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**VARIA** 17 (E)

**LAW OF THE REPUBLIC OF MOLDOVA  
ON PARLIAMENTARY ADVOCATES**  
(DRAFT 1997)

**EOI**

## The Law of the Republic of Moldova on Parliamentary Advocates

WHEREAS the Republic of Moldova has confirmed its adherence to the Universal Declaration on Human Rights and other international legal documents on human rights;  
WHEREAS in conformity with the UNO Charter the state has the responsibility to promote the respect for and compliance with the human rights and freedoms;  
WHEREAS there exists the need for the guarantee of the right of the residents of the Republic of Moldova to the protection of their constitutional rights and freedoms,  
the Parliament is adopting this Law.

### Chapter I

#### THE STATUTE OF THE PARLIAMENTARY ADVOCATES. THE PROCEDURE OF THEIR NOMINATION AND EXCUSE FROM POSITION

**Article 1.** The activity of the parliamentary advocates is oriented towards guaranteeing the observance of the citizens' constitutional rights and freedoms by the central and local public administration bodies of the Republic of Moldova, institutions, organizations and enterprises irrespective of their ownership, public associations, as well as officials of all levels.

**Article 2.** The Parliamentary Advocates should promote the rehabilitation of the citizens' infringed rights and work for the improvement of the legislation of the Republic of Moldova in the area of human rights protection and legal enlightening of the population, applying the means stipulated in this Law.

**Article 3.** Citizens of the Republic of Moldova over 35 years of age with higher legal education and knowledge in the area of human rights and freedoms protection who enjoy prestige may be appointed as Parliamentary Advocates.

**Article 4.** The Parliamentary Advocates are appointed and excused from position by the Parliament of the Republic of Moldova with majority of votes of the elected parliamentarians.

The proposals regarding candidates for Parliamentary Advocates positions are moved in the Parliament within one month of the date when the authority of the previous Parliamentary Advocates ends by the President of the Republic of Moldova, a group of no less than 20 parliamentarians and by the Government.

For each of the candidates the Parliamentary Committee on Human Rights and National Minorities offers a grounded reference to the Parliament.

**Article 5.** The Parliamentary Advocates are appointed for a five year term.

A person cannot serve more than two terms of service as Parliamentary Advocate.

In case of Parliamentary Advocate's death or excuse from position according to Article 9 of this Law, a new Parliamentary Advocate is appointed.

**Article 6.** The Parliament appoints four Parliamentary Advocates specialized in protection of constitutional human rights and freedoms, as well as the protection of the most vulnerable layers of

the population (the elderly, the disabled, women and children), protection of national minorities rights.

When introducing each of the candidates, the Parliamentary Committee on Human Rights and National Minorities indicates the area of specialization for each of them.

All the Parliamentary Advocates have equal rights and responsibilities, each of them acting independently.

**Article 7.** Upon the appointment, the Parliamentary Advocates are sworn in to the Parliament, taking the following oath: "I take over the responsibility to honestly and fairly carry out the duties of Parliamentary Advocate, to protect human and citizens' rights and freedoms having as guidance the Constitution, the Laws of the Republic of Moldova and the international legal documents on human rights to which the Republic of Moldova has adhered".

The Parliamentary Advocate comes into authority from the moment of taking the oath.

**Article 8.** The Parliamentary Advocates have no right to hold any elected position or any position in public administration bodies or to perform any paid job, except for the teaching positions and scientific work.

The Parliamentary Advocates have no right to perform political activity or to be members of any party or any other political organization.

Within ten days of taking the oath the Parliamentary Advocate will cease any activity contradicting his/her statute as well as suspend any membership in a party or other political organization.

**Article 9.** The Parliamentary Advocate may be excused from position prior to end of service term in case of mistrust voted by two thirds of the elected parliamentarians.

The proposals regarding voting mistrust to the Parliamentary Advocates are moved by the President of the Republic of Moldova and a group of no less than 20 parliamentarians. The Parliamentary Committee on Human Rights and National Minorities offers a grounded report to the Parliament regarding the proposal.

