

stipulate that any information provider shall make public (as part of its responsibilities) a certain amount of information, which shall include: "a) description of the organisation's structure and address; b) description of functions, directions and form of activity of the institution; c) description of subdivisions and their authorities, their working hours, showing the hours and days of operation of the officials responsible for provision of official information and documents; d) final decisions on major issues considered." In addition, the public institutions are obliged, according to the Law, to provide to citizens, as part of their responsibility, general information on financial sources, budgets, balance sheets, internal programs and strategies, as well as ways to contest its decisions by an applicant.

The way in which the public institutions provide public interest information as part of their responsibilities was studied over two stages: in June/August 2004 the web pages of the central public institutions were studied, while in early September a telephone opinion poll was carried out which was a practical way to test the availability of officials to provide the contact data of the person responsible for provision of information, as well as the veracity of the information placed on the webpage of the institution.

Study of the Internet web pages of public authorities

At this stage the webpage content of public institutions was studied. Some 66 institutions were subjected to study, including 64 central and 2 local level ones (Chisinau Mayor's Office and Gaguzia regional authority). The examination of the web pages of public institutions was carried out according to the following criteria: existence of the page in Internet, contact data for addressing the institution (name of institution, address, telephone numbers, fax, E-mail address), first and last name of the institution's management and/or the person responsible for dissemination of public information, the hours of operation, the legislation and operating guidelines of the institution and its units,

documents specific for the activity of the institution (such as the organisation chart), sources of funding, budget and balance sheet of the institution, and announcements of public auctions. Also, it was researched whether the web pages of institutions had information about ways to contest and challenge the decisions of the public authorities in case a person believes his/her rights to access to public interest information have been violated. Several other criteria for the study of web pages dealt with maintenance of the page, existence of its translation into English or other languages. Simultaneously, a review was made of the features and drawbacks of the web pages of these public institutions. The results of the evaluation are as follows (Table 5):

Out of the total studied public institutions, 21 (which amounts to 31.8 percent) have no web page. Out of the 45 institutions that do have web pages, only 27 have their own site, while the web page of 18 institutions must be accessed only through the government site **www.moldova.md**. It should be noted that the web pages of some institutions could never be accessed (www.aap.moldova.md, www.cca.md and www.cadastre.net.md).

– And you, journalists, complain that you are not supported from above….

The contact data of the institution that is the address, telephone number, fax, and E-mail address are found only on 36 web pages and only in 15 of those the name of a contact person is shown. The full organisation chart of the institution, including names, positions and contact data of the officials can be found only on 5 web pages: those of the Ministry of Energy, Ministry of Health, Ministry of Culture, National Agency for Control in Telecommunications and Information, as well as the Chisinau Mayor's Office. The 14 other web pages, while showing an organisation chart, provide no contact data of officials and in some cases – no names. For example, the Ministry of Finance and the Ministry of External Affairs show just the structure of the organisation. In many cases the information placed in the webpage, including the organisation chart, is outdated. For example, in a list of the members of the Government placed on page **http://e-gov.moldova.md**, on July 11, 2004, one could find among the ministers the names of Ştefan Odagiu, Anatol Cupţov, Gheorghe Sima, Ion Păcuraru, Ion Morei, Nicolae Dudău and Gheorghe Duca, that, as of that date, were no longer in ministerial positions. For example, in the organisation chart of the Ministry of Economy the current minister is also found as a vice-minister. Also, on the pages of the Ministry of Energy and Ministry of Justice accessed on site **Moldova.md** in July one could still find Victor Creţu and, respectively, Victor Vicico and Felix Vârlan as vice ministers, while they have vacated their respective positions a long time prior. On another page of the Ministry of Justice, placed on site **www.rol.md**, the Minister of Justice is Valeria Şterbeţ, who had not held the position for some years. In the case of a number of ministries, the information of the webpage is limited to the pictures and biography of the minister and frequently, those of the vice ministers (Ministry of Agriculture and Processing Industry, Ministry of Labour). The page of the General Prosecutor's office that can be accessed on **www.rol.md**, is comprised of only the biography of the former General

Prosecutor, Mircea Iuga, and an extract from an interview offered to „Legea şi viaţa" (Law and Life) magazine. Some institutions have placed information and documents on the web that are only in Russian. The majority of the pages have additional versions in Russian and English. In several cases the Russian version has more information than the one in Romanian, which is also more frequently updated. An English version of the page exists only in two thirds of the studied institutions, but it is updated daily and comprises full information only at DIT, MDA and AGEPI. For the rest of the institutions, the information in English is very limited and outdated, in many cases no longer reflecting the current situation. For example, the column Transnistria of the Ministry of External Affairs had no information at all. The information placed on the Internet page by the Department for Privatization was not updated since 2002. It is obvious that the privatization advertisements placed there are no longer valid. Moreover, according to the information placed on the Internet page of the DP, the Republic of Moldova has a presidential governing system, the head of the state being elected through general election, the Constitution of Moldova having been adopted in September 1994 (the correct date is July 1994). The pages of more than one state institution have errors related to the language, dates, figures, events.

It is worth mentioning that none of the studied institutions have placed on their webpage information on sources of funding, budget and balance sheet, or announcements about public auctions. The web page of the Ministry of Finance comprises both the Law on Budget for 2004 and the Law Draft on State Budget for 2005, while no information exists on the management of funds by the units of the ministry. The Law on Budget is also placed on the webpage of the Government of the Republic of Moldova, but it is incomplete.

It is also notable that none of the institutions having web pages placed information on ways to contest or challenge the

decisions of public authorities in case a person believes his/her right to access to public interest information have been violated.

The ministry web pages show governmental e-mail addresses, urging the public to seek information of interest by e-mail directly addressing the minister or other officials. This option was tried out as part of the study. On behalf of two people, applications for information were sent to the Prime Minister and to five other ministers (Minister of Culture, Minister of Internal Affairs, Minister of Finance, Minister of Agriculture and Processing Industry and Minister of Justice). The applications included the electronic addresses of the persons seeking information, as well as their names. None of the institutions responded from the e-mail address placed on the web pages.

Among the best web pages are those belonging to the Ministry of Internal Affairs, Ministry of Ecology and Natural Resources, Department for Information Technologies, State Agency for Copyright Protection, Department for Statistics and Sociology and the National Agency for Control in Telecommunications and Informatics. These include not only the contact data of the institutions, but also current updated information, current laws and documents pertaining to the specific activity of the agency. The web page of the Ministry of Internal Affairs also gives a confidential telephone line, including the Criminal Police, the Guard Unit of the MDA, e-mail and contact data for police stations in all districts of guard units, the telephone of the Emergency Hospital and even the confidential telephone of the General Prosecutor's Office.

