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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**LAW**

**ON**

**GOVERNMENT AGENT**

**No. 151 of 2015**

**PARLIAMENT OF THE  
REPUBLIC OF MOLDOVA**

**(UNOFFICIAL TRANSLATION)**

Parliament adopts this organic law.

## **Chapter I. GENERAL PROVISIONS**

### ***Article 1. Purpose and scope of the Law***

(1) This Law has the purpose to secure the compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – *the Convention*) in the Republic of Moldova, and it regulates the representation of the Republic of Moldova before the European Court of Human Rights (hereinafter – *the European Court*) and the execution of the judgments and decisions of the European Court.

(2) This Law shall define the status of the Government Agent, his duties as representative of the Republic of Moldova before the European Court, duties pertaining to the process of execution of European Court judgments and decisions, duties concerning the implementation of the Convention on national level, as well as other duties.

## **Chapter II. STATUS OF THE GOVERNMENT AGENT**

### ***Article 2. Appointment of the Government Agent***

(1) Candidates for the Government Agent office shall meet the following requirements:

- a) holds the citizenship of the Republic of Moldova;
- b) has full legal capacity;
- c) holds a bachelor's degree in law or equivalent thereof;
- d) has no criminal record;
- e) possesses the official language of the state;
- f) possesses at least one of the official languages of the Council of Europe;
- g) meets the necessary medical requirements to hold the office;
- h) has at least 7-year experience appropriate to perform his duties;
- i) is not deprived of the right to occupy certain positions or to practice certain activities as main or complementary punishment established by a final judgment.

(2) The Government Agent shall be appointed by the Government, following the proposal of the Minister of Justice, for a single mandate of seven years. The European Court and the Secretariat of the Committee of Ministers of the Council of Europe are informed about the appointment of the Government Agent by the Ministry of Foreign Affairs and European Integration.

### ***Article 3. Status of the Government Agent***

(1) The position of Government Agent is a public office and shall be incompatible with any other civil service, political activity or any other paid activity, except for didactic, scientific and creative activities.

(2) The work of the Government Agent is regulated by the Constitution of the Republic of Moldova, the Convention, the European Court Rules, this Law, other normative acts in force and by international treaties to which the Republic of Moldova is party.

(3) The Governmental Agent shall be subordinated directly to the Prime Minister and the Minister of Justice.

### ***Article 4. Discontinuation of Government Agent's incumbency***

(1) The Government Agent shall end his activity in the following cases:

- a) resignation;
- b) loss of Moldovan citizenship;
- c) labour incapacity, which is proven by a medical certificate;
- d) partial or total legal incapacity as found by final judgment;
- e) criminal conviction found by final judgment;
- f) deprivation of the right to occupy certain positions or to practice certain activities as principal or complementary punishment established by final judgment;
- g) reaching the retirement age;
- h) termination of the mandate;

- i) death;
  - j) in other cases provided by law.
- (2) Dismissal of the Government Agent is decided by the Government following the proposal of Minister of Justice.
- (3) The Government shall appoint a new Government Agent at least within 3 months following the discontinuation of the former Agent's incumbency.

