 

|  |
| --- |
| **CHISINAU**  **27.01.2015** |

|  |
| --- |
|  |
| **STUDY ON EFFECTIVENESS OF DRAFT NORMATIVE ACTS EXPERTISE IN TERMS OF HUMAN RIGHTS** |
|  |

This Study is produced as a part of the Project “Harmonization of Legislation with International Human Rights Law” implemented by Centre for the Analisys and Prevention of Corruption

with the support of Civil Rights Defenders from Sweden.

CAPC experts who contributed in their expertise of draft legislative acts activity at Study preparing:

BOSTAN Galina

BACU Adelina

BESCHIERU Ion

BUDECI Vitalie

IONITA Lilia

IUDIN Gheorghe

JIGAU Radu

KALUGHIN Mariana

PAGONI Domnita

PAVLOV Steluta

PIRVAN Viorel

RUSU Iulian

UTICA Oleg

ZAMA Vitalie

All rights are reserved to the Public Association „Centre for the Analysis and Prevention of Corruption” (CAPC). The opinions laid down in this paper belong to authors and do not necessarily reflect the official point of view of the Civil Rights Defenders from Sweden.

# CONTENTS:

[LIST OF ABREVIATIONS: 4](#_Toc410460482)

[I. GENERAL CONSIDERATIONS 5](#_Toc410460483)

[I.1 Premises of legislation expertise from the perspective of human rights 5](#_Toc410460484)

[II. TOOLS TO PERFORM LEGISLATION EXPERTISE FROM THE PERSPECTIVE OF HUMAN RIGHTS 7](#_Toc410460485)

[II.1 Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality 7](#_Toc410460486)

[II.2 E-template to perform legislation expertise in terms of human rights 8](#_Toc410460487)

[III. MONITORING THE LAWMAKING PROCESS FROM THE PERSPECTIVE OF HUMAN RIGHTS 11](#_Toc410460488)

[III.1 The sample of the Study 11](#_Toc410460489)

[III.2 Draft normative acts vs. areas of expertise 11](#_Toc410460490)

[III.3 Draft normative acts vs. category of the legislative act 12](#_Toc410460491)

[III.4 Authors of legislative initiatives 13](#_Toc410460492)

[III.5 Justification of draft laws promotion 14](#_Toc410460493)

[III.6 Respecting of transparency, participation and accountability principles 16](#_Toc410460494)

[III.6.1 Principle of transparency 17](#_Toc410460495)

[III.6.2 Principle of participation 18](#_Toc410460496)

[III.6.3 Principle of accountability 20](#_Toc410460497)

[III.7 Draft laws vs. human rights regulated by the Constitution of the Republic of Moldova 22](#_Toc410460498)

[III.7.1 Individual rights and freedoms 22](#_Toc410460499)

[III.7.2 Social and economic rights and freedoms 22](#_Toc410460500)

[III.7.3 Civil and political rights and freedoms 23](#_Toc410460501)

[III.7.4 Cultural rights and freedoms 23](#_Toc410460502)

[III.7.5 Guarantees rights 23](#_Toc410460503)

[III.8 Gender impact of draft laws 24](#_Toc410460504)

[CHAPTER IV. VULNERABILITY FACTORS IN REVIEWED DRAFT LAWS 25](#_Toc410460505)

[IV.1 The spread of vulnerability factors in draft laws and the effectiveness of formulated objections 25](#_Toc410460506)

[IV.2 Provisions that violate rights/freedoms 27](#_Toc410460507)

[IV.3 Omission/ignorance of rights/freedoms 29](#_Toc410460508)

[IV.4 Provisions that do not correspond to ECtHR jurisprudence 30](#_Toc410460509)

[IV.5 Provisions that limit rights/freedoms 32](#_Toc410460510)

[IV.6 Provisions that do not correspond to constitutional norms 33](#_Toc410460511)

[IV.7 Provisions that do not correspond to correlative legislative norms 35](#_Toc410460512)

[IV.8 Provisions that do not correspond to international standards 37](#_Toc410460514)

[IV.9 Provisions that do not correspond to the Constitutional Court jurisprudence 38](#_Toc410460515)

[IV.10 Discriminatory provisions 39](#_Toc410460516)

[CONCLUSIONS 41](#_Toc410460518)

# LIST OF ABREVIATIONS:

|  |  |
| --- | --- |
| Centre for the Analysis and Prevention of Corruption | CAPC |
| E-template to perform legislation expertise from the perspective of human rights | E-template |
| Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality (hereinafter - the Guide) | Guide |
| European Court of Human Rights | ECtHR |
| Official Gazette | OG |
| Law on Legislative Acts No.780-XV of 27 December 2001 | Law on Legislative Acts |

# I. GENERAL CONSIDERATIONS

Study on effectiveness of legislation expertise in terms of human rights represents a generalization of the Center for the Analysis and Prevention of Corruption activity in this area, carried out with the support of Civil Rights Defenders from Sweden, within three consecutive projects conducted over a year and a half: "Developing tools to perform legislation expertise in terms of human rights and gender equality”; "Vulnerability expertise of normative acts in terms of human rights" and "Harmonization of legislation with international human rights law".

In Chapter I, in a concise manner, there are presented the premises and the stages of performing the expertise of draft normative acts from the perspective of human rights.

# I.1 Premises of legislation expertise from the perspective of human rights

Since independence, Republic of Moldova has ratified and adhered to most international instruments devoted to fundamental human rights. In this regard, our country was committed to ensure respect of human rights - supreme value of the rule of law, and assumed pledges at international level should be harness at national level by adopting a suitable legal framework.

Althrough the respect of human rights in the Republic of Moldova is constantly monitored both by international structures, as well as by public institutions and civil society at national level and whether public authorities assert that human rights in our country are ensured, external monitoring reports and European Court of Human Rights’ decisions frequently find limitation and/or violation of fundamental human rights. There are many reasons of such situation and one of the problems would be the imperfect legislation.[[1]](#footnote-1)

Taking into account these reasons, CAPC initiated legislation expertise in terms of human rights, which was perform according to a model already tested by CAPC - corruption proofing of legislation.

The main preconditions for implementing legislation expertise in terms of human rights are:

* Law no. 239-XVI of 13.11.2008 on transparency in decision making process;
* Concept on cooperation between Parliament and civil society (approved by the Parliament Decision no.373-XVI of 29.12.2005);
* Placing by the Parliament of the draft laws on [www.parlament.md](http://www.parlament.md) web page;
* CAPC experience, since 2006, of cooperation with the Moldovan Parliament on carring out the corruption proofing of legislation.

Legislation expertise in terms of human rights offers many advantages, including:

* identifying and eliminating vulnerabilities of legislative and regulatory framework that favors the appearance, perpetuation or increasing any violation of human rights, including gender equality;
* ensuring a real and permanent monitoring of civil society on the legislative process in Moldova and involving civil society representatives in this process by providing qualified expertise;
* informing the public about the content of draft laws and media coverage of discriminatory draft laws.

**I.2. Project „Harmonization of Legislation with Internationl Human Rights Law”**

Legislation expertise in terms of human rights has conducted by CAPC with the support of Civil Rights Defenders from Sweden in two stages:

*Ist stage*: developing tools to perform legislation expertise in terms of human rights:

Within this stage, during November 1, 2012 - January 31, 2013 CAPC implemented the project “Developing tools to perform legislation expertise in terms of human rights and gender equality” and elaborated:

* Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality;
* E-template to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality.

*IInd stage*: performing legislation expertise in terms of human rights, within which 2 projects have been implemented:

* the Project "*Vulnerability expertise of normative acts in terms of human rights*" implemented since June 1, 2013 up to December 31, 2013, and
* the Project "*Harmonization of legislation with international human rights law*", implemented between January 2, 2014 and December 31, 2014.

"*Harmonization of legislation with international human rights law*" Project activities (similar to of "*Vulnerability expertise of normative acts in terms of human rights*" Project activities) include: conducting vulnerability expertise of drafts normative acts in terms of human rights; dissemination of the results of human rights expertise through press conferences and press releases.

Two Project coordinators carried out the project implementation along with 13 experts specialized in the following areas of expertise: justice and home affairs, human rights and freedoms; economy and trade; budget and finance; education, culture and media; labor law, social ensurance and health care.

# II. TOOLS TO PERFORM LEGISLATION EXPERTISE FROM THE PERSPECTIVE OF HUMAN RIGHTS

This Chapter discribes the tools to perform legislation expertise from the perspective of human rights: Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality (section II.1) and the E-template to perform vulnerability expertise of drafts normative acts in terms of human rights (section II.2).

# II.1 Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality

The Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality (hereinafter - Guide) was developed by a group of CAPC experts.

According to authors, the Guide represents a first step in creating a set of minimum standards applicable to the conceptualization, elaboration and promotion process of draft normative acts and which will contribute: to ensure compliance of legal norms to the national and international human rights standards, including gender equality; to prevent the vulnerability factors’ appearance and/or identification, which violates/limits/ignores or could violate/limit/ignore human rights/gender equality and to prevent or diminish their possible negative effects; and to prevent the Republic of Moldova condemnation to the European Court of Human Rights.

Vulnerability expertise of draft normative acts in terms of human rights and gender equality, according to the Guide, could be carry out both concerning basic drafts normative acts, as well as on drafts normative acts on amending, completing and repealing. The Guide could be also applied in the expertise process of normative acts in force.

Structurally, the Guide contains two chapters. First chapter, named “General provisions” offers a description of the most important concepts and definitions used, applicable to the process on performing vulnerability expertise of the drafts normative acts in terms of human rights and gender equality *(section 1)*, an analysis of basic provisions from domestic legislation that devotes human rights, including gender equality principle *(section 2)*, brief description of main relevant international instruments *(section 3)*, an analysis of European Court of Human Rights’ role and impact *(section 4)*, as well as some theoretical references *(section 5)*.

The second Chapter named “Vulnerability expertise of draft normative acts in terms of human rights” refers to: goal and objectives of the vulnerability expertise (section 1); expertise stages (section 2); conditions that expertise report should contain (section 3).

The Guide establishes the following principal goal of the expertise:

* contribution to harmonize new adopted/issued regulations by public authorities with standards in the field of human rights and gender equality;
* non-admission to limit, violate or omit human rights and fundamental freedoms;
* monitoring to ensure the respect of gender equality in new regulations.

Secondary goal of vulnerability expertise aims at developing and understanding of the human rights and fundamental freedoms protection in terms of Constitutional Court jurisprudence and ECtHR jurisprudence.

It is necessary to mention that within expertise, draft normative act norms are reported to constitutional regulations, which enshrine and guarantee human rights and fundamental freedoms.

The Guide establishes the following basic objectives of the expertise:

* identification of provisions that do not correspond or correspond insufficient to standards in the field of human rights and gender equality;
* vulnerability factors identification;
* developing recommendations to exclude or diminish eventual effects of vulnerability factors.