A telephone opinion poll

The telephone opinion poll was aimed at evaluating the receptiveness of officials of state institutions in view of contact information provision: address, telephone, fax, e-mail address, webpage, name and contact data of person responsible for

provision of information. The evaluation was based on the following criteria: tone of voice used during discussion (polite, reserved, suspicious), the position of the person answering the telephone, if the person introduces her/himself, if (for provision of simple information) the applicant is questioned regarding the reason for requesting information. It should be mentioned that the applications were made on behalf of the Center for Investigative Reporting and when asked about the reason for requesting information, the need for compiling a database was given. This study was initiated drawing on the principle of openness of the authorities in their relationships with the public. This principle requires that the provider of information respond to the applicant in a polite tone, introducing himself/herself, offers information without asking for explanations as to the reason for the interest in respective information, taking into account that the type of information requested shall be made public as part of the responsibilities of the authorities, in compliance with the effective legislation.

For the study, some 65 central state authorities were examined, as well as the Chisinau Mayor's Office. (Table 6). All the respondents were addressed during the working hours between 09.00-12.00 and 14.00-17.00. The telephone numbers used were taken either from the web page of the respective institution, or

from the Moldtelecom Information Service. The reporter of the Center for Investigative Reporting found out the needed information dialling just one telephone number in the case of 54 institutions. In another 10 cases the reporter was told to dial a different telephone number of the same institution in order to find out the necessary information. In some cases, in order to find out the necessary information, we had to dial 2, 3 and even 6 telephone numbers (such as the Ministry of Internal Affairs). On the other hand, the Central Electoral Commission had answered only after several hours, however, the answer was well documented. The case suggests that the staff of the various institutions do not have the requested data handy, and it should be necessary for each staff member to have a list of respective data on his/her desk.

The Ministry of Internal Affairs was the "champion" in passing the responsibility to provide information, the reporter of the Center having to dial 6 numbers in order to find out the necessary information. The second "top passer" was the Department for Information Technology with 3 dialled numbers. In the case of 8 institutions out of the total 66, two telephone calls were made to find out the contact data of the institution.

In only one case it was not possible to obtain the information. This institution was the Ministry of External Affairs, where the official in the Minister's anteroom refused to provide the requested information by repeatedly terminating the call.

With respect to the issue of „information comprehensiveness" 14 of the studied public authorities failed with the officials offering incomplete data, non knowing the E-mail address and the web page of the institution for which they worked. In some of the abovementioned 14 cases the respondents did not know exactly whether the institution had a web page, an E-mail address or neither. On the other hand, the employees of two institutions (Service for Information and Security and State Agency for Land

Tenure and Cadastre) did not know the exact name of the public relations person, recommending that the reporter ask another person within the institution to find out the name.

With respect to the person who first answered the telephone call, in most cases it was either a secretary or an official of the chancellery of the institution. In three cases the calls from the Center were answered by heads or management staff of the institution, namely National Agency for Public Purchases (Vice Director), State Registration Chamber (Chairman), the State Agency for Copyright (Director). Two of the latter, the Vice Director of the National Agency for Public Purchases and the Director of the State Agency for Copyright provided at once the information to the Center for Investigative Reporting, while the Chairman of the State Registration Chamber recommended that we call his secretary claiming an overloaded schedule. In one case (Ministry of External Affairs) the telephone call was answered by a visitor waiting for a meeting with the Minister.

Regarding the provision of information, in 37 cases the requested data were provided by the secretary, in 10 cases – by heads of chancelleries, in 6 – by public relations officials, in 4 - by minister advisors, and in 3 – by heads of the institution. In one case the lawyer of the institution answered. In five cases, the call was answered by officials that were substituting as secretary.

Another evaluation criterion was used within the study – the tone of voice used by the interviewee. Initially the main features for such evaluation were established, the tone being polite, reserved, suspicious, and in the graph attached we see another feature, impolite. This new feature had to be used because the tone of voice of some of the officials that responded the telephone call would not qualify under any of the initially established features. The tone of the response from 4 institutions. (State Registration Chamber, Chisinau Mayor's Office, Ministry of External Affairs, Information Technologies Department) was qualified as impolite.

The official in the anteroom of the Information Technologies Department refused to provide the needed information right at the start of the conversation saying "We have a special section dealing with public relations. Every one of us does his/her own business. You are keeping the line busy and maybe somebody is trying to call from the Presidency or from the Government". When asked to introduce himself, the official suspended the conversation. However, the employees in the department to which we were referred used a polite or reserved tone. Thus, the characteristics for this institution are: impolite/polite and impolite/reserved. In another case, the secretary of the Ministry of External Affairs advised us to find the necessary data on the web page of the Ministry. When telephoned again the official said distinctly: "We provide no information on the telephone. Send a letter to the Protocol division and you will get an answer". The secretary of the Ministry of Transportation and Communications was polite at the start of the conversation, while later, suddenly terminating without answering the question, saying, "I apologize, the Minister is calling". Therefore, the reporter from the Center for Investigative Reporting had to call again in order to find out complete information.

The respondents of the 6 institutions out of 66 showed a reserved behaviour towards the applicant for information. From the whole of the studied sample, in only 6 cases was the applicant questioned as to the reason for his/her application. The majority of the officials (57) responded politely to the request for information.

The fact is relevant that out of the 66 studied institutions, there was only one case that can be qualified as highly professional behaviour of a civil servant, the case of the State Archive Service. The telephone call of the reporter from the Center for Investigative Reporting was answered by a secretary that greeted the reporter, introduced herself saying her first and last name, her position and the name of the institution. In all the

other cases the officials were introducing themselves only at the request of the reporter from the Center.

II. Legal aspects of exercising the right to information

2.1 Legal entities may also ask for information

In compliance with article 5 of the access to information Law, the subjects of the law are the information provider and the applicant for information… According to the respective law official information may be requested by: a) any citizen of the Republic of Moldova; b) citizens of other states, having residence or a home in the territory of the Republic of Moldova; c) non-citizens living or having residence in the territory of the Republic of Moldova. A specific issue shall be noted here. During the debates over the text of the access to information Law the opinion was expressed that legal entities cannot be applicants for official information, the respective right being limited to the citizens of the Republic of Moldova and, in some conditions, to citizens of other countries and non-citizens. We qualify this opinion as erroneous for the following reason. For one thing, it is not correct to compare two notions with different *genus proximus*, moreover, two notions pertaining to two different areas of law.

The concept of „citizen" pertains to constitutional law, its correlatives being, as apparent from the text of the cited law, „citizen of a foreign country" and „non-citizen". The concept „legal entity" pertains to civil law, its correlative being „physical person", both having the same genus proximus „subjects of civil law", or „persons" – if we are to use the term from the Civil Code. Further, the law maker, when using the term "persons" (art. 10, 22, 23 of the access to information Law), does not distinguish between physical persons and legal entities, since *ubi lex non distinguit, nec nos distinguere debemus*. Additionally, in

art. 4 para. (1) the same lawmaker states „Anyone, in conditions of this law, has the right to seek, to receive and to make the official information public". Moreover, according to art. 12 para. (3) of the same law, "except for cases of application for personal information, the applicant need not show his/her identifying data in the application"; thus, there remains but one conclusion – it was not a matter of principle for the lawmaker as to who submits the respective application, whether a physical person, or a legal entity.

