

ACTIONS TAKEN BY THE OMBUDSMAN OF THE REPUBLIC OF MOLDOVA TO PROTECT HUMAN RIGHTS DURING THE COVID-19 PANDEMIC

Mihai DOLTU¹

¹PhD Student, University of European Studies of Moldova, Republic of Moldova
Corresponding author: Mihai Doltu; e-mail:mihai_doltu@yahoo.com

Abstract

The COVID-19 pandemic tested the resilience of democratic institutions worldwide, particularly in fragile governance settings like the Republic of Moldova. This study critically evaluates the role of the Moldovan Ombudsman (People's Advocate) in safeguarding human rights during the public health emergency. Drawing upon legal frameworks, thematic reports, and international human rights standards, the paper analyses how the Ombudsman monitored detention conditions, advocated for equitable healthcare, and challenged disproportionate emergency restrictions. Despite structural constraints—such as limited enforcement powers, political marginalization, and underfunding—the Ombudsman leveraged its mandate to issue impactful reports, engage with civil society, and maintain visibility in international human rights forums. The findings highlight both the strategic adaptability and institutional limitations of the Ombudsman, offering insight into the performance of national human rights institutions during crises.

Keywords: *Human Rights, Ombudsman, COVID-19 Pandemic, Moldova, Emergency governance.*

1. INTRODUCTION

The global COVID-19 pandemic created a complex human rights landscape, especially in fragile democracies such as the Republic of Moldova. Public health emergencies often necessitate exceptional legal and policy responses, yet these measures risk infringing on fundamental human rights if not appropriately justified, proportionate, and time-bound. In Moldova, the institution of the *People's Advocate* (Ombudsman) emerged as a key factor in safeguarding human rights amidst an evolving public health crisis and political instability.

Legally, the Republic of Moldova declared a state of emergency under *Law No. 212/2004 on the State of Emergency, Siege and War*, which allowed the government to adopt restrictive measures in

response to the pandemic. These included mandatory quarantine, travel bans, school closures, restrictions on public gatherings, and even limitations on the right to protest. While such measures were legally grounded in domestic legislation and aligned with international health guidelines, their application raised significant concerns regarding legality, necessity, and proportionality—principles enshrined in both Moldovan constitutional law and international human rights instruments (Legis, 1994).

The People's Advocate Institution, established under *Law No. 52/2014*, is an independent national human rights institution tasked with monitoring state compliance with human rights obligations, investigating complaints, and issuing recommendations. It also functions as Moldova's National Preventive Mechanism (NPM) under the *Optional Protocol to the Convention against Torture (OPCAT)*, providing it with authority to conduct unannounced visits to places of detention and monitor conditions therein.

During the COVID-19 pandemic, the Ombudsman's role gained heightened relevance. The state's pandemic response brought about a litany of human rights dilemmas: restricted access to health care and justice, increased vulnerability of institutionalized persons, and diminished space for the civil society. The Ombudsman was among the few institutions actively documenting these infringements, calling for transparency, and urging compliance with international standards of human rights protection.

Scholarly and policy analyses have corroborated the crucial yet constrained function of Moldova's Ombudsman during the pandemic. As documented by Freedom House, the People's

Advocate criticized the legislative drafts that would grant excessive powers to the security services, citing risks to privacy and judicial oversight, while also calling attention to delays in ensuring access to medical services for vulnerable groups such as detainees and people with disabilities (Mirza, 2021). Reports published by civil society organizations and international watchdogs noted that the Ombudsman's public statements and interventions were essential in shaping a rights-conscious narrative during a period dominated by executive overreach.

Furthermore, the Ombudsman issued several special reports and recommendations in 2020 and 2021, urging the state to:

- Uphold the right to personal liberty and bodily integrity,
- Ensure transparent communication and equitable vaccine distribution,
- Improve the material conditions in detention and quarantine facilities, and
- Guarantee access to information and remedies for affected populations.

These efforts must be assessed against the backdrop of Moldova's broader governance environment, which Freedom House and the UN Human Rights Council have consistently characterized as politically volatile and institutionally fragile (Freedom House, 2022). Although the Ombudsman is constitutionally independent, its financial and political vulnerability posed constraints on enforcement and influence during the crisis.

In sum, the COVID-19 pandemic served as both a stress test and a revealing lens into the structural capabilities of Moldova's human rights institutions. This article proceeds to assess in detail the actions, strategies, and outcomes of the Ombudsman's interventions, drawing on official reports, legal documents, and peer-reviewed analyses to evaluate its performance within Moldova's human rights architecture during the pandemic period.