According to the Guide, the expertise involves the following activities, organized in three stages:

**General evaluation of the draft**

*Analysis of draft goal and of informative note;*

*Verification of transparency principle respecting;*

*Verification of participation principle respecting;*

*Verification of accountability principle respecting.*

**Substantive evaluation of the draft**

*Specification of the regulatory area;*

*Analysis of compliance level of the draft with the standards in the field of human rights and gender equality;*

*Analysis of compliance level of the draft with the Constitutional Court jurisprudence and ECtHR jurisprudence;*

*Analysis of the eventual impact of the draft;*

*Vulnerability factors identification.*

**Formulating conclusions**

*Generalization of expert findings following the general and substantive evaluation of the draft*

# II.2 E-template to perform legislation expertise in terms of human rights

The e-template to perform legislation expertise in terms of human rights (hereinafter – e-template) was designed based on needs of CAPC experts and logic of the Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality, being systematized in a model all elements contained in the Guide.

During the e-template development, it took into account the following requirements that this one had met:

* experts possibility perform the remote normative acts’ expertise;
* the possibility of drafting a expert report by many experts;
* updated statistics on the exact number and type of recommendations for adjusting Moldovan legislation to the requirements of human rights and gender equality;
* updated statistics on effectiveness of recommendations for adjusting Moldovan legislation to the requirements of human rights and gender equality;
* ensuring high and uniform quality of the reports contain;
* monitoring by the responsible for reports drafting/approval, of the experts workload, of the objections and their effectiveness;
* automatically posting on web site of the experts reports, even the day of their approval by the administrator;
* the possibility of e-template improvement (revising/enlargement) in accordance with standards on human rights and gender equality evolution.

The e-template has placed on CAPC internal informational system. Both on the e-template itself, as well as on CAPC experts’ reports, which will be screen on webpage, donor’s logo will appear.

E-template has two access levels:

*a) Administrator access level*

Administrator access level allows: draft laws administration; experts reports administration; statistics visualization; users (experts) administration; formulated recommendations administration; administration of the authors themselves; donors administration.

The system generates statistics on: status of examined drafts; workload of each expert; authors of legislative initiatives; authors of all examined drafts; explanatory level of examined drafts; respecting the principle of transparency; respecting the principle of participation; respecting the principle of accountability; individual rights and freedoms; social and economic rights and freedoms; social and political rights and freedoms; cultural rights and freedoms; the level of draft correspondence to the constitutional norms; the level of draft correspondence to the correlative legislation; the level of draft correspondence to the Constitutional Court and ECtHR jurisprudences; draft impact in terms of human rights; draft impact in terms of gender equality.

All statistics data can be selected by the following criteria: period; experts who edited experts’ reports; drafts type and status of examined acts (legislative, normative); respecting the deadline for cooperation with civil society; drafts authors.

*b) Expert access level*

To access the e-template system, the expert enters in the browser the system address (for example: <http://gender.capc.md/>). After login page appears, the expert introduces his login and password.

E-template algorithm included four main compartments, which include all experts’ reports in terms of human rights and gender equality, developed by CAPC:

1. General evaluation
2. Substantive evaluation of the draft normative act
3. Detailed analysis of the draft provisions
4. Conclusions.

Within first section “General evaluation” the algorithm has appointed the following elements, which have to necessarily be specified by the expert: author of the draft (with the possibility of selecting certain option); category of the draft (with the possibility of selecting certain option); goal of the act; informative note (with the possibility of selecting certain option); Regulatory area of the draft and its correspondent rights (with the possibility of selecting certain option).

In the second section, entitled “Substantive evaluation of the draft normative act” the algorithm included the obligation of the expert to verify the correspondence of the draft law to:

* Transparency, participation and accountability principles (by providing a precise response to some specified criteria);
* Constitutional norms;
* Correlative legislation;
* International instruments;
* Constitutional Court jurisprudence;
* ECtHR jurisprudence.

At the same time, in the second section, the expert shall:

* appreciate the draft impact in terms of human rights, checking one of the following options – the draft limits or violates or ignores or respect rights/freedoms;
* appreciate the gender impact of the draft, checking one of the following options – the draft is gender sensible or gender neuter or gender oriented or it is discriminated or gender asymmetric or it do not establish equal opportunities between men and women or there exists the need to preview affirmative actions.

The third section named “Detailed analysis of the draft text” has dedicated to the detailed analysis of the draft text and included the number and the provision text on which objection has made; the objection itself; vulnerability factors (the expert selects the factors from a list); the recommendation formulated by the expert. At the developing the section, it took into accounts also the possibility of enlargement the vulnerability factors list.

In the fourth section “Conclusions”, the algorithm established the obligation of the expert to formulate conclusions in a clear manner.

# III. MONITORING THE LAWMAKING PROCESS FROM THE PERSPECTIVE OF HUMAN RIGHTS

This chapter, after a brief introduction to the sample of the Study, presents the main findings made by CAPC experts in the process of performing legislation expertise in terms of human rights: analysis of projects in terms of areas of expertise, type of legislative act and of the authors of the legislative initiatives (Sections III.2 - III.4); argumentation degree of draft laws promotion (Section III.5); the principles of transparency, participation and accountability respecting, indicating some examples of draft laws in case of which implementation will be respected or not the principles of transparency, participation and accountability (Section III.6); the share of regulation certain rights under the Constitution of the Republic of Moldova in reviewed draft laws (Section III.7) and gender impact of draft laws (Section III.8).

# III.1 The sample of the Study

The findings below are based on the analysis of statistical data provided by e-template and generated as a result of the expertise performing during the period of June 2013 - December 2014, of 77 projects, of which: 75 draft laws and 2 draft regulatory acts. At the moment of this Study was prepared, 20 bills had been adopted and published in the Official Gazette, 1 bill had been adopted, but had not been published in the Official Gazette and 2 bills had been rejected/withdrawn.

In the 77 experts’ reports, CAPC experts formulated 991 objections referring to the vulnerability elements identified, of which 351 objections in the draft acts adopted/withdrawn (23 projects).

# III.2 Draft normative acts vs. areas of expertise

In order to follow the main trends of regulation in all areas of legislation, the reviewed draft laws were established in 5 areas of expertise: justice and home affairs, human rights and freedoms; economy and trade; budget and finance; education, culture and media; labour legislation, social insurance and healthcare.

Thus, most draft laws have been registered in the area "Justice and home affairs, human rights and freedoms" - 35, which represents 46.67%. This significant share of drafts laws in the "Justice and home affairs, human rights and freedoms" area is explained by the fact that the reviewing period of the dratf laws from the perspective of human rights coincided with the change of the legal framework, generated by the justice reform and enforcement bodies.

Figure 1 shows that the "Justice and home affairs, human rights and freedoms" area, in terms of the share of reviewed draft laws as regulatory domains, is followed by the "Labour legislation, social insurance and healthcare" with 17 draft laws, which represents 22.67% and by the "Economy and Trade" area with 11 draft laws, 14.67% respectively. The lowest percentage registered the "Budget and Finance" and "Education, culture, religion and media" areas - each of them with 6 draft laws or 8% of total reviewed draft laws.

***Figure 1.*** *Draft acts distribution by the areas of expertise*

Ordination of the reviewed draft laws by the area of expertise allowed the revealing of the legislative acts that are frequently modified and/or supplemented. It should be noted that the legislation from the "Justice and home affairs, human rights and freedoms" area, in the period of June 2013 - December 2014, was the most frequently changed. The table below shows the legislative acts from "Justice and home affairs, human rights and freedoms" area, reviewed by CAPC during the period of reference and the number of laws on amending/supplemeting of the respective draft legislative act adopted by Parliament.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Name of the draft law** | **These statistical data refer to the period of**  **June 2013 – December 2014** | |
| **No. of draft laws on amending/supplementing the draft law, reviewed by CAPC** | **No. of draft laws on amending/supplementing the draft law, adopted by the Parliament** |
| 1. | Criminal Code | 5 | 10 |
| 2. | Criminal Procedure Code | 4 | 5 |
| 3. | Contraventions Code | 3 | 27 |
| 4. | Elections Code | 3 | 4 |

It should observe that in the sample of 77 reviewed draft laws the highest rate of legislative intervention has registered the Contraventions Code, which in a year and a half has been modified/supplemented even 27 times. Unfortunately, despite various previous criticisms addressed to the public authorities regarding the lawmaking process, the phenomenon of "fluctuating law" became constant and it seems that the authorities ignore the exigencies of the Law on legislative acts.

# III.3 Draft normative acts vs. category of the legislative act

Depending on the category of the targeted legislative act, CAPC reviewed both integral laws, as well as laws on amending and/or supplementing some laws.

In the figure below, it could observe that from the 77 reviewed draft laws, the highest share have the laws on amending and supplementing the laws - 50 laws, which represents 64.94%, followed by integral laws – 24 laws or 31.17%. Share of amending laws (2 or 2.6%) and of laws on supplementing (1 or 1.3%) is insignificant.

***Figure 2.*** *Draft laws distribution by legislative act category*

In the same time, it should be noted that most draft laws on amending and supplementing were registered in the Area I "Justice and home affairs, human rights and freedoms" - 30 draft laws or 81.08%, and most integral laws in the areas of "Economy and Trade" - 6 projects or 54.55% and "Budget and Finance" - 3 or 50%.

Such an important share of laws on amending and supplementing represents one more proof of the phenomenon of "legislation fluctuation" and is generated by disregarding the rules of initiation, development, expertise, drafting and adoption of legislative acts, as they were established by the Law on legislative acts.

# III.4 Authors of legislative initiatives

Article 73 of the Constitution of the Republic of Moldova provides that the right of legislative initiative belong to Members of Parliament, President of the Republic of Moldova, Government, and People’s Assembly of Gagauzia territorial autonomous unit.

Thus, the results analysis of draft legislation generalization (75 draft laws) in terms of their authors (see Figure 3) allowed us to find that over 61% of reviewed draft laws by CAPC were promoted by the Government, over 25% by a group of deputies, more than 5% by a deputy and almost 7% by the People’s Assembly of Gagauzia territorial autonomous unit. None of CAPC reviewed draft laws represented the legislative initiative of the President of the Republic of Moldova.

***Figure 3.*** *Share of the legislative initiatives authors*

Although the sample of 75 reviewed draft laws is not representative for the legislative activity of the Parliament of the IXIth Legislature, it should be however noted, that compared to other legislatures, the number of bills submitted by the following subjects with legislative initiative increased: a group deputies and People's Assembly of Gagauzia.

However, it should be found that all categories of authors mainly submitted draft laws governing the field "Justice and home affairs, human rights and freedoms", and the second area of interest, especially for groups of deputies, was the Area "Labour legislation, social insurance and healthcare".