From another point of view, the capacity as founder (member) or representative of a legal entity does not exclude one as citizen; a reporter, for example, either applying for information in his/her own name, or on behalf of the newspaper that authorized him/her to do it, is in both cases a citizen of the Republic of Moldova. Additionally, the right to information is one of the fundamental rights provided by the Constitution, while, for improved exercising of these rights, citizens have the right to association. Consequently, if any citizen of the Republic of Moldova in particular has the right to apply for official information, *a fortiore*, the organisation has the right to do this, the latter being a legal entity constituted of more than one citizen.

A real problem for the interpretation of the access to information Law would arise if not citizens, but physical persons were named in the law as applicants for official information. In such a case, it is true, that according to the logical argument *per a contrario*, it could have been deduced that legal entities have no such right. However, since the lawmakers in 2000 named the citizen as owner of the right to access the information, the distinction between physical persons and legal entities is of no consequence, as shown above.

2.2 There are cases when the ones that have adopted the Law fail to observe it

The Parliament of the Republic of Moldova had adopted the Law No. 982 on access to information on May 11, 2000. The mission of parliament does not end with adoption of a law, but continues onwards through supervision of its execution. This motivated us to apply to the Commission for culture, science, education, youth and mass media of the Parliament of the Republic of Moldova with an application for information as to whether the Parliament is supervising the execution and the efficiency of the abovementioned law and if the provision of Article 25 of the Law stating "the Government, within 3 months shall submit to the Parliament proposals on making the legislation comply with this law, including in establishment of responsibilities for actions that are grave violations of the access to information Law" and if the Parliament had law drafts on modification or completion of the access to information Law, and who were the authors of such law drafts and what were the contents of the law drafts.

Although the respective application had the introduction: „In compliance with art. 34 of the Constitution of the Republic of Moldova, art. 10 of the European Convention on Protection of Human Rights and Fundamental Freedoms, art. 1, 3, 26 of the Law on press, art. 10, 11, 12, 15, 16 of the access to information Law, we hereby apply for the following information...", while the information solicited related specifically the access to information Law, no answer was received either within legal terms or afterwards. It should be mentioned that the Legislative Body of the country has not replied to the application-questionnaire of Transparency International – Moldova in response to applications related to access to information either.

The same type of information was requested from the Government of the Republic of Moldova – the authority called to organize the execution of laws. The Government was asked

whether the provision of Art. 25 of the Law was executed and whether there were law drafts on modification or completion of the access to information Law, which were their initiators and what were the contents of such drafts, if any.

If the fact is ignored that the application for information was met after the legal deadline, it was peculiar that the response came from …the Ministry of Justice. The latter had been obliged to answer the application through an order of the Government. As shown below, an application for information may be readdressed only with the consent of the applicant. The Government of the Republic of Moldova ignored this legal norm.

„As for making the legislation comply with this law – the Ministry of Justice informs us – the Code on administrative contraventions (art. 199/7) and the Criminal code (art. 180) establish the administrative and respectively criminal penalties for the actions that are grave violations of the right to access to information."

Referring to the second question, we were informed that „ the Ministry of Justice has no computer database to keep track of the legal initiatives of the Government, including the ones on modification or completion of the access to information Law."

Thus, the existence of legislative initiatives for modification or completion of the respective law remains unknown. We take this occasion to repeat that the issue of the law is controversial, some

arguing that the law is good, while others say that the law could be improved by making the evaluation criteria and tools for compensation of damage to applicant through impeding access to information more specific. Our own position is of the second viewpoint. Truly, the efficiency of the law depends on the specificity of the system of penalties. And, while, in this aspect, the reason for the difficulties lies not so much in the wording of the law, but in the way it is interpreted and applied by courts. Still, the issue of modification and completion of the access to information Law remains open.

2.3 The damage – between the honour worth millions for some and the denied access to information for others

Information is the „raw material" of a reporter. The access to this „raw material" is guaranteed by art. 34 of the Constitution of the Republic of Moldova and it is exercised through the access to information Law. Thus, the fact is obvious that mass media organisations make their publication schedules relying on the timely meeting of their applications for access to information, because it is a natural thing to prepare a schedule of work based on a constitutional right. The cases where the applications for access to information were not timely met not only break the work plan for publications, but also have also another negative effect. It forces the reporters to publish information obtained from other sources, sometimes not fully validated, which leads to litigation. Definitely, untimely response to applications for access to information causes moral and material damage. We are not aware of any case when the court (having examined a case of infringing access to information) made an order for restitution of damages.

Unfortunately, courts do not accept proof from reporters. Moreover, when rejecting the applications for restitution of damages, some judges see their attitude as a brave and wise thing, amounting to „we need to defend the interests of the state and not

to leave them at the disposal of some shrewd lawyers". We believe this idea is erroneous. The bureaucrat should not to be pampered but penalized and obliged to observe the law.

The above attitude reveals also the inconsistency and ambiguity of the Moldovan jurisprudence. A situation is created when, on the one hand, the judges lavishly compensate the moral damage to those that pretend to be victims of the materials published in press, while on the other hand, they reject applications for restitution when damage is caused by not meeting applications for access to information. A new vicious circle is formed: those who pretend that their honour has been injured are state officials who obstruct access to information. In other words, these officials, by not meeting the legal applications for access to information, force the reporters' investigations towards other sources of information, and hence the officials complain that their honour has been damaged. If authorities were to submit the requested information on time and in a complete manner, we would have less people with their honour damaged.

The argument frequently invoked by information providers when the demand is made for compensation of damages for non provision of timely information by reporters is "Why didn't you write about something else?" (cases of AIP against the Ministry of Finance, AIP versus the Government of the Republic of Moldova). It should be noted that the courts sometimes also use this argument, while in other cases they do it prior to accepting the claim. This is also an attempt for censure, very subtle, though. Even though the old, vulgar exclamation "Do not write about it!" was replaced by a new, more delicate one "…write about something else…", it still expresses an attempt to censure. Such arguments, (which do not honour those that make use of them) when 10 years after the adoption of the Constitution have passed, the Constitution guaranteeing the right of each person to have access to public interest information, should be decisively rejected. We are fully aware that a free reporter should not write

"about something else", but about a specific subject, otherwise newspapers would publish nothing else except horoscopes, crosswords…or "public interest information" like how to make a necktie knot with just three movements. However…, this is not what the reader expects and it contradicts the role of mass media in a free society.

2.4 Illegal re-addressing of applications for access to information

In article 17 – „Readdressing of applications" – of the access to information Law a norm is inserted, the lack of which would make this legal institution inefficient. In compliance with this article, the "application for information may be readdressed to another information provider with mandatory notification of the applicant within 3 working days from the date of the application receipt and only upon consent of the applicant in the following cases:

a) the addressed provider does not have the requested information;
b) the requested information, as owned by other provider would meet better the interest of the applicant in such information".