2. LEGAL AND INSTITUTIONAL FRAMEWORK

The Ombudsman's mandate is defined by *Law No. 52/2014 on the People's Advocate*, which tasks the institution with monitoring compliance with

human rights, especially during states of emergency. The Moldovan Constitution (Art. 54) also establishes limitations on rights during emergencies, which must be legal, necessary, and proportionate. During the COVID-19 pandemic, the National Commission for Emergency Situations issued decrees that imposed lockdowns and restricted freedoms of movement and assembly. The Ombudsman monitored these measures for proportionality and legality.

The role and functioning of the Ombudsman (People's Advocate) in the Republic of Moldova are anchored in a robust legal framework shaped by both national constitutional law and international human rights obligations. The effectiveness of this institution during the COVID-19 pandemic must be assessed against this normative backdrop, which both empowered and constrained its capacity to act in the face of sweeping emergency measures.

Constitutional Mandate and Legislative Authority

The Constitution of the Republic of Moldova enshrines a comprehensive set of human rights and freedoms, with Article 54 establishing the legal basis for limiting rights during states of emergency. This provision stipulates that such restrictions must be provided by law, be necessary in a democratic society, and pursue a legitimate aim—principles that mirror Article 15 of the European Convention on Human Rights (ECHR), to which Moldova is a signatory (Council of Europe, 1950; Legis, 1994).

The legal basis for the declaration and management of a public health emergency is found in *Law No. 212/2004 on the State of Emergency, Siege and War*, which outlines procedures for imposing extraordinary measures, including restrictions on movement, property rights, and individual freedoms. The State of Emergency decrees enacted by the National Extraordinary Public Health Commission (CNESP) and the Parliament under this law served as the main instruments for managing Moldova's pandemic response.

Parallel to this, the People's Advocate institution operates under *Law No. 52/2014*, which provides it with the mandate to monitor and report on human rights compliance by public authorities, both in ordinary and extraordinary circumstances.

According to Article 1 of the law, the Ombudsman functions as an autonomous, apolitical, and independent body accountable to the Parliament, with authority to issue recommendations, initiate legal actions, and submit amicus curiae briefs in constitutional and judicial proceedings.

Furthermore, in accordance with *Law No. 129/2012*, the Ombudsman serves as the National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture (OPCAT), with powers to visit detention facilities, psychiatric hospitals, and quarantine centres without prior notice. This institutional role became particularly relevant during the pandemic, given the increased risk of ill-treatment in closed institutions due to prolonged isolation and diminished oversight.

As noted by the Aspen Institute Germany, Moldova's legal framework formally upholds the international human rights standards but suffers from inconsistent enforcement and political interference, particularly during times of crisis (Esch & Valeska, 2020).

Interaction with International Human Rights Mechanisms

Moldova is party to a broad range of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of Persons with Disabilities (CRPD), and the Convention on the Elimination of Discrimination Against Women (CEDAW). These instruments not only impose legal obligations on the state but also provide normative guidance to the Ombudsman in assessing state conduct during emergencies.

In its 2022 Universal Periodic Review (UPR) submission, Promo-LEX and other stakeholders emphasized the importance of the Ombudsman's alignment with international best practices in pandemic governance, particularly in the areas of access to justice, medical treatment, and information transparency.

The Ombudsman's reliance on international standards enhanced the legitimacy of its findings and ensured that its reports – though not legally binding – carried normative weight in domestic and international advocacy forums (Freedom House, 2022).

Limitations of Institutional Power and Resources. Despite its broad mandate, the People's Advocate's authority is largely recommendatory. Unlike the judiciary, the Ombudsman cannot annul laws or compel compliance with its recommendations. This structural limitation is compounded by chronic underfunding and dependence on parliamentary goodwill for operational capacity. According to Freedom House, these constraints hindered the full realization of the institution's preventive and remedial functions during the pandemic (Mirza, 2021).

The 2021 *Report on Human Rights in Moldova* underscored this issue, noting that while the Ombudsman's office was proactive in issuing statements and conducting monitoring visits, its interventions were often ignored or only partially implemented by state agencies.

In summary, Moldova's legal and institutional framework grants the Ombudsman a robust mandate grounded in constitutional and international law. However, operational and structural constraints limited the effectiveness of its oversight during the COVID-19 pandemic, underscoring the need for legal reforms that would enhance the enforceability of its recommendations and ensure greater institutional independence.

3. MONITORING CONDITIONS IN DETENTION FACILITIES

The monitoring of detention facilities represented one of the most urgent and significant aspects of the Moldovan Ombudsman's mandate during the COVID-19 pandemic. As custodial settings are inherently closed environments, they posed an acute risk of viral transmission, exacerbated by chronic structural deficiencies such as overcrowding, poor sanitation, and limited access to medical care. The pandemic thus intensified existing vulnerabilities and presented new challenges for the protection of the rights of the people deprived of liberty.