# III.5 Justification of draft laws promotion

According to article 20 from Law on legislative acts, explanatory note should contain:

*“a)conditions that determine the need to develop the draft act, including the need to harmonize the legislative act with the provisions of the community legislation, the final results sought through the implementation of the new regulations;*

*b) main provisions, the place of the act in the legislative system, outlining the new elements, social, economic and other kind of effects of its implementation;*

*c) references to the corresponding regulations of the community legislation and the level of compatibility of the draft legislative act with the respective regulations;*

*d) economic and financial justification if the implementation of the new regulations requires financial and other kind of expenditures";*

*e) act of regulatory impact analysis, where the legislative act regulates entrepreneurship activity. Regulatory impact analysis represents a justification based on the cost and benefits, of the need to adopt the normative act and the analysis of its impact on entrepreneurship activity, including protection of rights and interests of entrepreneurs and of the state. "*

In the process of legislation expertise from the perspective of human rights performing, CAPC experts evaluated the sufficiency of explanatory notes justification to the draft laws in terms of their compliance with the requirements of Law on legislative acts. Thus, over 48% (37 bills) of explanatory notes to the draft laws contained a sufficient explanation to promote the draft law. Otherwise, either justification was not enough (almost 47% - 37 bills), either it generally lacked (over 5% - 4 bills).

***Figure 4.*** *Sufficiency of drafts justification*

Figure 5 shows that only in the "Justice and home affairs, human rights and freedoms" area, explanatory notes to the draft laws percentage, which contains a sufficient justification is higher (62%) almost twice than the percentage of explanatory notes that do not contain a sufficient justification (35%). This situation can be explained by the fact that the authors of the draft laws, which regulate the "Justice and home affairs, human rights and freedoms" area are the authorities with an institutional experience in the field of legislative creation. At the other pole of sufficiency of drafts justification "top" is "Budget and finance" area, in which the percentage of the explanatory note with an insufficient justification (67%) is almost 4 times higher than of rationale with a sufficient justification (17%).

***Figure 5.*** *Sufficiency of draft laws justification by areas*

Concerning the authors of legislative initiatives, it should be observed that the Government gives the best justification of draft laws. Only in case of this legislative initiative subject the number of explanatory notes with a sufficient justification (59%) is higher than that of explanatory notes with an insufficient justification (37%). As for MPs, the rationale share with an insufficient justification (70%) is more than twice higher than that of communications with a sufficient justification (26%) and concerning the subject initiative with legislative competencies - People’s Assembly of Gagauzia territorial autonomous unit - in general, there was no bill, which would contain a sufficient justification to promote the draft law.

***Figure 6.*** *Sufficiency of draft law justification by the authors of the legislative initiatives*

Regarding the analysis of explanatory notes’ justification to the reviewed draft laws there are required two findings:

* none of the explanatory notes to the draft laws does not contain information on the compatibility of the bill with the Community legal framework, which was to be inserted into the Table line, as regulated in the Annex to the Regulation on Mechanism of approximation Moldovan legislation with Community Law no.1345 approved by Government Decision of November 24, 2006 and used to demonstrate the compatibility of national bill with Community law, which necessarily accompanies the draft legislative act throughout its movement until its adoption by Parliament. In addition, there are not respected any provisions of letter d) para. (2) Art. 23 of Law on legislative acts no. 780-XV of December 27, 2001, which states that the dossier accompanying the final version of the draft legislative act will include explanatory note which must contain both the results of compatibility evaluation with Community law as well as regulations reference list of Community law;
* none of reviewed draft laws is accompanied by the list of documents that need to be developed or revised as a result of legislation adoption, although it should be included in the dossier accompanying the final version of the draft legislative act, in accordance with the requirements of art.23 from the Law on legislative acts.

# III.6 Respecting of transparency, participation and accountability principles

According to para.1 of art. 5 from the Law on legislative acts *protection of rights, freedoms and legal interests of citizens, equality and social fairness, as well as the compatibility with Community law is a prerequisite of any legislative act*. The Law on Legislative Acts, in para. 3 of art. 4, also provide that at the preparation, adoption and implementation of the legislation there are respected, among other things, the principles of transparency, publicity and accessibility.

Activity on elaboration of draft normative acts is an extremely responsible. Reflection of all interests in future regulations is closely linked to the participation of civil society and interest persons to the public debates of draft normative acts during all legislative creation process and adoption of new regulations. In this context, respecting the transparency, publicity, participation and accountability principles become a sine qua non requirement[[2]](#footnote-2).

The existence of guarantees or legal mechanisms for the respecting of transparency, participation and accountability principles in the implementation process of laws is to provide citizens’ information on decision-making process within public authorities, thereby contributing to the transparency of public authorities activity; to ensure direct participation of citizens in decision-making process and make it more efficient; to increase the responsibility of public authorities towards citizens; to stimulate active participation of citizens, associations establisted in accordance with the law, of other stakeholders in decision making process.

# III.6.1 Principle of transparency

Principle of transparency, among to principle of publicly offers the possibility to civil society to know and to be informed about management and about draft normative acts examined within decisional process[[3]](#footnote-3).

In order to assess if during the implementation process of the law it will be ensured the principle of transparency respecting, CAPC experts have verified the following aspects:

* if draft law contains express/tacit provisions that oblige public authorities to offer accessible and easy available, relevant and updated information;
* if draft law establishes legal mechanisms to communicate with peoples.

Figure 7 shows that legal garantees and mechanisms established in 71.43% of CAPC reviewed draft laws will ensure the principle of transparency respecting in case of their approving and implementation. However, in 16.88% of the bills discussed in Parliament, this principle respecting is insufficiently insured and in case of 3.9% of drafts, transparency principle generally will not be respected.

***Figure 7.*** *Respecting of transparency principle*

The highest rate of respecting the principle of transparency was registered in the Area I "Justice and home affairs, human rights and freedoms" (almost 73%) and the lowest share of non-respecting the principle of transparency (0%) was recorded in the areas "Economiy and trade" and "Education, culture, religion and media".

Example of non-respecting the principle of transparency: Draft Law on Code of Ethics and Conduct for Member of Parliament (registered in Parliament under the number 233 of June 6, 2013, the status of the project - under examination). CAPC expert report taking into account the lack of respecting the principle of transparency has held as follows:

*„Referring to the principle of transparency, it is not ensured. The principle of transparency estabilished in art. 4 para. (2) f) of the bill, can be found among the principles of conduct of the MPs. Thus, according to pre-cited rules, MPs shall ensure transparency in their work, with the obligation to maintain a permanent dialogue with citizens on issues that interest them and resulting from the assumption and conducting the mandate of MPs. In fact, it was important to ensure transparency in the appointment process and the activity of the Ethics Commissioner and to ensure transparency of the results of breaches investigation of deputy ethics, along with the transparency of cases examination by the Legal Committee for appointments and immunities. In this respect, the draft contains no express rules that would ensure that key actors (Ethics Commissioner; Legal Committee for appointments and immunities; Parliament) will offer accessible information, easily available, relevant and updated on the implementation of the law. However, the project does not establish mechanisms for communication with the population. ....”*

Example of respecting the principle of transparency: Draft Law on industry parks from information technology (registered in Parliament under the number 370 on October 1, 2014, the status of the project - under examination). CAPC expert report in relation to the principle of transparency respecting noted as followings:

*„….the draft Law contains provisions that oblige the Administration of parks from information technology industry to provide accessible information, easily available, relevant and updated. However, the bill establishes some mechanisms for communication with interested people in parks activity.*

# III.6.2 Principle of participation

Principle of participation ensures the individual right to participate to the public debates on draft normative act in order to express his opinion and to submit his proposals. Participation represents both a result, as well as a process regarding the following key elements:

* any person shall have the right, maximum possible, to participate and influence all political and administrative decisions, which directly affects him. This right includes full holding of all basic information concerning such decisions and participation to these meetings, which have the scope to adopt decisions;
* participation of representatives and promoters of members of certain groups (minorities, vulnerable groups, etc.) interests can be an alternative for direct and constant participation[[4]](#footnote-4).

In order to evaluate if during the implementation process the respecting of participation principle will be ensured, the experts verified the following aspects:

* if draft contains provisions that establish a mechanism to allow express of opinion;
* if draft contains express/tacit provisions that establish a mechanism to allow taking into account of expressed opinion;
* if draft sets up semi-permanent structures within public representatives (or stakeholders’ representatives) will be consulted at different stages of decisional process.

Analyzing the data from the figure below, it can be found that legal garantees and mechanisms established in 44.16% of reviewed bills by CAPC experts will not sufficiently ensure the respecting of participation principle, and in the case of 6.49% from the drafts, the participation principle respecting will not be ensured. However, in 37.66% of the bills discussed in Parliament, the principle of participation respecting is sufficiently ensured.

***Figure 8.*** *Respecting of participation principle*

The highest rate of respecting the principle of participation was recorded in the Area IV "Education, culture, religion and media". Similarly, this area of legislation regulating is the leader at the absence of bills, through implementing of which the principle of participation will not be respected.

Example of non-respecting the principle of participation: The draft law on electronic signature and electronic document (registered in Parliament under the number 533 of December 23, 2013, the status of the project - adopted on 05.30.2014). CAPC expert report in relation to the principle of participation violation held as follows:

„The project does not refer to a citizen to comment on how the law is implemented. The only form of communication with the competent national authority in the field of electronic signature occurs through written requests and complaints regarding improper activity of certification service providers. Thus, under Article 27 para. 10 letter b) sets out the Control Commission's right in the field of electronic signatures to make spot checks in case of receiving written and motivsted requests and complaints related to violation and improper fulfillment of the obligations established in law by the certification service provider. The complaints may be addressed in line with the Law on petitioning. Draft provisions do not stated the possibility for certification service providers and recipients of services to expose the way in which the law will be implemented and do not have the opportunity to participate in the consultation process through semi-permanent structures”.

Example of respecting the principle of participation: Draft law for approval the Office of the Ombudsman organization and functioning (registered in Parliament under the number 380 of October 24, 2014, the status of the project - under examination). CAPC expert report in relation to the principle of participation respecting held as follows:

*„Office of the Ombudsman allows the creation of expert groups which will be consulted at the Office and Ombudsman. The latter can delegate the exercise of his specific competencies to the expert groups. NGOs involved in the human rights respecting are also consulted in this process”.*

# III.6.3 Principle of accountability

Principle of accountability implies the argumentation of need to adopt the examined act in decision-making process or the justification of actions, citizens having the possibility to appreciate performances, and the responsibility of those who will realize the act too. This principle implies the following key elements:

* individuals capacity to request from public authorities to offer arguments and explanations in order to justify decisions and actions;
* individual capacity to punish public authorities for low performances[[5]](#footnote-5).

In order to evaluate if in the process of laws implementation the respecting of accountability principle will be ensured, the experts verified the following aspects:

* if draft contains express/tacit provisions that allow the public institutions monitoring and their developed policies and create a mechanism to take into account the monitored results;
* if draft contains express/tacit provisions that oblige public authorities to publish the results of their controls.

The figure below illustrates the share of respect for the principle of accountability in draft legislation pending before Parliament. Thus, the principle of accountability is assured enough only in 16.88% of bills. In 40.26% of drafts, the principle of accountability is ensured insufficient and in 33.77%, the principle of accountability will not be ensured.

***Figure 9.*** *Respecting of accountability principle*

Concerning the respecting rate of the principle of accountability on the areas of regulatory legislation, the following picture is designed: the highest rate of respecting the principle of accountability was recorded in the Area IV "Education, culture, religion and media", and the highest rate of violation the accountability principle is found in the Area V "Labour legislation, social insurance and healthcare".