**Article 5. Duties of the Government Agent**

- (1) The Government Agent shall represent the Government before the European Court and shall contribute, under the law, to ensuring the execution of European Court judgments and decisions against the Republic of Moldova.
- (2) The Government Agent has the following powers in the field of representation of the Republic of Moldova before the European Court:
- a) represents the Republic of Moldova before the European Court;
  - b) pursues measures aimed at preventing findings of violations of the Convention by the European Court in cases against the Republic of Moldova;
  - c) pursues measures to remedy the alleged violations of the Convention and for compensation of damages;
  - d) recommends measures to the authorities for an appropriate implementation of the Convention and enforcement of human rights standards imposed by the European Court's case-law;
  - e) provides the translation in the official language of the state of judgments and decisions of the European Court in cases against the Republic of Moldova and their inscription into the State Register of Judgments and Decisions of the European Court in cases against the Republic of Moldova;
  - f) asks for an interpretation, revision or rectification of judgments and decisions of the European Court in cases against the Republic of Moldova.
- (3) In the field of execution of judgments and decisions of the European Court, the Government Agent has the following powers:
- a) develops and proposes measures to be taken for execution of the European Court judgments and decisions and coordinates the implementation thereof;
  - b) monitors the execution of judgments and decisions of the European Court in cases against the Republic of Moldova;
  - c) represents the interests of the Republic of Moldova in relation with the Secretariat of Council of Europe for what concerns the execution of European Court judgments and decisions in cases against the Republic of Moldova;
  - d) informs the Prime-minister, Minister of Justice, Minister of Foreign Affairs and European Integration and other relevant authorities on the leading cases against the Republic of Moldova and serious issues emerging during the execution of European Court judgments and decisions.
- (4) In the field of national implementation of the Convention, the Government Agent:
- a) represents the Republic of Moldova as an expert at plenary sessions of the intergovernmental committees of the Committee of Ministers of the Council of Europe in the field of human rights, in coordination with the Ministry of Foreign Affairs and European Integration;
  - b) in cases provided by law, intervenes or attends the national proceedings or requests their reopening;
  - c) informs the competent authorities about the need to amend national legislation as a result of the developments of the European Court case-law;
  - d) submits, if necessary or at the request of authorities, his opinions regarding the compliance of national legislation and draft legislation with the Convention and the European Court's case-law;
  - e) informs the Government and Parliament about the overall situation on the representation of the Republic of Moldova before the European Court, as well as on the execution of judgments and decisions of the European Court;
  - f) informs the judges, prosecutors, public servants and relevant authorities about the activity of the European Court and about the decisions of the Committee of Ministers of the Council of Europe and disseminates such information.

(5) In case of vacancy of Government Agent's office, temporal inability to exercise his powers or in a situation of conflict of interests in an individual case, the Minister of Justice shall appoint a chief of the specialized division that assists the Government Agent in his activity as a person who will exercise temporarily the Government Agent's powers.

#### **Article 6. Responsibilities of the Government Agent**

(1) The main responsibilities of the Government Agent are as follows:

- a. to act with due diligence in representing the interests of the Republic of Moldova;
- b. to observe the confidentiality of proceedings and information regarding friendly settlements, and in other cases stipulated by the Rules of the European Court;
- c. to ensure the non-disclosure of applicant's identity in cases before the European Court;
- d. to ensure the protection of personal data from case files that are at his disposal;
- e. to refrain from public statements that could prejudice the image and interests of the Republic of Moldova in proceedings before the European Court or the Committee of Ministers of the Council of Europe;
- f. to refrain from consultancy or any other legal assistance incompatible with his mandate.

(2) Responsibilities of the Government Agent set in paragraph 1.c and paragraph 1.d shall be maintained even following discontinuation of his incumbency.

(3) A person who has served as Government Agent may not represent or advise an applicant before the European Court or in any other proceedings in cases communicated within the period when he was in office as Government Agent.

#### **Article 7. Assistance of the Government Agent**

(1) The Government Agent shall be assisted by a specialized subdivision of the central body of the Ministry of Justice consisting of public servants and secondments from other authorities.

(2) The structure and the number of personnel of the specialized subdivision for assistance of the Government Agent, within the limits of the Ministry's provided employees, its relations with other subdivisions of the Ministry of Justice shall be established by an Order of the Minister of Justice, following a proposal of the Government Agent.

(3) Prosecutors and other public servants may be seconded to the specialized subdivision assisting the Government Agent, following his proposal and by agreement of the Minister of Justice, under the conditions established by law.

(4) The Government Agent may request the assistance of experts or specialists while handling complex cases or when special knowledge is required.

(5) The Minister of Justice, at the proposal of the Government Agent and if appropriate, may employ translators, interpreters, experts and specialists on contract basis.

(6) Responsibilities of Government Agent as provided by Article 6, in what concerns confidentiality, due diligence and refrainment from public statements, shall be extended correspondingly to the persons who fall within the provisions of the present Article.

#### **Article 8. Expenses of the Government Agent**

(1) All expenses of the Government Agent and any other costs related to his and/or the assisting persons' attendance to the proceedings before the European Court and before the Committee of Ministers of the Council of Europe, as well as expenditures related to Government Agent's missions shall be covered from the budget of the Ministry of Justice.

(2) Where the representation in a case before the European Court requires special knowledge, the Government Agent may request conclusions from an expert or specialist.

(3) Expert conclusions submitted by public authorities or affiliated institutions shall be free of charge. The expert conclusions provided by third persons shall be sought with a prior consent of the Minister of Justice and the costs thereof should be borne by the budget of the Ministry of Justice.