Thus, the application for access to information may be readdressed only within 3 working days from its receipt and *with the consent of the applicant*. This is the rule that undoubtedly hinders the bureaucratic practice of sending the citizen from one authority to the next. It is for this reason that, when the authority asks for the consent of the applicant for information to readdress the application, the applicant must make sure the readdressing is justified so as not to be carried along by the bureaucratic merry-go-round. Regretfully, there are very many cases when the application is readdressed after the deadline allowed by the law and, what is still worse, without the consent of the applicant, the fact being confirmed by the findings of this study.

An eloquent example in this respect was the route taken by the application for access to information addressed by the Association for an Independent Press to the Ministry of Finance. The application had "been walked" from the Ministry of Finance to the Government, from the Government to the Ministry of Justice and… all the way back. In order to prove the violation of the access to information Law, during a lawsuit the Association for an Independent Press at the Court of Appeals put forward a claim for proof demanding that the Government show the written record to prove that the Ministry of Finance had informed the Association about orders No. 1514-13 of 20.01.04 and No. 1514-33 of 26.01.04, signed by the Prime Minister of the Republic of Moldova, addressed to the Ministry of Justice, and of the response of the Ministry of Justice to the abovementioned orders... Regretfully, the court has rejected the claim for no convincing reason.

2.5 Abusive confidentiality – an obstacle to access to information

A reason for denying access to information, invoked more and more frequently by the authorities, is that the requested information is a state secret. This fact is already notorious as some of these denials have been published in the press. Since this tendency is of great interest the delicate issue will be considered in more detail.

Invoking the state secret as reason for denying access to information is not accidental. The officials rely on recollections of the old system. They depend on the ideas enforced during the soviet period that the Power may assign any information as state secret, with the state secret being the rule and that access to information is strictly denied to ordinary people, otherwise misfortunes may happen. Also that it is better for the official, irrespective of his/her position, not to tell anyone what they knew as part of their activity, even if they deal with ordinary things

related to their professional routine. Generally, the state secret is still viewed by some as an obscure and intangible place, accessible only to a select few. This perception is undoubtedly outdated and harmful. In a state of law, no one is above the law. Thus, even those who hold the power of state secret are not above the law, moreover, the ones that pretend that they do. The institution of state secrecy (the need for which we do not question) is also regulated by law.

A clear distinction should be made between information which is state secret and the attribution of some information to the category of state secret. It is only for the law to say which information is secret and not for the official, even for a high ranking one. The officials, and not just any officials, but the ones designated in the List of officials invested with authority to attribute information as state secret have the obligation to designate information as being secret upon determination that it conforms to the conditions of the Law on state secrets and to the List of types of information attributed as state secrets. Thus, the state secret is not a no man's land, but is subject to certain rules and, primarily, to principles for attributing information to the category of state secret. It is also important to mention that in compliance with art. 10 para. (4) of Law no. 106/1994 on state secrets, the officials invested with authority to attribute information as state secrets bear the responsibility for unjustifiably attributing information as state secret.

The history of the state secrets institution confirms a sad reality: the majority of the information qualified as state secret refers, directly or indirectly, to violations or even crimes against humanity. The less democratic a regime, the more secrets it has. Former Soviet Union citizens became convinced of this during the period of "Gorbachev's perestroika", when limited access to archives was allowed. Behind the feared "strictly confidential" of the Stalin period (and also during periods prior to it and after it) there were executions, deportations, torture, humiliation… In the

former socialist states of Central Europe this institution was made to follow democratic rules due to some factors that were lacking in the case of the Republic of Moldova. These factors were the lustration legislation, the row of law suits for rehabilitation of victims of political repression for restitution of illegally nationalized property (especially real estate), all of them demanding mandatory opening of archives and declassification of information. Regretfully, the Moldovan society never experienced (with few exceptions) this retrospective political phenomenon.

Still, according to art. 14 para. (1) of Law no. 106/1994 on state secrets, „the citizens, companies, institutions, organisations and state authorities have the right to address the interdepartmental commission for protection of state secrets, to companies, institutions, organisations, including the state archives, with the application to declassified information indicated as state secret or unjustifiably attributed as secret information." This norm certainly offers a chance for better knowledge of the present, but to a greater extent, to the past of a society. In order to find out whether the persons authorized by the law to exercise their right to demand declassification of state secret information have indeed exercised their right, we addressed the Interdepartmental Commission for State Secret Protection with the following questions: „How many applications for declassified information that is qualified as state secret or was unjustly attributed to state secret were addressed to the Interdepartmental Commission for State Secret Protection since the Law on state secrets was enacted? How many of the applications were sent by citizens? How many of the applications were favourably solved with the respective information being withdrawn from the classification as state secret? To which areas (of the ones stipulated in art. 5 of the Law on state secrets) is the information requested to be declassified referred?"

A partial answer was received to this application. Thus, „at the address of the Interdepartmental Commission for State Secret Protection two applications arrived (from physical persons) for declassified state secret information; the applications were examined by the abovementioned commission. In both cases no reason for declassifying the respective information was found by the Commission with the applicants being informed accordingly. We need to recognize with deep regret that the number of these applications, as referred to the past of a nation, as tragic and as little known as ours, is infinitesimal.

Using as a starting point the same art. 14 para. (1) of the Law on state secrets (cited above), we addressed the same questions to the National Archives of the Republic of Moldova. The answer follows: „We have thoroughly studied your applications. We are willing to cooperate with "Transparency International – Moldova". The development and provision of some analytical, synthesis or novel materials may be done according to a contract between the applicant and the provider of information for a negotiable pay, if the provider is available and has the right to carry out such an offer (it is a reproduction of para. (5) of art. 12 of the access to information Law (*n.n.*)). Moreover, your organisation, in cases determined by the effective legislation, will, possibly, have to undertake actions for non-disclosure of limited access information, etc., which needs also to be coordinated with us. We appreciate your understanding."

The requested information (in fact, some figures) was neither analytical, nor novel. Moreover, it could have been submitted in one paragraph.

Further, we will deal with the ingenious expression used by a number of authorities (we do not believe it to be a coincidence) in denying access to information due to state secret reasons. It is as follows: First argument, it is stated that the requested information is state secret information; second argument – the

normative act comprising the respective information is a resolution of the Government, third argument – according to art. 3 of Law no. 173/1994 on mode of publication and enacting of official documents, „the official document with contents qualified as state secret is enacted on the date of its adoption, or on another date fixed in the document and it is communicated only to the interested institutions (*s.n.*). In the case that some headlines, chapters, or articles of the official document contain state secret information, they are omitted from publication showing the mark, "State secret" instead.

It is a simple solution, but is it constitutional? It was this expression that was used by the Center for Combating Economic Crime and Corruption to refuse provision of information on salaries of CCECC central and local management staff requested by the Association for an Independent Press, when both the requested information and the normative act classifying it were qualified as state secret. Even if we admit that the government resolutions unpublished in the Official Monitor are constitutional (we will revert to this issue later), the reason needs to be countered with arguments specifically offered by the Law on state secrets because those who invoke state secret do not name an article of the law on which to base their decision to classify the information as secret, but refer only to the institutions for protection of state secrets and to the mode of authorizing access to information that is a state secret, both of which are inconclusive.