Example of non-respecting the principle of accountability: Draft Law on amending the Law No. 102-XV from 13.03.2003 on employment and social protection of people looking for a job (registered in Parliament under the number 459 of November 15, 2013, project status - adopted on 03.07.2014, but not published in OG). CAPC expert report in relation with respecting the principle of accountability has held as follows:

**„***Respecting the principle of accountability in the process of adopting legislation supposes that within the draft legislative act, must be presentprovisions which will allow the monitoring of public institutions, the policies developed by them, and alsoto contain contain provisions that would enable citizens to apply from public authorities to provide arguments and explanations in order to justify decisions and actions. However, this principle respecting would allow to sanction the public authorities for poor performances. Both draft laws under examination, as well as the Basic Law, 102/2003, which are modified, do not fully comply with this principle. The draft law refers only to some "virtual" measures of public authorities stimulating that through the draft law would be required to allocate at least 10% of the number of staff for the internship. In this context, it has to be stated that the Law does not provide a mechanism for authorities accountability which have not complied with the requirement established in the new art. 21/1. Given the above, we consider that the bill is declarative, does not provide concrete mechanisms for achieving proposed provisions and for accountability the law subjects for violation the provisions”.*

Example of respecting the principle of accountability: The project of the Broadcasting Code (registered in Parliament under the number 15 of January 21, 2014, the status of the project - under examination). CAPC expert report on respecting the principle of accountability has held as follows:

„*The draft Broadcasting Code contains provisions aimed at empowering Broadcasting Council members, the managing institution, as well as the participants in the field of media. Thus, the art. 82 from the draft law provides that Parliament exerts control over the Broadcasting Council by debating its annual report, presented for the previous year. Parliamentary Committee may request the President of the Broadcasting Council specific reports whenever deemed necessary. The annual reports of the Broadcasting Council include two chapters on the exercise of competencies and on the spending of funds. Broadcasting Council's annual report is submitted to the specialized parliamentary Commission until February 1. Parliamentary Committee organises public hearings on the annual report of the Broadcasting Council where are invited to attend the hearings the Broadcasting Council members, representatives of political parties, representatives of NGOs in the media filed, representatives of international organizations and other stakeholders, which may present alternative reports on monitoring the work of the Broadcasting Council or conclusions on the annual report of the Broadcasting Council. To this end, Parliamentary Committee shall publish Broadcasting Council report on Parliament's website and the Broadcasting Council on its website at least 10 days before the public hearings. Following the public hearings, and based on their findings, the Commission approves the specialized parliamentary positive or negative annual report of the Broadcasting Council motivating this decision. The Commission's report refers to the legality, appropriateness and effectiveness of the work of the Broadcasting Council and the fairness and transparency of financial transactions. During debates on the report of the Broadcasting Council, onthe professional opinion of the Parliamentary Commission, Parliament may adopt the decision to approve or reject it. At the same time, art. 84 of the draft provides that supervision of compliance, control and sanction of violations the obligations of code provisions and of decisions issued under and apply for it are attributed to Broadcasting Council competencies. In exercising supervision and control, Broadcasting Council may require media service providers and distributors of services to ptovide necessary information and documents ... The applicant shall indicate the legal basis, purpose of the request and the time of presenting the information. In case of office inspection, service providers and media services distributors will provide access to activity locations, will provide recordings of broadcasts, where available under this Code, shall cooperate in order to facilitate timely and effectively exercise control. Art. 85 of the draft distinctly regulates liability for breach of broadcasting legislation, which means the application by the Broadcasting Council, under the law, of sanctions against media service providers or service distributors who have committed violations of the broadcasting law. Under the draft provisions cited above, it can be found a sufficient level of assurance of the principle of accountability”.*

# III.7 Draft laws vs. human rights regulated by the Constitution of the Republic of Moldova

In order to monitor, at normative level, the draft laws impact on human rights (including the rate of regulation some rights in draft laws), multiple rights and fundamental freedoms of individuals established in the Constitution of the Republic of Moldova and international treaties signed by Republic of Moldova, have systematized as follows: individual rights and freedoms; social and economic rights and freedoms; civil and political rights and freedoms; cultural rights and freedoms; guarantees rights.

In this section, CAPC experts specified, according to a pre-determined list, the regulation area selecting correspondent human rights as these are stated in the Constitution of the Republic of Moldova.

# III.7.1 Individual rights and freedoms

Individual rights and freedoms – are composed of inviolabilities, i.e. the individual rights and freedoms that, by their content, ensure life, physical and psychical safety, possibility to free movement etc. This category of constitutional rights includes: the right to non-discrimination (art. 16); the right to life and physical and mental integrity (art. 24); individual freedom and people security (art. 25); the right of defence (art. 26); the right to free movement (art. 27); the rights to private and family life (art. 28); inviolability of domicile (art. 29); privacy of correspondence (art. 30); prohibition of forced labour (art. 44).

Thus, the constitutional rights of the category “Individual rights and freedoms” are express or tacit regulated in 55 dtaft laws. The highest share in this category recorded the “Right non-discrimination (art. 16 of the Constitution)”, which is covered in 16 draft laws reviewed by CAPC, followed by "Individual freedom and people security (art. 25 of the Constitution)”, which is covered in 9 draft laws.

# III.7.2 Social and economic rights and freedoms

Constitutional rights as of category “Social and economic rights and freedoms” are express or tacit regulated in 75 reviewed draft laws, which means that almost all reviwewd bills covers any right from category “Social and economic rights and freedoms”.

This category of rights includes: the right of healthcare (art. 36); the right to life in a healthy environment (art. 37); the right to work and of access to work (art. 43); the right of striking (art. 45); the right of private property and its protection (art. 46); the right of receiving social assistance and protection (art. 47); protection of mothers, children and young people (art. 50); protection of persons with disabilities (art. 51); family (art. 48); protection of family and orphaned children (art. 49).

The highest share of regulation the category “Social and economic rights and freedoms’’ has registered the ‘’Right to private property and its protection (Article 46 of the Constitution)’’ – 18 draft laws, followed by the ‘’Right to work and of safety to work (art. 43 of the Constitution)’’ being regulated in 14 bills and the lowest share (3 bills) has covered by “Protection of family and orphaned children (Article 49 of the Constitution)” category.

# III.7.3 Civil and political rights and freedoms

Civil and political rights and freedoms reflect the level of state development to ensure social protection and determine the possibility of individuals to participate at state and society administration. This category of rights includes: the right to vote and being elected (art. 38); the right to administrate (art. 39); the freedom of assembly (art. 40); the freedom of political association (art. 41); the right to establish and join trade unions (art. 42); freedom of conscience (art. 31); freedom of opinion and expression (art. 32); the right of access to information (art. 34).

Constitutional rights as of category "Civil and political rights and freedoms" are express or tacit regulated in 34 draft laws reviewed by CAPC. The highest share in this category has recorded the "Right to information (art. 34 of the Constitution)" which is covered in 7 draft laws examined by CAPC, and the lowest share has covered by the “Right to establish and to join trade unions (art. 42 of the Constitution)”- 1 draft law.

# III.7.4 Cultural rights and freedoms

Cultural rights and freedoms have a special importance for multilateral development of individual and directly influence the spiritual relationships that affect independence and originality in spiritual concept creation of personality. This category includes the right of access to education (art. 35); the freedom of creation (art. 33).

Analyzing statistics generated by e-template on performing legislation from the perspective of human rights, it can be found that the regulation of these categories of rights was not just in the "top of the perferences" of the legislature being examined only 6 bills, of which 5 regulates the "Right to education (Article 35 of the Constitution)" and 1 draft law – the "Freedom of creation (article 33 of the Constitution)".

# III.7.5 Guarantees rights

Guarantees rights have a special signification to ensure the exercising of all others guaranteed rights and freedoms by Constitution. This category of rights includes: right of petitioning (art. 52); the right of person aggrieved by public authority to restore and repair the violated right (art. 53); the right to citizenship of the Republic of Moldova (art. 17); the right to state protection for its nationals (art.18); the right of aliens and stateless persons (art. 19); the rights to free access to justice (art. 20); the right to presumption of innocence (art. 21); non-retroactivity of law (art. 22); the right to know one's rights and duties (art. 23).

Constitutional rights as of category the "Guarantees rights" are rexpress or tacit regulated in 47 bills. The most frequency regulation has recorded in the "Right to free access to justice (art. 20 of the Constitution)" - 15 draft laws. At the other pole - regulated in a single bill, were positioned the “Right of aliens and stateless persons (Article 17 of the Constitution)”, the “Right of foreign citizens and stateless persons (art. 19 of the Constitution)”, the “Right to presumption of innocence (Article 21 of the Constitution)”, "Non-retroactivity (Article 22 of the Constitution)”.

# III.8 Gender impact of draft laws

In the process of carrying out legislation expertise of draft laws from the perspective of human rights, CAPC experts assessed the gender impact of draft laws, apeciind if new legislative initiatives are in line with relevant international treaties to which Republic of Moldova is party and with relevant national laws ensuring gender equality: Law on equal opportunities between women and man no. 5-XVI of 09.02.2006; Law on equal opportunities nr.121 of 25.05.2012; Government Decision on Classifier of industries, professions and jobs with hard and dangerous work prohibited to women and on Norms of maximum requesting allowed to women for lifting and manual transportation of loads no. 624 of 06.10.1993; Government decision on creating Governmental Commission for equality between women and men no. 350 of 07.04.2006; Government decision on the approval of Regulation of Governmental Commission for equality between women and men no. 895 din 07.08.2006; Government decision on the approval of National Programme to ensure gender equality for 2010 – 2015 years no. 933 din 31.12.2009.

Analysis of the results of statistical data, allowed us to find that 74 of reviewed draft laws are gender neutral, which means that these bills do not influence gender differentiation do not contribute to gender inequality and generate the same impact on women, as well as on men.

Two draft laws are oriented gender: Education Code of the Republic of Moldova and the draft Law on amending and supplementing some legislative acts (Law on Government – art. 2, 3, 19, 27, Law on press – art. 4, 8; etc.). Thus, these projects could modify the effects of the disadvantaged status of persons of a particular gender by benefiting directly.

However, concerning a draft law (draft Law on electronic signature and electronic document) it has found the need to provide affirmative action. This means that during the implementation of this law, gender equality could not be ensured if the legislator will introduce temporary special measures (organizational, legal, institutional measures) aimed at encouraging persons of a particular gender.

# CHAPTER IV. VULNERABILITY FACTORS IN REVIEWED DRAFT LAWS

This chapter summarizes concrete objections formulated by CAPC experts in expert reports by analyzing the spread of vulnerability factors and the effectiveness of the formulated objections. In the same time, this chapter includes a brief description of each vulnerability factor identified in the draft laws adopted/withdrawn, its spread depending on regulatory areas of reviewed draft laws, the effectiveness of its identification in experts’ reports and examples of vulnerability factors identified in adopted/withdrawn draft laws.

Vulnerability factors were analyzed in terms of:

* rate of objections to each factor of vulnerability of all objections by areas

*sample: 991 factors (objections) identified in 77 expert reports*

* rate of acceptance of the experts objections on vulnerability factors by legislator

*sample: 351 factors (objections) in 23 experts’ reports on legislative acts adopted/withdrawn by Parliament*.