#### **Article 9. Advisory Council of the Government Agent**

(1) In order to guarantee a good representation of the Republic of Moldova before the European Court and the execution of its judgments and decisions, the Government Agent benefits from an Advisory Council consisting of representatives of public authorities, academia and civil society.

(2) Composition and working methods of the Advisory Council shall be established by a Statute approved by the Government upon the proposal of the Minister of Justice. Secretariat of the Advisory Council is secured by the specialized subdivision assisting the Government Agent.

### **Chapter III. REPRESENTATION OF THE GOVERNMENT BEFORE THE EUROPEAN COURT**

#### ***Article 10. Contentious proceedings before the European Court***

(1) Having received a formal communication from the European Court regarding the submission of an individual application, the Government Agent shall request from the authorities relevant materials and comments concerning the circumstances as to the facts and law, explaining to them the risks and the perspective of the case. The authorities, irrespective of their status, are bound to submit the requested information and acts on procedures before them, irrespective of the stage they reached, under the terms and conditions set by Government Agent.

(2) In the event the requested materials and comments fall under protection of State secret, limited access data or personal data protection, they shall be submitted to the Government Agent according to the applicable legislation.

(3) The authorities' comments submitted to the Government Agent may be used exclusively in the proceedings before the European Court.

(4) The Law on Access to Information No. 982-XIV of 11 May 2000 shall not apply to the correspondence of Government Agent with the European Court and other authorities, neither to the case files of the proceedings before Government Agent.

#### ***Article 11. Friendly settlement proceedings of the cases pending before the European Court***

(1) A friendly settlement shall be initiated solely following a formal communication of the case by the European Court and may be carried out simultaneously with the proceeding under Article 10, the provisions of which shall be applied accordingly.

(2) The Government Agent, *ex-officio* or upon the request of the applicant or his representative, shall be entitled to negotiate a friendly settlement of any case pending before the European Court.

(3) Under the provisions of para. 1, the friendly settlement proceeding shall be confidential and it shall be concluded by signing a mutual declaration proposed with the assistance of the European Court or by a written agreement between the Government Agent and the applicant or his representative. The terms of the agreement shall be established for each case separately and, if necessary, they shall be coordinated preliminary with the Government and/or other authorities that are attributed the alleged violation of applicant's rights.

(4) The Government Agent and the applicant may reword the clauses of the agreement prior to its admission by the European Court, following a preliminary coordination, too.

#### ***Article 12. Unilateral declarations***

(1) In the event the applicant rejected a friendly settlement of a case pending before the European Court or in the event such a procedure may not be initiated or is not possible, the Government Agent may formulate an unilateral declaration recognizing thereby a violation of the Convention and committing himself to take all the needed measures for remediation.

(2) The unilateral declaration shall undergo a preliminary consultation with the Government and/or other authorities which are attributed the alleged violation of applicant's rights.

(3) The Government Agent may withdraw or reword the unilateral declaration prior to its admission by the European Court.

#### ***Article 13. Interim measures***

(1) Interim measures ordered by the European Court to the authorities of the Republic of Moldova are binding and enforceable.

(2) The Government Agent, by his motion, requires the competent authorities for an immediate execution of any interim measure ordered by the European Court, and explains the way of its execution. The motions of the Government Agent made under the provisions of the present article are mandatory for examination and adoption of measures under the law.

**Article 14. Interstate cases**

(1) The Government Agent may initiate an interstate case on behalf of the Republic of Moldova solely by virtue of a Government Decision.

(2) In an interstate case, including in case the Republic of Moldova is a defendant, the Government Agent shall coordinate his position with the Government, as well as with other relevant authorities.

**Article 15. Third party intervention in the proceedings before the European Court**

(1) Following the reception of communication from the European Court, the Government Agent may intervene in the European Court proceedings in favour of the applicant, who is a citizen of the Republic of Moldova that submitted the claim against another State.

(2) The Government Agent may intervene in the European Court proceedings upon the invitation of another country that is a party to the Convention.

(3) The Government Agent may request the intervention of another State, which is a party to the Convention, in a case against the Republic of Moldova or in an interstate case.

(4) In situations provided by paragraphs (1)-(3) the Government Agent shall coordinate his position with the Ministry of Foreign Affairs and European Integration and with the Minister of Justice.

**Article 16. Referral of a judgment before the Grand Chamber of the European Court**

The Government Agent, in cases provided for by the Convention, within a 3 months period, may require the referral of certain judgments before the Grand Chamber of the European Court, following consultations with the Government, Minister of Justice and other relevant authorities.