Art. 2 of the Law on state secrets defines the notion of state secrets as follows: A state secret is information protected by the state in the areas of military, economic, technical, science, external policy, reconnaissance, intelligence, and operational investigation, the dissemination, disclosure, loss, theft or destruction of which might endanger the security of the Republic of Moldova. Art. 5 of the same law shows a wide range of information (for each of the areas listed in art. 2) that can be

attributed as state secrets. It should be noted that in many cases the information that is claimed to be state secret does not pertain to any of the above areas, even if the later are worded in generic terms susceptible to wide interpretation.

According to art. 6 of the same law, „the information is attributed as state secrets in compliance with the legal principles and with principles of argumentation and opportunity. The legal principle requires correspondence of information subject to classification with provisions of articles 5 and 8".

Art. 8 – „Mode of attributing information as state secrets"– among other conditions, states in para. (3): „In order to promote a uniform policy in the area of information classification, the Government shall establish an interdepartmental commission for state secret protection that will compile a List of types of information to be attributed as state secrets. This List shall be approved by the President of the Republic of Moldova and published…" Art. 9 – „Mode for classifying information" – states in para (1): „As basis for information classification and application of the "Secret" mark on documents, products and works is their conformity with:

a) The List of types of information attributed as state secrets; b) the Lists of departments provided for in article 8 para. (4)".

The fact is noticeable that many of the information providers, while claiming that the requested information is a state secret, do not refer to the provisions of art. 5 of the Law on state secrets and to the provisions of the List of information attributed to state secret, as ground for their refusal to submit information.

It should be repeated that according to art. 7 para. (2) of the access to information Law, „the access to official information cannot be obstructed except in the case of: a) information that is state secret, regulated by an ***organic law***..."

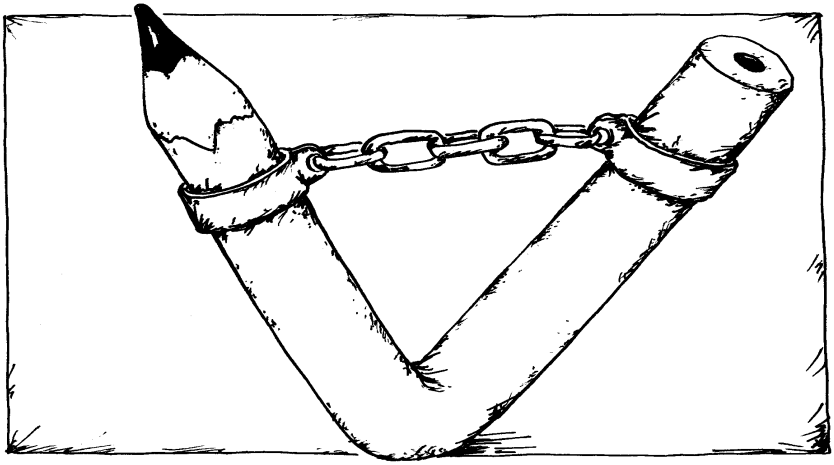
Also, the provider of information has to prove (as stated in art. 7 para. (4) of the access to information Law) that the „restriction is guided by an organic law and is needed in a democratic society for protection of legitimate rights and interests of the people or for protection of national security and that the damage to the rights and interests would be higher than to the public interest knowing the information". We need to add here that art. 12 of the Law on state secrets forbids classifying as secret some categories of information.

As shown above, among other elements of legal classification, the List of information attributed as state secrets is mentioned. We reiterate that according to the Law on state secrets, this List is public and has an essential role in guaranteeing the legality; that the information not included in the List cannot be attributed as secret information. The aim of the list instituted by law (one general and public, the others pertaining to departments and secrets) is to prevent violations of the law in this area, irrespective of their nature. That is, to prevent abusive obfuscation of information or abusive publication. Since information providers claiming to protect state secrets do not refer to the List of information attributed as state secrets, we applied to the Interdepartmental Commission for Protection of State Secrets with the following questions: „Where and when was the List of types of information attributed as state secrets published? Has the List of types of information attributed as state secrets been reviewed? Which were the grounds for such revision?"

The reply signed by the Director of the State Chancellery informed us that „the provisions of the Constitution of the Republic of Moldova (article 34), of Law no. 106-XIII of 17.05.1994 on state secrets (articles 18, 19 and 21), Law no. 982-XIV of May 11, 2000 on access to information, European Convention for Protection of Human Rights, and of the List of types of information that can be attributed as state secrets

developed in compliance with article 8 of the Law on state secrets, that has not been published (s.n.) were taken into account during development of documents marked as "secret". The List of types of information attributed as state secrets approved through the Decree of the President of the Republic of Moldova no. 147 of June 5, 1996, until now has not been revised because there was no need for such action. Currently, a draft law is being finalized on state secrets and on professional secrets that will replace the Law on state secrets. Upon adoption of the abovementioned law, the Government will propose for approval through President decree the List of types of information that can be attributed as state secrets and which will be published."

Thus, in violation of the Law on state secrets (art. 8), The List of types of information attributed to state secret has not been published. The Interdepartmental Commission for State Secret Protection, the most competent authority in the matter, does not offer a reason for non-publication. May the right to access to information be exercised in an unrestricted and efficient manner under conditions of nonpublication of the List? Categorically, no. When the publication of the List was provided for in the law, the lawmakers wanted to achieve a clear distinction between that information which is state secret, and that which is not. Otherwise, the applicant for information lacks the legal instrument to check the basis for denying access to information for reason of state secret. We believe that the omission from publication of the abovementioned List is not accidental. This was a way for some officials to manoeuvre (possibly for their own interests) outside the legal framework and to totally exclude control by a civil society. The Interdepartmental Commission for State Secret Protection assures us that upon adoption of the new law on state secrets, the List of types of information attributed to state secret will be published. However, we hope this sincere promise to observe a future law does not justify the violation of the effective law.



It was mentioned at the very beginning of this study that in an attempt to avoid the truth, by way of evading the law, the authorities sometimes use arguments with circular logic. It also happened in the above case. Since so many authorities declare that the requested information is state secret and that it is protected by a government resolution, which, in turn, was omitted from publication, we asked the Government: „How many of the government resolutions were omitted from publication (based on art. 3 of Law no. 173/1994 on the mode of publication and enacting of official documents because their content was a state secret) since the enacting of the abovementioned law? How many of the published government resolutions have omissions of text replaced by "State secret" since the enacting of the abovementioned law? The application for access to information was met by the State Chancellery of the Republic of Moldova. The reply letter says: "Regretfully, the number of resolutions issued with the "State secret" mark cannot be publicized since it discloses the amount of information classified which contradicts the provisions of the Regulation on Assuring Confidentiality Regime". The basis for the refusal (even accompanied by regrets) is not well grounded because, if we add it to the three

other arguments of the authorities (information is a state secret, it is protected by a governmental resolution, which, in turn, has not been published in the Official Monitor), we witness the vicious cycle of state secrecy.