# IV.1 The spread of vulnerability factors in draft laws and the effectiveness of formulated objections

The Guide to perform vulnerability expertise of draft normative acts in terms of human rights and gender equality has identified 16 vulnerability factors:

1. Provisions that violate rights/freedoms;
2. Omission/ignorance of rights/freedoms;
3. Omission/ignorance of gender equality;
4. Provisions that establish unequal rights for men and women;
5. Provisions that establish unequal obligations for men and women;
6. Provisions that do not correspond to ECtHR jurisprudence;
7. Provisions that limit rights/freedoms;
8. Provisions that do not correspond to constitutional norms;
9. Provisions that do not correspond to correlative legislative norms;
10. Provisions that do not correspond to international standards;
11. Provisions that do not correspond to Constitutional Court jurisprudence;
12. Provisions that establish unequal responsibility for men and women;
13. Provisions that do not ensure equal opportunities for men and women;
14. Provisions that do not ensure equal partnership between men and women;
15. Unequal results (consequences) for men and women
16. Discriminatory provisions.

At the same time, in addition to the factors set out in the Guide to perform vulnerability expertise of draft normative acts in terms of human rights and gender equality, experts were able to identify and "Other elements": non-respecting of legal technique requirements and regulatory language; lacunar rules; ambiguous formulation that allows abusive interpretation; confusing rule; doubling the existing rules; lack/ambiguity of administrative procedures, etc.

Of the total number of vulnerabilities identified (714) the highest share have the provisions that do not correspond to correlative norms (243). However, the share of the most widespread vulnerability factor is lower than the "Other elements" - 277 identified during the expertise performing in those 77 draft laws.

At the other pole of the degree of spread are the next 6 vulnerability factors: provisions that establish unequal responsibility for men and women; provisions that do not ensure equal opportunities for men and women; provisions that do not ensure equal partnership between men and women; omission/ignorance of gender equality; provisions that establish unequal rights for men and women; unequal results (consequences) for men and women. Thus, three vulnerability factors (*provisions that establish unequal responsibility for men and women; provisions that do not ensure equal opportunities for men and women; provisions do not ensure equal partnership between men and women*) were not identified in any of the reviewed draft laws, two vulnerability factors (*omission/ignore of gender equality; provisions that establish unequal rights for men and women*) were identified once each of them, and the factor - *unequal results (consequences) to men and women* – twice.

***Table 2.*** *Share of each vulnerability factor in the total number of reports, legislative acts adopted/retired and the effectiveness of formulated objections*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Name of vulnerability element | Number of elements identified in reviewed draft laws (77 draft laws) | Number of elements identified in adopted/retired laws (23 laws) | Number of accepted objections (effectiveness of the expertise) | % of the effectiveness |
| **1.** | **Provisions that violate rights/freedoms** | 88 | 27 | 8 | 29,63% |
| **2.** | **Omission/ignorance of rights/freedoms** | 41 | 12 | 4 | 33,33% |
| **3.** | **Omission/ignorance of gender equality** | 1 | 0 | 0 | 0% |
| **4.** | **Provisions that establish unequal rights for men and women** | 1 | 0 | 0 | 0% |
| **5.** | **Provisions that establish unequal obligations for men and women** | 0 | 0 | 0 | 0% |
| **6.** | **Provisions that do not correspond to ECtHR jurisprudence** | 25 | 13 | 6 | 46,15% |
| **7.** | **Provisions that limit rights/freedoms** | 73 | 22 | 8 | 36,36% |
| **8.** | **Provisions that do not correspond to constitutional norms** | 87 | 34 | 15 | 44,12% |
| **9.** | **Provisions that do not correspond to correlative legislative norms** | 243 | 58 | 25 | 43,1% |
| **10.** | **Provisions that do not correspond to international standards** | 52 | 23 | 9 | 39,13% |
| **11.** | **Provisions that do not correspond to Constitutional Court jurisprudence** | 36 | 16 | 8 | 50% |
| **12.** | **Provisions that establish unequal responsibility for men and women** | 0 | 0 | 0 | 0% |
| **13.** | **Provisions that do not ensure equal opportunities for men and women** | 0 | 0 | 0 | 0% |
| **14.** | **Provisions that do not ensure equal partnership between men and women** | 0 | 0 | 0 | 0% |
| **15.** | **Unequal results (consequences) for men and women** | 2 | 0 | 0 | 0% |
| **16.** | **Discriminatory provisions** | 65 | 22 | 8 | 36,36% |
| **17.** | **Other elements** | 277 | 124 | 54 | 43,55% |
|  | **TOTAL** | **991** | **351** | **145** | **41,31%** |

As of 351 objections formulated in 23 experts’ reports on draft laws, which were adopted/withdrawn, Parliament accepted 145 objections, representing 41.31%. From the above table it can be seen that vulnerability factors with the highest acceptance rates are: provisions that do not correspond to Constitutional Court jurisprudence - 50%; provisions that do not correspond to ECtHR jurisprudence - 46.15%; provisions that do not correspond to constitutional norms - 44.12%. The lowest acceptance rate was recorded at provisions that violate the rights/freedoms and represents 29.63%.

# IV.2 Provisions that violate rights/freedoms

Provisions that violate rights/freedoms are the rules from the draft normative acts, which if adopted, would violate or will violate the rights and/or freedoms stated by the Constitution or international treaties to which Moldova is party.

The danger of this element consists in the denaturation of protection concept by law authority of human rights and freedoms protection.

Situation by areas of expertise regarding the share of provisions that violate rights/freedoms and the effectiveness of objections formulated by CAPC can be viewed in the Table 2.

***Table 2.*** *Share of provisions that violate rights/freedoms and the effectiveness of formulated objections by areas of expertise*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that violate rights/freedoms identified in reviewed draft laws (77 draft laws) | 49 |
| Number of provisions that violate rights/freedoms identified in adopted/retired laws (23 laws) | 8 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 37,5% |
| Area II. | **Economy and trade** | Number of provisions that violate rights/freedoms identified in reviewed draft laws (77 draft laws) | 16 |
| Number of provisions that violate rights/freedoms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of provisions that violate rights/freedoms identified in reviewed draft laws (77 draft laws) | 4 |
| Number of provisions that violate rights/freedoms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 75% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that violate rights/freedoms identified in reviewed draft laws (77 draft laws) | 9 |
| Number of provisions that violate rights/freedoms identified in adopted/retired laws (23 laws) | 7 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 28,57% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that violate rights/freedoms identified in reviewed draft laws (77 draft laws) | 10 |
| Number of provisions that violate rights/freedoms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example:*** Law no.232 of 11.10.2013 on amending and supplementing some legislative acts (Contraventions Code of the Republic of Moldova no.218-XVI of October 24, 2008; Law no.200 of July 16, 2010 on aliens’ regim in the Republic of Moldova)

|  |
| --- |
| ***Text of the draft:*** “Article 333. Violation of staying rules in Republic of Moldova  ...  (4) Lack of declaring by foreign nationals and stateless to the competent authorities within the deadline set by the legislation on the entry in Moldova ***by the Moldovan-Ukrainian border segment uncontrolled by Moldovan authorities*** is punishable by a fine of 10 to 20 conventional units”. |
| ***Vulnerability element identified and expert recommendation:*** provisions that violate rights/freedoms; discriminatory provisions; provisions that limit rights/freedoms; provisions that do not correspond to ECtHR jurisprudence; provisions that do not correspond to constitutional norms; provisions that do not correspond to correlative legislative norms.  ***Expert objection***: These provisions establish a discriminatory requirement for foreigners through which there are violated their right to freedom of movement, or, none of normative acts in force establishes any obligation to inform public authorities about the entry in Moldova by the Moldovan-Ukrainian border segment or a prohibition to cross the border. Entry in the Republic of Moldova is the subject of state control through a border crossing point, which, according to the concept contained in article 3 of the Law on state border of the Republic of Moldova no.215 of 04.11.2011, represents a place organized and authorized by the Government to pass the state border. The fact that the Moldovan authorities do not control whole border, the Republic of Moldova cannot impose to such people’s obligations which, by itself, consits interferences in human rights. ...... Foreigners sanctioning for failure to above restriction represents also a restriction of freedom of movement, which is presumed that it should not cross the Moldovan-Ukrainian border. Such an approach is contrary to the purpose of this draft law …  ***Recommendation:*** It is necessary to review the rule in terms of formulated objections. |
| ***Text od approved Law:***  “Article 333. Violation of staying rules in Republic of Moldova  (4) Lack of declaring by foreign nationals or by stateless to the competent authorities within the deadline set by the legislation on the entry in Moldova in order to be tsken on evidence, except those to whom the entry was authorized,  is punishable by a fine of 10 to 20 conventional units. This penalty is not applied to holders of travel documents issued by foreign authorities residing in localities from the left bank of Nistru (Transnistria). |

# IV.3 Omission/ignorance of rights/freedoms

*Omission/ignorance of rights/freedoms* is the situations generated by possible implementation of the draft laws norms, of neglecting, disregarding the rights and/or freedoms provided by the Constitution of the Republic of Moldova or international treaties to which Moldova is party.

The danger of this element consists in the possibility that is offered to the public authorities to consciously refuse to know and apply the Constitution of the Republic of Moldova and the international treaties to which Moldova is a party, thus being disregarded human rights and freedoms.

Situation on areas concerning the provisions share allowing omission/ignoring the rights/freedoms and effectiveness of objections formulated by CAPC is shown in Table 3.

***Table 3.*** *Share of provisions that allow omission/ignorance of rights/freedoms and the effectiveness of formulated objections by areas*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that allow omission/ignorance of rights/freedoms identified in reviewed draft laws (77 draft laws) | 20 |
| Number of provisions that allow omission/ignorance of rights/freedoms identified in adopted/retired laws (23 laws) | 9 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 22,22% |
| Area II. | **Economy and trade** | Number of provisions that allow omission/ignorance of rights/freedoms identified in reviewed draft laws (77 draft laws) | 8 |
| Number of provisions that allow omission/ignorance of rights/freedoms identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of provisions that allow omission/ignorance of rights/freedoms identified in reviewed draft laws (77 draft laws) | 0 |
| Number of provisions that allow omission/ignorance of rights/freedoms identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area IV. | **Education, culture, religion and media** | Number of provisions that allow omission/ignorance of rights/freedoms identified in reviewed draft laws (77 draft laws) | 7 |
| Number of provisions that allow omission/ignorance of rights/freedoms identified in adopted/retired laws (23 laws) | 3 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 66,67% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that allow omission/ignorance of rights/freedoms identified in reviewed draft laws (77 draft laws) | 0 |
| Number of provisions that allow omission/ignorance of rights/freedoms identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example:*** Transport Code no. 150 of 17.07.2014

|  |
| --- |
| ***Text of the draft:***  - vehicles or more vehicles with a maximum authorized mass not exceeding 3.5 tonnes used for the carriage of goods; |
| ***Vulnerability element identified and expert recommendation:*** omission/ignorance of rights/freedoms  ***Expert objection***: Such vehicles may be used for personal purposes. It is not clear why the authors have missed/ignored the right to use such vehicle for personal/non-commercial puropses.  ***Recommendation***: It recommends supplementing the article with the phrase "used for non-commercial purposes". |
| ***Text of approved Law:***  – road vehicles or moreroad vehicles with a maximum authorized mass not exceeding 3.5 tonnes used for the road carriage of goods in personal purpose; |

# IV.4 Provisions that do not correspond to ECtHR jurisprudence

*Provisions that do not correspond to ECtHR jurisprudence* are norms at preparing of which did not take into account ECtHR decisions witin which Republic of Moldova has been convincted or ECtHR decisions regarding other countries and are relevant for the subject of respective norm.