The Parliamentary Advocate will also be excused from position in the following cases:

- a) on his/her own free will;
- b) on reaching the retirement age;
- c) at the end of a first authority term if not elected for a second one;
- d) in case of a long-term sickness (longer than four consecutive months) interfering with his/her performing the functions;
- e) a court accusation regarding him/her becoming ineffective.

The Parliamentary Advocate is discharged from service prior to service end in cases provided in items a) through e) of this Article by approval through the majority of votes of the parliamentarians present at the session.

**Article 10.** In fulfilling their duties, the Parliamentary Advocates are guided by the Constitution, this Law, other Laws of the Republic of Moldova as well as the Universal Declaration on Human Rights, international treaties and other agreements, in which the Republic of Moldova is a party.

If a contradiction exists between the treaties, agreements on the main human rights, to which the Republic of Moldova is a party, and its internal legislation, the international norms will be prior.

**Article 11.** When performing their duties the Parliamentary Advocates are independent of the parliamentarians, President, central and local public administration bodies and officials of any level. The activity of the Parliamentary Advocates is based on principles of legitimacy and transparency according to their conscience.

**Article 12.** The Parliamentary Advocates are granted immunity for the whole period of their

authority.

The immunity of the Parliamentary Advocates also extends to their residence, offices, transportation and communication means, correspondence, documents and personal property.

The Parliamentary Advocates cannot be convicted by criminal or administrative court, confined, arrested, searched, their property cannot be searched without prior consent of the Parliament, except in case of arrest on the scene of crime.

## Chapter II PARLIAMENTARY ADVOCATES' AUTHORITIES

**Article 13.** The Parliamentary Advocates consider the complaints of the citizens of the Republic of Moldova and its permanent or temporary residents and non-citizens having residence permits (hereinafter referred to as Announcers), whose rights and lawful interests have been infringed in the Republic of Moldova.

**Article 14.** The complaint should be submitted to the Parliamentary Advocate in writing in the Moldovan language or other language in conformity with the Law on Languages Functioning on the Territory of the Republic of Moldova.

The complaint sent to an Parliamentary Advocate is not subject to any state fee.

The Parliamentary Advocates also consider complaints passed to them by the parliamentarians, if they are within their authority.

**Article 15.** The Parliamentary Advocates consider the complaints regarding decisions or actions (lack thereof) taken by the local and central public administration bodies, institutions, organizations and enterprises irrespective of their ownership, public organizations and officials of all levels, infringing, in the Announcer's opinion, his/her constitutional rights and freedoms.

**Article 16.** The Parliamentary Advocates should neither consider complaints regarding Laws and resolutions approved by the Parliament, President's Decrees, policies and orders of the Government of the Republic of Moldova, nor complaints to be considered by criminal or civil courts, administrative and labor courts.

**Article 17.** The complaint may be submitted to a Parliamentary Advocate no later than within one year of the assumed constitutional right or freedom infringement or of the date when the infringement became known to the Announcer.

**Article 18.** The complaint should be signed by its author. It should comprise his/her name (father's name), family name and place of residence.

The complaint not indicating such data will be regarded as being anonymous and will not be subject to consideration.

**Article 19.** The complaint addressed to the Parliamentary Advocate by a person serving a term in a penitentiary institution should not be reviewed by the administration of the penitentiary and should be sent to the addressee within 24 hours of its receipt.

**Article 20.** Upon receipt of the complaint the Parliamentary Advocate has the right to:

- a) accept the complaint for consideration;
- b) return the complaint to the Announcer with due explanation of the ways and means for his/her rights and freedoms protection;
- c) pass the complaint to the respective institutions for examination, according to the Law of the Republic of Moldova "On Submission of Petitions";
- d) reject the complaint.

The Parliamentary Advocate should notify the Announcer about his/her decision within ten days . The rejection of the complaint should be grounded. The decision on rejection has no right to appeal. The complaint sent repeatedly for consideration will be accepted only if new circumstances have occurred.

**Article 21.** In case of trustworthy information regarding mass or rough infringement of citizens' human rights or freedoms, or when the said infringement is of high social significance, or when needful to protect the rights of people unable to protect themselves individually, the Parliamentary Advocate has the authority to act on his/her own initiative and undertake measures within his/her authority.