Article 5 of Law no. 106/1994 on state secrets not only discloses the amount of information classified, but also names the information that may be attributed to state secret for each of the state's areas of activity (military, economic, technical, scientific, external policy, reconnaissance, intelligence, and operational investigation). Thus, the amount of information classified cannot be larger than the amount of information existing in the total of these areas. Moreover, the disclosure of the number of government resolutions with publication omissions would not disclose the amount of information classified for the simple reason that one government resolution may comprise ten times as much information as another; these normative acts have no standard limit as to the number of items or sub items (structurally speaking). Thus, the number of government resolutions would be of no use to the potential assaulters of Moldovan state security. We have grounds to believe that the real reason for the Government's refusal to tell how many of its resolutions have publication omissions is their number, which might be too high for a democratic state.

As we had promised earlier, we now revert to the issue of the constitutionality of the normative acts on which some officials base their refusal to submit information for reason of state secrecy. First of all, we will present several extracts from the access to information Law. Thus, art. 7, headed „Official information with limited accessibility" states: „(1) Exercising the right to access to information may be subjected only to restrictions regulated by an organic law (*s.n.*) and which answer the needs: a) of observing the rights and reputation of other person; b) of protection of national security, public order, health protection or protection of the society's morale. (2) In compliance

with para. (1) of this article, the access to official information cannot be impeded except in case of a) information that is a state secret regulated by an organic law and categorized as state protected information in the areas of military, economic, technical, scientific activity, external policy, reconnaissance, intelligence, and operational investigation activity of which the dissemination, disclosure, loss, theft or destruction might endanger the security of the state; b) confidential business information submitted to public authorities with confidentiality title, regulated by the law on commercial secrets and information dealing with production, technology, management, finance, or other activity of economic life, the disclosure (transmission, leakage) of which may affect the interests of the businessman; c) personal information, the disclosure of which is considered interference in a person's private life, which is protected by the legislation (the access to the latter being possible only by observing the provisions of article 8 of the same law); d) information dealing with operational or investigative activity of the respective institution, but only in case the disclosure of such information may damage the investigation, interfere in the court proceedings, deprive the person of the right to a just and impartial examination of his/her case or endanger the life or physical security of any person – these aspects being established by law; e) information reflecting the intermediary or final results of a scientific or technical investigation, the disclosure of which may deprive the authors of the priority publication or which negatively affects the exercising of other rights protected by law. (3) If the access to the requested information or documents is partially restricted, the information providers are obliged to submit to the applicants those parts of the document that are not restricted according to the legislation, the omitted parts being replaced by the mark "state secret", "commercial secret", "confidential personal information". The denial to access to the respective parts of the document is effected assuring the observance of

provisions of article 19 of this law. (4) No restrictions to the freedom of information shall be imposed except in cases in which the information provider may prove that the restriction is regulated by an organic law and needed in a democratic society for protection of legal rights and interests of a person or for national security protection and that the damage to those rights and interests shall be greater to the public interest than knowing the information. (*s.n.*). (5) Nobody may be penalized for making public certain information with limited accessibility, if the disclosure of the information does not affect or may not affect a legitimate interest, related to national security or if the public interest for knowing the information exceeds the affect that might be made by disclosure of information".

According to art. 19 of the same law, „the refusal to provide official information or an official document shall be made in writing, showing the date of the refusal letter, name of the responsible person, reason for the refusal, with mandatory reference to the normative act (title, number, date of adoption, source of official publication), on which the refusal is based (*s.n.*), as well as the procedure for appeal of the refusal, including the terms for the appeal".

Based on these provisions of the law, we arrive with only one conclusion – the refusal to provide information that is state secret shall be legally grounded by provisions of the state secrets Law and the List of types of information attributed to state secret. This is not being done because, as we have shown above, many of the types of information denied as secret do not comply with the conditions required by art. 2, 5, 8, 9 of the same Law, while the List of types of information attributed to state secret has not even been published. Then, an "ingenious" solution was found based on art. 3 of the Law no. 173/1994 on the mode of publication and enacting of official documents, according to which the official document (the contents of which is a state secret) shall be enacted on the date of its adoption or on the date

indicated in it and it shall be communicated only to interested institutions.

We reject this legal reasoning. In compliance with art. 102 para. (4) of the Constitution of the Republic of Moldova, the resolutions and orders adopted by the Government shall be signed by the Prime Minister and co-signed by the ministers having the authority for their execution and shall be published in the Official Monitor of the Republic of Moldova. Non-publication means non-existence of that resolution or order (*s.n.*).

Article 7 of the Constitution also states: „The Constitution of the Republic of Moldova is its supreme Law. No other law and no other legal document which contradicts the provisions of the Constitution is valid." These constitutional norms lead us to deduce that the resolutions of the government that are not published in the Official Monitor of the Republic of Moldova are unconstitutional. Thus, it is inadmissible for the right to information granted by the Fundamental Law to be obstructed by an unpublished governmental resolution. Such governmental resolutions cannot be brought in court, since justice is being exercised in the name of law and not in the name of non-existent normative acts.

We should underline that the Law no. 173/1994 on the mode of publication and enacting of official documents was adopted on July 6, 1994 and was enacted on August 12, 1994 (publication date). The Constitution of the Republic of Moldova was adopted on June 29, 1994 and was enacted on August 27, 1994. Thus, the respective law is prior to the Constitution. In compliance with art. 1 para. (1) of Heading VII „Final and transitory provisions" of the Constitution of the Republic of Moldova, the laws and other normative acts stay valid insomuch as they do not contradict the current Constitution. Consequently, art. 3 of the Law no. 173/1994 on the mode of publication and enacting of official documents can no longer serve as a basis for non-publication of

governmental resolutions; the Constitution provides for their publication in the Official Monitor of the Republic of Moldova, the penalty for non-publication being non-existence of the document. Since, according to the Constitution, one of the conditions for the validity of the government resolution is its publication in the Official Monitor, we reiterate, the unpublished governmental resolutions cannot be considered as being constitutional.

To support this argument, art. 68 of the Law (we underline, the organic law) no. 317/2003 on normative acts of the Government and other central and local authorities, requires that „all (*s.n.*) normative acts shall be brought to public awareness through publication or visual display according to the provisions of the law. All (*s.n.*) the normative acts of the Government and of other central and local public authorities shall be published in the Official Monitor of the Republic of Moldova according to the provisions of the law under the responsibility of the head of the respective agency."

According to art. 3 of the same law, the normative acts shall be initiated, developed, issued and applied in compliance with the provisions of the Constitution of the Republic of Moldova while, according to art. 5 para. (6), the protection of legitimate rights, freedoms, interests of the citizens, social equality and equity is a mandatory condition for any normative act.