**Chapter IV. EXECUTION OF JUDGMENTS AND DECISIONS OF THE EUROPEAN COURT****Article 17. Execution of judgments and decisions of the European Court**

(1) Final judgments of the European Court concerning remedial measures and financial compensations are enforceable documents.

(2) A friendly settlement agreement or a unilateral declaration becomes an enforceable document following the notification of the European Court's decision of striking the case out of the lists, and the clauses and remedial measures included therein are binding for all authorities.

(3) The procedure for the execution of European Court judgments and decisions is governed by a Statute approved by the Government.

**Article 18. Execution of individual measures**

(1) The execution of individual measures includes remedial actions and/or payments of financial compensations, which result from the European Court's judgment or as provided by a friendly settlement agreement or unilateral declaration accepted by the European Court's decision.

(2) The Government Agent, within one month from the day the judgment or decision of the European Court becomes final, shall inform the relevant authorities about the requirement of implementation and the way of execution of individual measures. The informed authorities are responsible for execution of the judgment or decision of the European Court.

(3) The amounts awarded by the European Court's judgments and decisions shall be paid unconditionally by the Ministry of Finance, irrespective of whether or not there were envisaged financial means for this purpose in the State budget law for the current year.

(4) The payment shall be made within the time limit prescribed by the European Court's judgment or decision or friendly settlement agreement or unilateral declaration. If such a period has been not set, the payment shall be made within 3 months from the day when the judgment or decision of the European Court becomes final.

**Article 19. Execution of general measures**

(1) Execution of general measures aims at preventing future violations of the Convention, removal of systemic problems identified by the European Court, which require adoption or amendment of legislation, policy documents, establishing or changing practices and other relevant measures.

(2) The Government Agent, within 3 months after the European Court's judgment becomes final, proposes general measures to the authorities, coordinates and monitors their implementation.

(3) Execution of the general measures is the task of the authorities which have an active role in their implementation.

**Article 20. State Register of European Court judgments and decisions, translation and publication**

(1) The Government Agent keeps the State Register of judgments and decisions of the European Court on cases against Moldova. The rules of such a Register shall be set by an order of the Minister of Justice.

(2) The Government Agent provides a translation in the official language of the state of the judgments and decisions of the European Court in cases against the Republic of Moldova and may ensure translation of judgments or decisions of the European Court on cases against another State, or a summary thereof, upon a necessity.

(3) The translated judgments and decisions of the European Court on cases against the Republic of Moldova should be included in the State Register, which is public, and are notified to the relevant authorities. An applicant can obtain the translation of a judgment or a decision of the European Court on a case against the Republic of Moldova to which he or she was party.

**Article 21. Governmental supervision**

(1) Before the 31<sup>st</sup> of January each year, the authorities involved in the execution of the European Court judgments and decisions must submit to the Government Agent their reports on execution of general and individual measures for the previous year.

(2) The Government Agent may request the authorities involved in the execution of the European Court judgments and decisions any information on the execution of general and individual measures, and they are required to submit such information.

(3) Before the 15<sup>th</sup> of March each year, the Government Agent prepares and submits for the Government's approval the draft annual report for the previous year on the measures taken for the execution of judgments and decisions of the European Court, as well as on other important issues relevant to the execution or plans for execution. The report is to be submitted to the Parliament for information until the 15<sup>th</sup> of April each year.

**Article 22. Parliamentary control**

(1) The execution of general and individual measures shall be subject to parliamentary control in the manner prescribed by the present law and the Regulation of the Parliament.

(2) The Parliament shall be informed periodically or upon its request by the Government Agent about the judgments and decisions of the European Court, the measures to be taken or that have been already taken for the execution thereof, as well as about any relevant correspondence with the Committee of Ministers of the Council of Europe on execution of judgments and decisions of the European Court that concern the Republic of Moldova.

**Article 23. Submissions to the Committee of Ministers of the Council of Europe**

(1) The Government Agent shall be in charge of preparing submissions before the Committee of Ministers of the Council of Europe, through the Ministry of Foreign Affairs and European Integration, on the execution of European Court judgments and decisions in cases against the Republic of Moldova.

(2) Following an invitation of the Ministry of Foreign Affairs and European Integration, the Government Agent may attend the examination by the Committee of Ministers of the Council of Europe of judgments and decisions concerning the Republic of Moldova.