The Parliamentary Advocate may start consideration at his/her own initiative based on facts regarding infringement of human rights and freedoms.

**Article 22.** Accepting a complaint for consideration, the Parliamentary Advocate has the right to apply to the respective bodies or officials for assistance in organizing the verification of the circumstances needing elucidation.

The verification will not be delegated to the body or official, whose action (or lack thereof) makes the subject of complaint.

**Article 23.** The Parliamentary Advocate, acting as an intermediary, should undertake all actions to resolve the complaint by reconciliation of parties and search for a mutually acceptable decision.

The reconciliation may take place at any time during the consideration of the complaint and by mutual consent of parties may result in the signing of an agreement.

The reconciliation serves as a ground for the cessation of considering the complaint.

**Article 24.** When examining a complaint the Parliamentary Advocate has the right to :

- a) freely visit all the central and local public administration bodies, attend sessions of their boards;
- b) freely visit enterprises, institutions and organizations, irrespective of their ownership, military units, penitentiaries;
- c) require and obtain from central and local public administration bodies and officials data, documents and materials necessary for the examination of the complaint;
- d) require explanations from officials regarding issues to be elucidated in the course of the complaint examination;
- e) delegate to the respective state agencies the performance of expert investigations and preparation of reports in issues needing elucidation in the course of complaint examination.

**Article 25.** The Parliamentary Advocate during his/her services has the priority right to be immediately received by managers and officers of central and local public administration bodies, legal institutions, enterprises, institutions and organizations, irrespective of their ownership, non-governmental organizations, military units and penitentiaries.

The officials have the responsibility to supply to the Parliamentary Advocate all the materials and documents required by him/her, as well as any other information necessary for exercising his/her authority.

The required materials and documents, other information should be sent to the Parliamentary Advocate within ten days of the date of the request receipt, if the request does not state otherwise.

**Article 26.** The Parliamentary Advocate has the responsibility:

- a) to be correct and responsive in his/her relationships with the Announcers;
- b) not to disclose the state classified information and other data protected by law;

- c) not to disclose confidential information, as well as personal data of the Announcer, which became known to him/her in the course of examining the complaint;
- d) refrain from any action incompatible with the position of Parliamentary Advocate.

The violation of the above responsibilities may serve as ground for voting mistrust to the Parliamentary Advocate.

**Article 27.** Upon stating the Announcer's rights infringement, the Parliamentary Advocate should send to the respective body or person, the actions (or lack thereof) of whom has led to the infringement of the constitutional rights and freedoms, his/her report, comprising recommendations regarding immediate actions to be undertaken for the rehabilitation of the infringed rights and freedoms.

The respective body or person in charge, receiving the report, has the responsibility to examine it and notify the Parliamentary Advocate in writing about the actions undertaken within one month.

**Article 28.** Based on the results of complaint examination the Parliamentary Advocate has also the right to:

- a) apply to court with a statement defending the interests of the Announcer, whose constitutional rights and freedoms have been infringed;
- b) apply to the respective bodies with the requirement for initiating a disciplinary or administrative action or an action in criminal court in respect to the official who has admitted the action conducting to significant infringement of human rights and freedoms;
- c) notify the respective officials or civil servants about the neglect of duties, unethical conduct in performing the duties, procrastination and bureaucracy;
- d) apply to the General Prosecutor's Office with the requirement to examine an effective court decision, if there is good reason to believe that the said court decision has been taken in violation of human rights and freedoms during the court or investigation procedures.

If stated that the facts described in the complaint are not true and no infringement of constitutional rights and freedoms has taken place, the Ombudsman shall take a grounded decision to reject the complaint.

The decision regarding complaint rejection has no right to appeal.

**Article 29.** Based on the results of investigating the data on citizens constitutional rights and freedoms infringement and based on the general conclusions attained through the examination of the complaints, the Parliamentary Advocate has the right to:

- a) apply to the Parliament with the suggestions for improving the effective legislation of the Republic of Moldova in the area of human rights and freedoms;
- b) submit to public administration bodies the conclusions reached and general comments regarding the guarantee of constitutional rights and freedoms observance, improvement of the administrative staff activity.