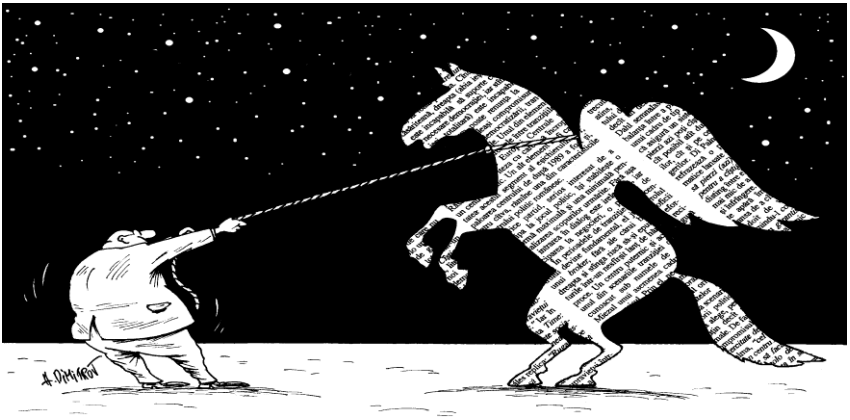
We need to add here that the legal acts, according to art. 6 para. (6) and (7) of the legal acts Law, have a subordinate hierarchy. The superior normative act may modify, complete or annul the inferior legislative act, while, in the case that a conflict of norms arises between two acts of the same legal authority such as promoting different solutions for the same subject of regulation, the provisions of the latter act shall be applied. It must be repeated that Law no. 173/1994 on mode of publication and

enacting of official documents is prior to the other two laws cited above, but also to the Constitution.

Thus, according to the current solution offered by the Constituting and by Law no. 317/2003 on normative acts of the Government and other central and local public authorities, the governmental resolutions may not comprise information which is state secret, since, under penalty of non-existence they shall be published in the Official Monitor of the Republic of Moldova.

If somebody believes that this wording of the Constitution is not the best possible, the person shall offer their respective arguments and initiate the amendment of the Fundamental law and subsequent laws. Thus, the principle would be observed that if a law is not satisfactory, it should be amended but never violated. In fact, by non-publication in the Official Monitor of the Republic of Moldova of some governmental resolutions, the Constitution is being violated, and through the non-publication of the List of types of information attributed as state secrets, Law no. 106/1994 is infringed.

There are many reasons to use the analogy that the legal system in Moldova is like an iceberg, one which looks as if it exists primarily on the surface of water, but in reality, most of it is deep



under water... An additional proof is that this lack of transparency (non publication of normative acts in the Official Monitor) has reached a critical phase in the Republic of Moldova much like the head of the state on a „legislative guillotine". We believe, however, that there are more chances to counter the obfuscation of governmental decisions through lawsuits related to access to information in cases of unconstitutional exceptions.

The governmental resolution is the most vulnerable to corruption of the normative acts. This can be explained through the fact that it is almost impossible to promote group interests by amending (deforming) the Constitution. It is also difficult to do this by use of organic or ordinary laws. The abovementioned normative acts are relatively few in number, are adopted by the Parliament, are subjected to public debate and are highly publicized. Regretfully there are some negative precedents here as well, because in many cases the "key" to corruption is hidden in the law itself. As opposed to laws, governmental resolutions come in bigger numbers and are technical in their essence which creates difficulties for understanding by a person alien to the respective area. It is for this reason that they escape the vigilant eye of civil society. On the other hand, the increased interest by corruption factors regarding governmental resolutions may be explained through their role in the system of normative acts: the law is put into application through a governmental resolution; thus, if the law is the "bread", the governmental resolution is the "knife to cut it". Moreover, it is important to underline that it is through a governmental resolution that the financial aspect of the law implementation is regulated. The procedure for the development of a governmental resolution also makes the fraud easier: these documents are developed by a small circle of persons or by a single person, and when they are moved for vote, the members of the government "diligently" support it without getting into the subtleties of the respective text, more so because everybody is

interested in the promotion of the normative acts of his/her own authority.

Certainly, normative corruption may exist at lower stages of the legal acts system, for example, at the stage of a Minister's order. However, the risks assumed by the authors are higher, while the space for manoeuvring is less. And then, the governmental resolution, as opposed to a Minister's order, is more convenient for the authors of normative act corruption because they are adopted by a collegial body, and thus, the responsibility may somehow "get lost" somewhere between the special authority and the government.

From the Report of the Constitutional Court of the Republic of Moldova on exercising the constitutional jurisdiction for 2003, we find out that from the 40 notes on the control of the normative acts constitutionality, 17 referred to laws and 13 to governmental resolutions. It should be recognized that the number of governmental resolutions is inadmissibly high; we should take into account the fact that these normative acts are issued for the application and execution of some existing laws (which may have no primary norms). The ideal solution for those promoting such governmental resolutions is their nonpublication in order to completely avoiding the risks which is done according to the scheme described above.

2.6 Difficulties for interpretation of the access to information Law

A primary conclusion drawn from the responses to the questionnaire sent to central and local public authorities (Table 2) is the misunderstanding of this regulation by many information providers. This conclusion results from the answer offered by the respondents to the very first question, referring to the number of applications to access to information registered by the respective institution. Some presented incredible figures of thousands, tens

of thousands or even more applications, without trying to find out whether they were applications for access to information or not. Others incorporated within the presented figures all types of petitions, requests, and inquiries. The confusion is partially due to the imprecise wording of art. 15 para. (1) of the access to information Law: „The written applications for access to information shall be registered in compliance with the legislation on registers and petitions". Even though the two regulations – the access to information and the petition (which are controlled by different laws) have many similarities, they should not be confused. If the petition disputes an administrative act (institution of the administrative law), the access to information (institution of the constitutional law) assures the access to official information. Since the access to information has a distinct legal order (and for the purpose of a quicker and more efficient solution of the access to information applications) their separate registration by the information provider is desirable. The respective register shall comprise not only the applications specifically based on the access to information Law (or on art. 34 of the Constitution, or on art. 10 of the European Convention for Protection of Fundamental Human Rights and Freedoms), but also the applications, that while not based on the right to information, aim at gaining access to official information.

A smart strategy used by officials to provide incomplete information to applicants, is to find out in a delicate way what the applicant already knows so as to subsequently limit the response to the application to a banal confirmation or rejection. This attitude is explained as follows. The information providers realize that as far as access to information goes, this saying is fit for application "Where there's smoke, there's fire". It is true that the applicants for information, especially the reporters, have more than one source of information and when applying for access to information want nothing more than an official confirmation or a confirmation of the information they already have. It is also true

that they show interest for information which lies beyond the limits of legality or morality. Thus, this attempt by the authorities to act as applicants for information instead of information providers must be decisively opposed, especially taking into account the fact underlined in art. 10 para. (3) of the access to information Law, "any person that applies for information in compliance with this law has no obligation to justify the interest for the solicited information".

From the questionnaire inquiry „In how many cases was the information provided for payment?" almost all authorities answered "In no cases". Some, possibly believing the question to have some hidden meaning categorically denied having accepted payment for information, one person even used the expression "not one ounce of information was provided for pay".