The danger of this element is to perpetuate, by authority of law, human rights violations and, therefore, to increase the probability of conviction or repeated condemnation of Moldova by the ECtHR.

Table 4 shows the situation on areas of expertise regarding the share of provisions that do not correspond to ECtHR jurisprudence and the effectiveness of objections formulate by CAPC concerning this factor in experts reports.

***Table 4.*** *Share of provisions that do not correspond to ECtHR jurisprudence and the effectiveness of formulated objections by**areas*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that do not correspond to ECtHR jurisprudence identified in reviewed draft laws (77 draft laws) | 10 |
| Number of provisions that do not correspond to ECtHR jurisprudence identified in adopted/retired laws (23 laws) | 2 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 100% |
| Area II. | **Economy and trade** | Number of provisions that do not correspond to ECtHR jurisprudence identified in reviewed draft laws (77 draft laws) | 2 |
| Number of provisions that do not correspond to ECtHR jurisprudence identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of provisions that do not correspond to ECtHR jurisprudence identified in reviewed draft laws (77 draft laws) | 4 |
| Number of provisions that do not correspond to ECtHR jurisprudence identified in adopted/retired laws (23 laws) | 3 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 66,67% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that do not correspond to ECtHR jurisprudence identified in reviewed draft laws (77 draft laws) | 7 |
| Number of provisions that do not correspond to ECtHR jurisprudence identified in adopted/retired laws (23 laws) | 6 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 33,33% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that do not correspond to ECtHR jurisprudence identified in reviewed draft laws (77 draft laws) | 2 |
| Number of provisions that do not correspond to ECtHR jurisprudence identified in adopted/retired laws (23 laws) | 2 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example***: Law no. 343 of 24.12.2013 amending and supplementing certain alegislative acts (Law no. 548-XIII of July 21, 1995 on the National Bank of Moldova; Law on Administrative Offences no. 793-XIV February 10, 2000; Civil Procedure Code of the Republic of Moldova no. 225-XV of May 30, 2003)

|  |
| --- |
| ***Text of the draft:***  Art. I. - Law on the National Bank of Moldova no.548-XIII of July 21, 1995 (Official Gazette of the Republic of Moldova, 1995, no. 56-57, art. 624), as amended and supplemented, shall be amended and supplemented as follows:  1. In Article 11:  Para. (4) to read as follows:  "(4) Acts of the National Bank in the field of monetary and currency policy, including safeguard measures, acts of the National Bank acts on the special administration of the bank, acts of the National Bank acts adopted in the evaluation and supervision of the shareholders entities quality supervised by the National Bank, and measures implemented by the National Bank or by the special administrator of the bank during the special bank administration can be contested only in terms of the adoption procedure, within 30 days, at Board, by filing a preliminary claim."  It is supplemented by paragraphs (5) and (6) as follows:  "(5) The Board examines preliminary requests on National Bank acts stated in para. (4) within 15 days from the date of submission.  (6) Contesting requests of National Bank acts stipulated at para. (4) shall be examined by the court within three months from the date of submission, under adoption procedure, in terms of mandatory respecting by the applicant of procedure set out in para. (4) and (5).” |
| ***Vulnerability element identified and expert recommendation:*** provisions that do not correspond to ECtHR jurisprudence; provisions that do not correspond to Constitutional Court jurisprudence; provisions that do not correspond to constitutional norms; provisions that do not correspond to correlative legislative norms; provisions that limit rights/freedoms; provisions that violate rights/freedoms.  ***Expert objection***: The proposed provisions at point 1 contradict the legislation in force in this area and contradict basic principles of law-making process. The author proposes a new wording of Article 11 para. (4) where: lists the administrative regulations of the National Bank exempted from the general procedure; establishes the right of appeal to them only in terms of the adoption procedure; sets deadline for appeal of 30 days, but without specifying the time when the term begins to run and without delimiting the administrative character of the act. .... Establishing at para. (6) the period of three months in which to be examine contesting requests of the National Bank acts by the court, is contrary to the law, to the jurisprudence of Constitutional Court and and even ECtHR jurisprudence. ... Both the national as well as the international legal frameworks prescribe the examination within a reasonable time the cases brought to court. Examination of the case within a reasonable time is one of the principles of civil process. ... Setting by law deadlines of litigation examination offer to the State a positive obligation, but an eventual overcoming of them can cause violation of due process and therefore can lead to condemnation of Moldova to the European Court. …  ***Recommendation:*** It recommends a substantial revision of Article 11, by bringing the rules content proposed in para. (4) and (5) in accordance with the provisions of legislation in force, of the Constitution, of the Constitutional Court and ECHR jurisprudences. However, we propose to exclude the whole para. (6) of Article 11. |
| ***Text of approved Law:***  **Art. I.** - Law no.548-XIII of July 21, 1995 on the National Bank of Moldova (Official Gazette of the Republic of Moldova, 1995, no. 56-57, art. 624), as amended and supplemented, shall be amended and supplemented as follows:  1. Article 11:  paragraph (4) will have the following content:  "(4) National Bank acts are subject to legal review in administrative courts under the procedure established by the Law on administrative court and according to the requirements of this law."  article is supplemented by paragraphs (5) - (9) with the following content:  "(5) The National Bank acts are not subject to the control of opportunity.  (6) The actions of administrative litigation concerning the National Bank acts or failure by this of a legal request within a legal term are filed in court within National Bank’ jurisdiction.  (7) National Bank acts in the field of monetary and currency policy, including safeguard measures could be contested only in terms of the adoption procedure.  (8) Contesting requests on the National Bank acts concerning the special administration of the bank, acts of the National Bank acts adopted in the evaluation and supervision of the shareholders entities quality supervised by the National Bank, and measures implemented by the National Bank or by the special administrator of the bank during the special bank administration shall be examined by National Bank, within 5 working days.  (9) Contesting requests on the National Bank acts concerning monetary and currency policy, including safeguard measures, the acts of National Bank on the special administration of the bank, the acts of National Bank adopted in the evaluation and supervision of the shareholders entities quality supervised by the National Bank and National Bank implemented measures or by special administrator during the special administration of the bank, shall be heard within 3 months from the filing date.’’ |

# IV.5 Provisions that limit rights/freedoms

*Provisions that limit the rights/freedoms* are rules freely restricting the exercise of rights and freedoms provided by the Constitution and international treaties to which Moldova is part.

The danger of this factor consists in abusive undermine, by authority of law, of guarantees to realise the rights and freedoms set out in the Constitution or international treaties to which Moldova is party.

***Table 5.*** *Share of provisions that limit rights/freedoms and effectiveness of formulated objections by areas of expertise*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that limit rights/freedoms identified in reviewed draft laws (77 draft laws) | 26 |
| Number of provisions that limit rights/freedoms identified in adopted/retired laws (23 laws) | 12 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 25% |
| Area II. | **Economy and trade** | Number of provisions that limit rights/freedoms identified in reviewed draft laws (77 draft laws) | 15 |
| Number of provisions that limit rights/freedoms identified in adopted/retired laws (23 laws) | 1 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of provisions that limit rights/freedoms identified in reviewed draft laws (77 draft laws) | 6 |
| Number of provisions that limit rights/freedoms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 75% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that limit rights/freedoms identified in reviewed draft laws (77 draft laws) | 16 |
| Number of provisions that limit rights/freedoms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 50% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that limit rights/freedoms identified in reviewed draft laws (77 draft laws) | 6 |
| Number of provisions that limit rights/freedoms identified in adopted/retired laws (23 laws) | 1 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example:*** Law no.42 of 27.03.2014 on amending and supplementing the Enforcement Code of the Republic of Moldova no.443-XV of Decembrie 24, 2004

|  |
| --- |
| ***Text of the draft:***  Para. (1) of Article 163 is amended and Article shall be supplemented by a new paragraph with the following content:  (1) Claims from the request on contesting execution documents prepared by bailiff will be submitted against the creditor or debtor. The request is judged in terms of Civil Procedure Code and is examined within court (including in the hierarchically superior) within 30 days.  (1/1) If the subject of appeal is a bailiff's inaction and/or the amount of the fee, the request will be submitted against the bailiff. In all other cases, the bailiff is introduced into the process in accordance with article 67 para. (3) of Civil Procedure Code. |
| ***Vulnerability element identified and expert recommendation:*** provisions that limit rights/freedoms;  provisions that do not correspond to correlative legislation  ***Expert objection***: The manner in which is exposed point 8 from the draft legislative act does not meet legal technique requirements established by Law No.780/2001. The text of Art.163 para. (1) is not changed, according to the authors, but only exclude the last sentence from the current text of Article 163 para. (1) from the Enforcement Code. Concerning the para. (1/1) proposed by the authors, we note the possibility of apparence in practice of possible confusing situations. The authors propose that the bailiffs to be introduced into the process as interveners accessories. Currently, the application for proceedings shall be submitted to the creditor or debtor and the bailiff is invited to give explanations on the disputed documents. We will not express our opinion on this option, since this represented the Government logic when have been changed in 2010 the whole system on enforcement in Moldova. However, in terms of standing currently available for bailiffs and of authors’ intention to grant the bailiffs the standing of accessory intervener it will be limited the bailiffs’ actions and rights. Or, according to Article 68 from the Civil Procedure Code, the accessory intervener has procedural rights and obligations of the stakeholder he joins, except the right to change the grounds and scope of the action, to increase or reduce the amount of claims in the action, and to cancel the action, to recognize the action or to conclude the transaction, to submit a reconventional claim or to demand enforcement of the judgment, conclusion or judicial decision.  ***Recommendation:*** We suggest the exclusion or text reformulation of proposed rules to be brought in line with the requirements of legislative technique. Regarding the intention of the authors to give to bailiffs the standing of accessory intervener, we consider it, at this moment, inappropriate, but this topic is actual and will be subject to specialized analysis, with the relevant public authorities and specialists in the field to identify optimal solution. |
| ***Text of approved law:*** Amendments to the article 163 from Enforcement Code were excluded. |

# IV.6 Provisions that do not correspond to constitutional norms

Basic internal normative act, which guarantees respect for human rights in the Republic of Moldova, is the Constitution. It introduces both fundamental rights and freedoms and their corollary, fundamental duties. The inclusion of rights in the Constitution is justified by their importance; respect for constitutional norm is forcing all other laws that provide, in their turn, the rights, freedoms and fundamental duties’ detailing[[6]](#footnote-6). Thus, for this reason, the experts have identified in draft legislative acts provisions that do not correspond to constitutional norms.