**Article 30.** When facts have been stated regarding mass or rough infringement of human rights and freedoms, the Parliamentary Advocate has the right to make a report at a session of the Parliament of the Republic of Moldova and to suggest the setting up of a Parliamentary Commission for the investigation of facts of human rights and freedoms infringement.

The Parliamentary Advocates have the right to attend the sessions of the Parliament and Government.

**Article 31.** The Parliamentary Advocates have the right to apply to the Constitutional Court of the Republic of Moldova with requests for performing the control over the constitutionality of laws and resolutions of the Parliament, President's Decrees, decisions and orders of the Government, their

compliance with the generally accepted principles and international laws in the area of human rights observance and protection.

**Article 32.** The interference in the work of the Parliamentary Advocates with a view of influencing their decisions in respect to specific complaints, the intentional ignoring by officials and civil servants of the requirements and recommendations of the Parliamentary Advocates, as well as hindrances in their activity in any form will call for responsibility in conformity with the effective legislation.

**Article 33.** The Parliamentary Advocates should organize enlightening activity in the field of protection of the main constitutional human rights and freedoms.

To this end they prepare and disseminate among the population informational materials regarding human rights, cooperate with non-governmental associations and organizations dealing with human rights protection in the country and abroad and with the representatives of mass media.

**Article 34.** The Center for Human Rights should annually submit to the Parliament before the date of January 20, a report on the observance of human rights in the Republic of Moldova over the previous year.

At the same time, the Parliamentary Committee on Human Rights and National Minorities should present and put into discussion a report on the activity of the Center for Human Rights and proposals for the improvement of its work..

The annual reports of the Center for Human Rights to the Parliament are subject to obligatory publication in "Monitorul Oficial al Republicii Moldova" (Official Monitor of the Republic of Moldova).

### Chapter III

#### THE CENTER FOR HUMAN RIGHTS. PROCEDURE OF ITS ORGANIZATION AND ACTIVITY

**Article 35.** The Parliamentary Advocates, along with their staff, form an independent institution, the Center for Human Rights, which is a legal entity with its own seal, letterhead and forms with its name and the image of the State Emblem of the Republic of Moldova.

The staff of the Institution performs the organizational, informational, reference, scientific, analytical and other support of the activity of the Parliamentary Advocates.

The Resolution regulating the organizational chart, personnel and funding of the Center for Human Rights, is approved by the Parliament.

**Article 36.** The Director of the Center for Human Rights is appointed by the Parliament from within the Parliamentary Advocates at the proposal of the Chairman of the Parliament.

At the proposal of other Parliamentary Advocates he/she hires and dismisses Parliamentary Advocates assistants and other staff of the institution, supervises their work, organizes the preparation of the annual reports, represents the Institution in the country and abroad.

In case, when the Director of the Center for Human Rights is absent, he/she is replaced by the oldest of the Parliamentary Advocates.

**Article 37.** Regarding the issues of compensation, medical, social security and other types of benefits for the Parliamentary Advocates, the provisions are applied that are applicable for the Judges of the Supreme Court of Justice.

The Center for Human Rights has its own budget, which should be incorporated in the state budget.

The draft budget with a preliminary evaluation of the Ministry of Finance is approved by the Parliament along with the state budget.

**Article 38.** The Parliamentary Advocates receive visitors according to a procedure set up by them no less than three times per month.

The personal reception by the Parliamentary Advocates is performed in Chisinau and in other cities of the Republic of Moldova according to an established schedule.

**Article 39.** In order to render consulting assistance an Experts' Council may be created by the Center for Human Rights composed of specialists in the area of constitutional human rights and freedoms.

**Article 40.** The Center for Human Rights will have permanent office in Chisinau.

## Chapter IV

### FINAL AND TRANSITORY PROVISIONS

**Article 41.** Within three months of the approval of this law the Government should submit to the Parliament:

- proposals for bringing the effective legislation in compliance with this Law;
- a draft Resolution regarding the organizational chart, staff and funding of the Center for Human Rights.

**Article 42.** The Center for Human Rights should be created within three months of the date of this Law coming into effect.

**Article 43.** This Law becomes effective on the date of its publication.

### CHAIRMAN OF THE PARLIAMENT