According to art. 12 para. (5) of the access to information Law „the development and provision of some analytical, synthesis or novel information may be carried out based on a contract between the applicant for information and the information provider, against a negotiable pay, if the information provider is available and has the right to carry out such an assignment". According to art. 20 with the heading „Payments for provision of official information": „(1) For provision of official information, except for the cases stipulated in the law, fees may be changed in the amount and according to the procedure established by representative bodies with the fees being transferred to the state budget. (2) The amount of the fee shall not exceed the expenses of the information provider for multiplication, posting of material and/or translation of the document at the request of the applicant. (3) The payment for provision of analytical, synthesis or novel information, carried out upon applicant's order, shall be set according to the contract between the applicant for information and the provider. (4) The official information that a) refers directly to the rights and freedoms of the applicant; b) is solicited verbally; c) is requested for study within the office of the

institution; d) by being supplied contributes to increasing the degree of transparency of the public institution's activity and corresponds to the interests of the whole society, shall be provided to the applicants for information free of charge.

Thus, even as an exception, the information providers may charge certain fees for provision of information. The amount of the fee, according to para. (2) of art. 20, shall be modest. This aspect was not addressed accidentally. Instead of waiting a long time for the information, some applicants stated their readiness to pay symbolic administrative fees so that their application may be met on time.

Thus, the responses of the authorities confirm our suspicion that the problem does not consist of the small expenses needed for writing a reply for submission of information, but in the reticence of the authorities in providing certain information to the public at large.

From the responses to the questionnaire (but also from the practice of exercising the right to access to information) we noticed that in some isolated cases certain authorities, along with a multitude of other formalities provided for payment, extended the respective normative framework to cover the applications for access to information. Such attempts need to be counteracted by complying with the provisions of the access to information Law as cited above.

Another question included in the questionnaire addressed to information providers referred to penalties imposed on officials responsible for provision of information. Attention! It is the only question to which the answer was unanimously negative, except for the General Prosecutor's Office. The answer amounted to the fact that no cases existed where a person responsible for provision of information was penalized for ill performance. Some of the situations are even hilarious. While the same authority states in the questionnaire that on the one hand, no cases

existed where a person responsible for provision of information was penalized, however, it recognized that it has no such officials or that no regulation exists within the authority of such person's rights and responsibilities, or that it has not lost a law suit regarding access to information.

According to the concept instituted by our legislation, the solution to access to information applications, and, implicitly, the guarantee of the constitutional right to information depends to a great extent on the competence and correctness of the person responsible for provision of the information. The exercising of the right to information has proved too many times that applications for access to information are not met. This reality is confirmed also by the precedents in the area which show very few successful cases in favour of applicants for access to information. However, the judiciary practice has no precedents for the penalization of officials based on art. 199/7 – "Violation of legislation on access to information" – stated in the Code on administrative contraventions.

Here, we need to remind the reader that according to art. 11 para. (2) item. b) of the access to information Law, which states that in order to guarantee free access to official information, the information provider should nominate and train officials responsible for carrying out procedures of official information provision, while according to art. 15 para (2), the applications for access to information shall be examined and resolved by public servants responsible for the provision of information. Article 24 of the same law also states that depending on the gravity of the effects of an illegal refusal by the official responsible for provision of official information to assure the access to the requested information, the court shall decide with the application of penalties in compliance with the legislation. We want to also remind that the Criminal Code (art. 180) and the Code on administrative contraventions (art. 199/7) provide for criminal

and, respectively, administrative responsibility of officials responsible for violating the right to access to information.

The questionnaire has also shown that within many authorities the person responsible for the provision of information is the head of the press service. Elaboration is due here. Some information providers believe that this solution solved the problem automatically. The main responsibility of the press service is to promote the image of the authority that has instituted it. To this end it presents the public with either a transparent campaign, or else with information that the respective authority is interested to publicize. Even in the case of access to information, the direction of the information is the same, from authorities – towards the citizens, the information sought is not that which that the authority wants to promote, but rather that which that the applicants want to know. Taking as a basis this difference in principle, the heads of the press service need to thoroughly study the legislation regarding access to information so as to correct the habit of telling the citizen what his authority wants with the practice of telling the citizen what he or she wants.

The access to information Law places the applicant for information and the information provider in front of each other. The former is eager to get the information, but has no experience in the formalities related to exercising that right. The latter is reticent towards the other's interest for the official information and has bureaucratic experience. We must recognize that in this circumstance, an inequality of forces is apparent. The official will seek out a pretext in order to not meet an application for access to information that comprises inconvenient questions. However, there is no situation which should force the applicant give up.

An eloquent example of the refusal to submit requested information under different pretexts is the one in which the subjects are, on the one hand, the Government and the State

Chancellery (information providers) and, on the other hand, the Association for an Independent Press (applicant for information). The latter applied to the former with an application for access to information regarding the number of contracts for promotion of the image of the Republic of Moldova in the international press concluded during the period 2001-2004 and the amounts paid with respect to such contracts to foreign agencies for image promotion. After having failed to meet the applications for access to information, the abovementioned information providers have kept the court waiting for a long time. When present in the court, the Government, through its representative, has invoked a number of reasons for rejecting the lawsuit, starting with the statement that the Government was not an information provider, or that no application for information came to the Government's address and ending with the remark that the questions in the application were not clearly stated. Although the court (Supreme Court of Justice) has rejected the initiation of a law suit by the Association for an Independent Press, it is still possible for the latter to persist, by all legal ways possible, in obtaining the requested information from the Government and the State Chancellery of the Republic of Moldova.

2.7 Judiciary practice

At the very start of work on this study, Transparency International – Moldova sent an application for access to information to the Supreme Court of Justice of the Republic of Moldova asking two questions: „Is the Supreme Court of Justice generalizing the judicial practice regarding access to information in order to allow more uniform and correct application of the access to information Law No. 982/2000? Is the Supreme Court of Justice developing an explanatory resolution on correct application of the access to information Law and on the proper resolution of lawsuits related to access to information? When is the respective resolution expected to be published?" Regretfully,

while the 15 day term for answering the application had long since elapsed, no response came.

Conclusion

The process of implementing the access to information Law is difficult and will take many years. This law will also laboriously work as a uniform judicial practice.

In principle and theoretically the refusal of each state institution to provide the public interest information applied for within this study can serve as subject matter for a lawsuit against the respective institution. However, Transparency International – Moldova have no such aim. The study was more of a democratic exercise both for the state institutions and for the civil society. The results showed that neither the state institutions, nor the civil society are sufficiently well prepared to efficiently implement this law, hence a common effort on both sides is needed. The employees of the state institutions need to be informed in detail about the provisions of this Law and the responsibilities borne by them for violation of the law. The civil society needs to be informed about the rights and freedoms granted by this law and about efficient ways to obtain the necessary information on time. The respective law is part of a whole category of normative acts, the implementation of which depends not only on authorities, but, primarily on the citizens who will exercise their rights conferred by it.