**Article 24. Resolutions and Decisions of the Committee of Ministers of the Council of Europe**

Resolutions and Decisions of the Committee of Ministers of Council of Europe adopted in cases against the Republic of Moldova shall be published, translated, disseminated through the media and notified to the authorities similarly as provided by Article 20.

**Chapter V. Liability for the violations of the Convention****Article 25. Individual liability**

(1) A person whose actions or omissions have led or significantly contributed to a violation of the Convention, which was found by the European Court in its judgment or that imposed a friendly settlement of the case before the European Court or a unilateral declaration, shall be held liable under criminal, administrative, disciplinary or civil law.

(2) The guilt and liability of individuals shall be established in each individual case by the authorities that are competent under the law to initiate proceedings or to adopt decisions on criminal, administrative, disciplinary and civil liability; such a guilt or liability does not directly depend on the amount of financial compensation paid under the judgment or decision of the European Court.

(3) The Government Agent notifies the authorities that are competent to initiate proceedings or to adopt decisions on criminal, administrative, disciplinary, and civil liability under the law and explains how the action or omission of the person concerned led to the finding of a violation of the Convention in a judgment of the European Court or imposed a friendly settlement agreement of the case before the European Court or a unilateral declaration.

**Article 26. Institutional liability**

(1) Institutional liability occurs when the actions or inaction of an authority, taken individually or as a whole, have led or contributed significantly to a violation of the Convention, which was found by the European Court in its judgment or imposed a friendly settlement of the case before the European Court or a unilateral declaration.

(2) Institutional liability consists of, where appropriate, official apologies presented on behalf of the authority to the applicant and/or decommissioning of the authority's budgetary resources.

(3) The official apologies to the applicant shall be presented by the authority at the request of the Government Agent on basis of a judgment or decision of the European Court.

(4) The Government Agent informs the Ministry of Finance whether the institutional liability for the purposes of the present Article could be applied by decommissioning of the authority's budgetary resources. The Ministry of Finance may, while drawing up annual budget, apply decommissioning of financial resources according to the law.

**Article 27. Right of recourse**

(1) The State enjoys the right of recourse against persons whose actions or omissions have led or significantly contributed to a violation of the Convention which was established by a judgment or imposed a friendly settlement of the case before the European Court or a unilateral declaration.

(2) The amounts awarded by a judgment or decision of the European Court, by friendly settlement agreement of the case before the European Court or by unilateral declaration shall be returned on the basis of a judgment, proportionally to the degree of liability.

(3) The Ministry of Justice shall pursue legal recourse, if the provisions established by law are met, within 3 years from the day of payments of amounts awarded by the European Court's judgment or decision or by friendly settlement agreement.

**Chapter VI. IMPLEMENTATION OF THE CONVENTION****Article 28. General notifications**

(1) The Government Agent *ex-officio* notifies the authorities whose practices, actions or inactions reveal a systemic problem, which can lead to massive violations of the Convention's rights and generate a higher number of applications before the European Court. The general notifications of the Government Agent are mandatory for examination by the authorities.

(2) The Government Agent, upon the express request of an authority, presents an assessment of an individual case in the light of applicability of the Convention and the European Court case-law. This assessment shall have an advisory nature and may be requested and submitted on confidential basis.

**Article 29. Notification on developments of the European Court case-law and compatibility of national legislation with the Convention**

(1) The Government Agent, *ex-officio* or upon the request of an authority, submits information about the relevant developments of the European Court case-law.

(2) The Government Agent, *ex-officio* or upon request, submits his opinions on the compatibility of national legislation with the Convention, insofar as it does not run counter to his mandate.

**Chapter VII. FINAL AND TRANSITORY DISPOSITIONS**

**Article 30.**

(1) Upon the date of entrance into force of this Law, there is abrogated the Law no. 353-XV of 28 October 2004 on Government Agent (Official Journal of the Republic of Moldova of 2004 No. 208-211, Art.932), with subsequent amendments and supplementations.

(2) The Government, in a 3 months period from the date of entering into force of this Law, upon the proposal of the Minister of Justice, shall appoint the Government Agent in line with the provisions of this Law.

(3) The Government, within 6 months from the date this Law comes into force:

a) shall submit to the Parliament proposals in order to adjust the legislation in force to this Law;

b) shall adjust, where appropriate, its normative acts to this Law.

Signature  
DEPUTY SPEAKER OF PARLIAMENT

Liliana PALIHOVICI

No. 151. Chişinău, 30 July 2015