*Provisions that do not correspond to constitutional norms* are the rules which are directly or indirectly contrary to the Constitution of the Republic of Moldova.

The danger of this element consists on the one hand on the probability of violation of rights and freedoms under the Constitution, and on the other hand on the lack of legal framework stability, because a rule/law could be declared unconstitutional.

***Table 6.*** *Share of provisions that do not correspond to constitutional norms and the effectiveness of formulated objections by areas*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that do not correspond to constitutional norms identified in reviewed draft laws (77 draft laws) | 40 |
| Number of provisions that do not correspond to constitutional norms identified in adopted/retired laws (23 laws) | 8 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 37,5% |
| Area II. | **Economy and trade** | Number of provisions that do not correspond to constitutional norms identified in reviewed draft laws (77 draft laws) | 7 |
| Number of provisions that do not correspond to constitutional norms identified in adopted/retired laws (23 laws) | 1 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 100% |
| Area III. | **Budget and finance** | Number of provisions that do not correspond to constitutional norms identified in reviewed draft laws (77 draft laws) | 5 |
| Number of provisions that do not correspond to constitutional norms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 75% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that do not correspond to constitutional norms identified in reviewed draft laws (77 draft laws) | 17 |
| Number of provisions that do not correspond to constitutional norms identified in adopted/retired laws (23 laws) | 17 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 8 |
| % of effectiveness | 47,06% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that do not correspond to constitutional norms identified in reviewed draft laws (77 draft laws) | 18 |
| Number of provisions that do not correspond to constitutional norms identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example***: Law no. 343 of 24.12.2013 on amending and supplementing some legislative acts (Law no. 548-XIII of July 21, 1995 on the National Bank of Moldova, Law on Administrative Court no.793-XIV of February 10, 2000; Civil Procedure Code of the Republic Moldova no. 225-XV of May 30, 2003)

|  |
| --- |
| ***Text of the draft:***  3. Article 23 para. (3) will have the following content:  "(3) Contesting requests of the acts set in art. 11 para. (4) of Law no. 548-XIII of July 21, 1995 on the National Bank of Moldova shall be examined by the court only in terms of the adoption process within 3 months from the date of submission ... " |
| ***Vulnerability element identified and expert recommendation:*** provisions that do not correspond to constitutional norms; provisions that do not correspond to Constitutional Court jurisprudence; provisions that do not correspond to ECtHR jurisprudence; provisions that do not correspond to correlative legislative norms; provisions that limit rights/freedoms; provisions that violate rights/freedoms.  ***Expert objection***: These special examination rules on contesting requests of the National Bank acts in court intervene and limit the powers of the courts. .... Moreover, these draft rules affect the rights guaranteed by the Constitution, including the right to defense, access to justice, the right of person harmed by a public authority. In accordance with Article 20 of the Constitution, everyone has the right to obtain effective protection from competent courts against acts that violate the rights, freedoms and interests. None of law may restrict access to justice. According to Article 26 of the Constiution, everyone shall be entitled to respond independently by appropriate legitimate means to an infringement of his/her rights and freedoms. In addition, according to Article 53, any person prejudiced in any of his/her rights by a public authority by way of an administrative act or failure to solve a complaint within the legal term, is entitled to obtain acknowledgement of the declared right, cancellation of the act and payment of damages. In this respect, the Constitutional Court in its judgment says: "some provisions derogating from those under constitutional control represents an unjustified restriction imposed by the legislator in terms of courts independence, and limiting the privilege granted to the complaintant to ask the court to suspend the administrative act, as precautionary measure until the pronouncement of the decision, makes it impossible to defend the individual against unjustified infringement of his constitutional rights and freedoms and does not create additional safeguards to ensure the legality, contrary to Articles 6, 20 para. (1) and 114 of the Constitution. "  ***Recommendation:*** It is necessary to review all these provisions, based on the above objections to bring them into line with constitutional norms and existing legal framework, with the coding system and unification of the legislation. |
| ***Text of approved law:***  2. Article 23 para. (3) shall read as follows: "(3) Applications lawsuit against acts referred to art. 11 (9) of Law no. 548-XIII of July 21, 1995 on the National Bank of Moldova shall be examined within three months from the filing date. |

# IV.7 Provisions that do not correspond to correlative legislative norms

*Provisions that do not correspond to correlative legislative norms* are the rules that directly or indirectly contravene to correlative legislation.

The danger of this element is to create impediments to the proper application of the law, by creating conditions for the selective application of the rules.

***Table 7.*** *Share of provisions that do not correspond to correlative legislative norms and the effectiveness of formulated objections by areas*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that do not correspond to correlative legislative norms identified in reviewed draft laws (77 draft laws) | 97 |
| Number of provisions that do not correspond to correlative legislative norms identified in adopted/retired laws (23 laws) | 7 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 4 |
| % of effectiveness | 57,14% |
| Area II. | **Economy and trade** | Number of provisions that do not correspond to correlative legislative norms identified in reviewed draft laws (77 draft laws) | 62 |
| Number of provisions that do not correspond to correlative legislative norms identified in adopted/retired laws (23 laws) | 7 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 14,29% |
| Area III. | **Budget and finance** | Number of provisions that do not correspond to correlative legislative norms identified in reviewed draft laws (77 draft laws) | 7 |
| Number of provisions that do not correspond to correlative legislative norms identified in adopted/retired laws (23 laws) | 5 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 4 |
| % of effectiveness | 80% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that do not correspond to correlative legislative norms identified in reviewed draft laws (77 draft laws) | 28 |
| Number of provisions that do not correspond to correlative legislative norms identified in adopted/retired laws (23 laws) | 27 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 11 |
| % of effectiveness | 40,74% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that do not correspond to correlative legislative norms identified in reviewed draft laws (77 draft laws) | 49 |
| Number of provisions that do not correspond to correlative legislative norms identified in adopted/retired laws (23 laws) | 12 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 5 |
| % of effectiveness | 41,67% |

### *Example*: Draft law on the organization and functioning of the National Unique Service for emergency call 112

|  |
| --- |
| ***Text of draft law:***  Article 12. Committee competencies  (1) The Committee shall coordinate, monitor and analyze the interaction of all institutions involved in providing 112 emergency services.  (2) The Committee has the role to coordinate and develop draft legislation (regulations, technical regulations, etc.) and interaction agreements of Service 112 with specialized emergency services. |
| ***Vulnerability element identified and expert recommendation:*** provisions that do not correspond to correlative legislative norms  ***Expert objection:*** According to art. 21 of the Law on Government no. 64-XII of May 31, 1990 ministries are central specialized bodies of the state. These are headed by ministers who bear personal responsibility for tasks assummed by them. Ministries transpose into life, under the laws of the Republic, Presidential decrees, Government policy, decisions and orders, conduct within the competence the areas of competences and are responsible for their work. Thus, according to point 2 from the Regulation of the Ministry of Information Technologies and Communications, approved by Government Decision no. 30 of 10.01.2008, the ministry develops, promotes and uses, within its competence, the policy and strategy for building the information society and perform its duties in the area of information, informatization, information and communication technologies, creation and use of information resources, carries out the monitoring and coordination of projects and programs related to its competence. Meanwhile, according to letters a) point 12 of the mentioned above normative act, the ministry elaborates, applies, amends or repeals, under legislation in force, the orders, dispositions, regulations, instructions, rules, technical regulations and other regulatiory acts for all participants at activities in the field of informatization, information and communication technologies, creation and use of information resources, regardless of subordination and ownership. In this context, the role of coordination and preparation of draft legislation in the field of electronic communications is assigned by law, to the Ministry of Information Technologies and Communications and not at all to an interdepartmental structure - Interdepartmental Coordinating Committee for ensuring interaction between 112 Service and specialized emergency services.  ***Recommendation:*** Rejecting para. (2) from the bill. |
| ***Text of approved law:*** The draft has been withdrawn on 09.10.2014. |

# IV.8 Provisions that do not correspond to international standards

*Provisions that do not correspond to international* standards are rules at developing of which it have not been take into account the relevant international treaties and EU directives.  
   
The danger of this element is to perpetuate, under the law, human rights violations.

***Table 8.*** *Share of provisions that do not correspond to international standards and the effectiveness of formulated objections by area*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that do not correspond to international standards identified in reviewed draft laws (77 draft laws) | 22 |
| Number of provisions that do not correspond to international standards identified in adopted/retired laws (23 laws) | 10 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 3 |
| % of effectiveness | 30% |
| Area II. | **Economy and trade** | Number of provisions that do not correspond to international standards identified in reviewed draft laws (77 draft laws) | 8 |
| Number of provisions that do not correspond to international standards identified in adopted/retired laws (23 laws) | 3 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 33,33% |
| Area III. | **Budget and finance** | Number of provisions that do not correspond to international standards identified in reviewed draft laws (77 draft laws) | 0 |
| Number of provisions that do not correspond to international standards identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that do not correspond to international standards identified in reviewed draft laws (77 draft laws) | 15 |
| Number of provisions that do not correspond to international standards identified in adopted/retired laws (23 laws) | 9 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 4 |
| % of effectiveness | 44,44% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that do not correspond to international standards identified in reviewed draft laws (77 draft laws) | 7 |
| Number of provisions that do not correspond to international standards identified in adopted/retired laws (23 laws) | 1 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 100% |

***Example:*** Law no. 103 of 12.06.2014 for amending and supplementing the Law no.42-XVI of March 6, 2008 on organs transplant, tissues and human cells

|  |
| --- |
| ***Text of the draft:*** "Recipient" concept |
| ***Vulnerability element identified and expert recommendation:*** provisions that do not correspond to international standards  ***Expert obiection:*** Art. 2 of Law 42/2008 in force operates with the notion of "recipient" which, from our point view, is contrary to Directive 2004/23/EC of March 31, 2004 and Directive 2010/45/EU in the field of reference, operating with the concept of “receiving”.  ***Recommendation:*** In order to ensure the compatibility with EU Directives mentioned above, we suggest reviewing the concept of "recipient". Accordingly, this term will be reviewed throughout the law. |
| ***Text of approved law:***  the term "recipient" is replaced with the term "recieving" and will have the following content:  "Receiving - a person benefiting from the organ transplants and/or tissue and/or human cell;". |

# IV.9 Provisions that do not correspond to the Constitutional Court jurisprudence

In order to identify provisions that do not correspond to the Constitutional Court jurisprudence, the CAPC experts identified the relevant jurisprudence of the Constitutional Court (if any) for the project under expertise and assess whether the project complies with established case law.

Provisions that do not correspond to the Constitutional Court jurisprudence are the rules on development of which it was not taken into account the decisions of the Constitutional Court regarding similar situations it addresses the draft normative act.

The danger of this element consists on the one hand in the probability of violation certain rights and freedoms under the Constitution and on the other hand in the lack of stability of the legal framework, because a rule/law may be declared unconstitutional.

***Table 9.*** *Share of provisions that do not correspond to Constitutional Court jurisprudence and the effectiveness of formulated objections by areas of expertise*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of provisions that do not correspond to Constitutional Court jurisprudence identified in reviewed draft laws (77 draft laws) | 15 |
| Number of provisions that do not correspond to Constitutional Court jurisprudence identified in adopted/retired laws (23 laws) | 3 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 33,33% |
| Area II. | **Economy and trade** | Number of provisions that do not correspond to Constitutional Court jurisprudence identified in reviewed draft laws (77 draft laws) | 5 |
| Number of provisions that do not correspond to Constitutional Court jurisprudence identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of provisions that do not correspond to Constitutional Court jurisprudence identified in reviewed draft laws (77 draft laws) | 3 |
| Number of provisions that do not correspond to Constitutional Court jurisprudence identified in adopted/retired laws (23 laws) | 3 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 66,67% |
| Area VI. | **Education, culture, religion and media** | Number of provisions that do not correspond to Constitutional Court jurisprudence identified in reviewed draft laws (77 draft laws) | 10 |
| Number of provisions that do not correspond to Constitutional Court jurisprudence identified in adopted/retired laws (23 laws) | 10 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 5 |
| % of effectiveness | 50% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of provisions that do not correspond to Constitutional Court jurisprudence identified in reviewed draft laws (77 draft laws) | 3 |
| Number of provisions that do not correspond to Constitutional Court jurisprudence identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |

***Example***: Education Code of the Republic of Moldova no. 152 from 17.07.2014

|  |
| --- |
| ***Text of the draft:***  Article 20. The establishment, reorganization and dissolution of educational institutions  (1) The public institutions of early education and primary education, secondary and extracurricular activities are established, reorganized and dissolved by local public authorities, which finances these institutions under the law. Local public authorities have a duty to ensure the proper functioning of these institutions, in accordance with the regulations and standards approved by the Ministry of Education. |
| ***Vulnerability element identified and expert recommendation:*** provisions that do not correspond to Constitutional Court jurisprudence; provisions that do not correspond to constitutional norms; provisions that do not correspond to correlative legislative norms; provisions that do not correspond to international standards.  ***Expert obiection:*** The text presented by the author is incomplete and confused... in the decision of 23.05.2013, the Constitutional Court noted that being the exclusive jurisdiction of the state, education cannot be decentralized and given in its own competence to local public authorities. To local public authorities may be delegated, by law, only certain competencies, by providing them adequate funding. The Court also found that local public authorities of first level, by prior coordination with the Ministry of Education, will decide the establishment, reorganization or liquidation of state pre-school and extracurricular education institutions, and by prior coordination with the Ministry of Education, local public authorities of the second level decides the establishment, reorganization or liquidation of state primary, secondary and extracurricular education institutions. In this respect, the Constitutional Court considered that, given that the administrative-territorial units of first level are not able to effectively ensure the organization and financing of education, these functions were delegate agiain to those of second level. Therefore, we believe that given text of the draft law to be adjusted with the concept of state exclusive competence on education and delegated competencies for local authorities of level I and II. …  ***Recommendation:*** It recommends reviewing the text of the norm taking into account formulate objections. |
| ***Text of approved law:***  **Article 21**. The establishment, reorganization and liquidation of general education   1. The public institutions of early education (ante preschool and preschool education) and extracurricular education (of local level) are established, reorganized and liquidated by the local public authorities of first level. Public institutions of primary, secondary and extracurricular education (of rayon level) are established, reorganized and liquidated by the local public authorities of second level and Gagauzia. Local public authorities have the duty to ensure the proper functioning of these institutions in accordance with the regulations and standards approved by the Ministry of Education. |

# IV.10 Discriminatory provisions

*Discriminatory provisions* are rules that establish criteria or practices apparently neutral which disadvantage certain groups of people, excepting the situation when they are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

The danger of this element consists in violation of rights and freedoms of discriminated persons.

***Tabel 10.*** *Share of discriminatory provisions and the effectiveness of formulated objections by areas of expertise*

|  |  |  |  |
| --- | --- | --- | --- |
| Area I. | **Justice and home affaires, human rights and freedoms** | Number of discriminatory provisions identified in reviewed draft laws (77 draft laws) | 31 |
| Number of discriminatory provisions identified in adopted/retired laws (23 laws) | 5 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 2 |
| % of effectiveness | 40% |
| Area II. | **Economy and trade** | Number of discriminatory provisions identified in reviewed draft laws (77 draft laws) | 7 |
| Number of discriminatory provisions identified in adopted/retired laws (23 laws) | 1 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area III. | **Budget and finance** | Number of discriminatory provisions identified in reviewed draft laws (77 draft laws) | 1 |
| Number of discriminatory provisions identified in adopted/retired laws (23 laws) | 0 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 0 |
| % of effectiveness | 0% |
| Area VI. | **Education, culture, religion and media** | Number of discriminatory provisions identified in reviewed draft laws (77 draft laws) | 12 |
| Number of discriminatory provisions identified in adopted/retired laws (23 laws) | 12 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 5 |
| % of effectiveness | 41,67% |
| Area V. | **Labour legislation, social insurance and healthcare** | Number of discriminatory provisions identified in reviewed draft laws (77 draft laws) | 14 |
| Number of discriminatory provisions identified in adopted/retired laws (23 laws) | 4 |
| Number of accepted objections in adopted/retired laws (effectiveness of expertise) | 1 |
| % of effectiveness | 25% |

### *Example*: Draft law on the organization and functioning of the National Unique Service for emergency call 112

|  |
| --- |
| ***Text of draft law:***  Article 3. The fundamental principles of organization and functioning of Service 112  (7) Service 112 will be organized so as allowing to all persons located on Moldovan territory, including persons with disabilities and speakers of other languages, the access to Service 112 (according to the norms approved by the Government, at the proposal of the Interdepartamental Coordinating Committee to ensure the interaction between Service 112 and specialized emergency services, and within the capacity of Service 112, but no less than those established by law).  Article 6. Competencies of Service 112  Service 112 has the following atributions:  d) receiving emergency calls in the languages spoken in the Republic of Moldova and at international level, according to the list approved by the Government, at the Interdepartmental Coordinating Committee in order to ensure interaction between Service 112 and specialized emergency services, and within the capacity of the Service 112, but no less than those established by law). |
| ***Vulnerability element identified and expert recommendation:*** discriminatory provisions; provisions that do not correspond to correlative legislative norms.  ***Expert objection:*** According to art. 7 of the Law on Languages Spoken in the MSSR territory no. 3465 of 09/01/89, leading workers, public institutions workers, public organizations wprkers and workers at enterprises, institutions and organizations, which in their job duties come into contact with the citizens, national legal framework establishes a requirement on knowledge of Moldovan, Russian, and in localities with Gagauz population - and Gagauz language at communication level required to meet professional duties. Access of "speakers of other languages" at phone number 112 in version formulated in the draft law, will also require that operators of Service 112 to respond in other languages too (eg. Chinese, Arabic, etc.) as those stipulated by Law no. 3465 of 09/01/89. In this regard, in our view, the amendment is worded ambiguously that at the application could allow abusive interpretation having an unclear/ambiguous sense. It could become vulnerable if they provide opportunities for the application of the rule in the preferred interpretation, depending on the interests of those responsible for implementation and enforcement of the law. However, it is not clear the emphasizing of "people with disabilities", which are anyway protected by the Law on equality ensuring no. 121 of 25.05.2012 which aim is to prevent and combat discrimination and to ensure equality of all persons in the Republic of Moldova in the areas of political, economic, social, cultural and other spheres of life, irrespective of race, color, nationality, ethnic origin , language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria. At the same time, the author uses different terms by using synonyms to define the same phenomenon "under regulations approved by the Government" and "according to the list approved by the Government". The danger of this element is that at the application inconsistently used terminology can cause vicious practice of interpretation of the meaning norm, ie, treating the various phenomenons as the same phenomenon, because of different appointment or treating the same phenomenon as distinct phenomenon due confusing two different terms in the text of the regulation. As a result, it could appear abuses from the part of representatives of public and private sectors. Simultaneously, the use of the term "witih capacity limit of Service 112" is not in line with the "languages spoken in the Republic of Moldova and at international level", being an impediment to the proper application of legal provisions that will create prerequisites for the application of "convenient" norm in a particular case, for subjective and abusive choice of applied rule.  ***Recommendation:*** Reviewing legislative proposals in terms of formulated objections |
| ***Text of approved law:*** The draft law was withdrawn at 09.10.2014. |

# CONCLUSIONS

The findings and recommendations listed below are based on the results of 77 reviewed draft laws from the perspective of human rights, performed by CAPC during June 2013 - December 2014 within the project *"Harmonization of legislation with international human rights law"* supported by Civil Rights Defenders from Sweden.

* The lawmaking process and Parliament’ legislative priorities are influenced by the existence of policy documents/strategies in a particular field. This trend is positive, since on the one hand contributes to the implementation of policies/strategies previously adopted and on the other hand contributes to the predictability principle of legislation.
* The number of legislative initiatives of MPs and of a group of MPs increased. Despite these initiatives, usually do not meet the requirements of the Law on legislative acts and initiatives from a group of MPs rather reflect a party or interest solidarity, than solidarity of vision on the areas of public interest, however this trend is positive.
* Although the majority of reviewed draft laws contained a sufficient explanation of promotion the bill, however, none of explanatory notes has accompanied by a list of documents that must be developed or revised in connection with the adoption of the legislation. However, none of rationale has contained the statement of compatibility with the Community law.
* Most of draft laws provides no mechanism (or are unsatisfactory) to the principles of participation and accountability. Or, the existence of effective mechanisms for compliance with these principles in the implementation process of laws provides direct citizens’ participation in decision making process and streamlines it, it increases the degree of responsibility of public authorities towards citizens, it stimulates active participation of citizens in decision making process.
* The vast majority of reviewed draft laws have covered rights from category of "Social and economic rights and freedoms" and in terms of gender impact were appreciated as "neutral", meaning that these drafts law does not influence the gender differentiation and does not contribute to gender inequality and so generates the same impact on women and men as well.
* Legislation expertise in terms of human rights performing during a year and a half has demonstrated an efficiency of 41.31% of objections formulated by CAPC and accepted by Parliament.

In order to eliminate the phenomena of "fluctuating legislation" and of "law inflation" it is necessary that all entities having the right of legislative initiative to meet the requirements of the Law no.780 of 27.12.2001 on legislative acts, a special attention being given to draft laws promotion and justification.

Although the legislation expertise in terms of human rights is implemented during a relatively short time, it has demonstrated its viability and the multitude of found problems, shows the need to institutionalize a mechanism for filtering the draft laws in terms human rights.

1. Guide to perform vulnerability expertise of drafts normative acts in terms of human rights and gender equality, [www.capc.md](http://www.capc.md) [↑](#footnote-ref-1)
2. Idem [↑](#footnote-ref-2)
3. Idem [↑](#footnote-ref-3)
4. Idem [↑](#footnote-ref-4)
5. Idem [↑](#footnote-ref-5)
6. Idem [↑](#footnote-ref-6)