Legal and International Obligations

Moldova is legally bound to uphold the rights of detainees under domestic and international instruments. Domestically, the Constitution of Moldova (Article 25) and the Criminal Procedure Code affirm the right to

dignity and prohibit inhuman or degrading treatment. Internationally, Moldova is a party to the European Convention on Human Rights, particularly Article 3, which forbids torture and inhuman or degrading treatment under any circumstance, including public emergencies (Council of Europe, 1950).

Additionally, Moldova has ratified the Optional Protocol to the Convention against Torture (OPCAT), which mandates the establishment of a National Preventive Mechanism (NPM) - a role fulfilled by the Ombudsman under Law No. 129/2012. This legal authority grants the Ombudsman the right to carry out unannounced visits to detention facilities, inspect conditions, and issue confidential or public reports.

According to the Aspen Institute's regional review, Moldova's implementation of OPCAT obligations remained fragile even prior to the pandemic, as systemic underfunding and lack of political support weakened the preventive framework (Esch & Valeska, 2020).

Findings from Pandemic-Era Monitoring Reports

During the first two years of the pandemic (2020–2021), the People's Advocate Office intensified its monitoring of penitentiaries, pre-trial detention centres, and psychiatric hospitals. Special attention was paid to the observance of minimum health standards, the provision of protective equipment, access to medical staff, and the continuity of legal assistance.

In its Special Report on the Observance of Human Rights in Detention during COVID-19, the Ombudsman found that:

- Many facilities were operating beyond their designed capacity.
- Hygiene materials and personal protective equipment (PPE) were inconsistently supplied.
- Isolation wards for COVID-positive detainees were poorly ventilated and lacked medical supervision.
- Legal representatives and family members faced prolonged restrictions on visitation, raising concerns about the right to a fair trial and protection from abuse (Odagiu, 2023).

In one documented case, the Ombudsman intervened to demand the transfer of infected detainees from the Chişinău Penitentiary No. 13 to

specialized medical units after multiple complaints from inmates and civil society organizations highlighted deteriorating health conditions and institutional inaction (Promo-LEX, 2020).

Detention Monitoring as a Preventive Strategy. While the Ombudsman's mandate is limited to issuing recommendations, the publication of its findings served as a form of soft power by shaming negligent authorities and raising international visibility. The institution frequently collaborated with civil society groups such as Promo-LEX, which conducted independent documentation missions and jointly submitted findings to international bodies, including the UN Committee against Torture and the Council of Europe's Committee for the Prevention of Torture (CPT).

As noted by the United Nations in its UPR review, the Moldovan Ombudsman's monitoring of detention centres during the pandemic was one of the few examples of state accountability in real-time during the emergency period.

Challenges and Institutional Constraints. Despite its proactive stance, the Ombudsman's efforts faced several structural limitations:

- Access to some high-security and medical detention facilities was temporarily denied during the height of pandemic restrictions, under the pretext of infection control.
- Recommendations issued by the Ombudsman were often delayed or ignored by prison administrations and the Ministry of Justice.
- Lack of enforcement power undermined the ability to implement urgent measures, particularly where administrative inertia or budgetary constraints persisted.

As legal scholar Violetta Odagiu notes, "The Ombudsman's lack of binding authority severely compromised the rapid implementation of health protection protocols in Moldovan pre-trial detention facilities during COVID-19" (Odagiu, 2023).

4. THEMATIC REPORTS AND PUBLIC ADVOCACY

The issuance of thematic reports and public statements constituted one of the Moldovan Ombudsman's most visible and influential strategies during the COVID-19 pandemic. Given the limited enforcement powers of the People's

Advocate (Ombudsman) under Moldovan law, these outputs served as crucial soft-law instruments for influencing policy, shaping public discourse, and signalling human rights concerns to both national authorities and international bodies. Thematic reporting and advocacy were especially important in contexts where emergency legislation risked undermining constitutionally guaranteed rights and freedoms.

Legal Basis and Normative Role of Thematic Reporting

According to Article 27 of Law No. 52/2014 on the People's Advocate, the institution is mandated to publish annual reports, special reports, and public recommendations on systemic human rights issues. These documents must be submitted to the Parliament of the Republic of Moldova and made publicly accessible. In the context of COVID-19, the Ombudsman expanded the use of thematic reporting to address pressing and evolving human rights issues resulting from the pandemic.

This approach aligns with international best practices. The UN Paris Principles recognize thematic reporting as a core function of national human rights institutions (NHRIs), allowing them to fulfil their dual mandate of oversight and advocacy through the collection of evidence, legal analysis, and public engagement.

Key Thematic Areas Covered During the Pandemic

Between 2020 and 2022, the Ombudsman issued several special reports, communiqués, and press statements addressing human rights implications of emergency measures. Notable themes included:

Access to Health Care and Vaccination Equity: A report released in early 2021 highlighted significant disparities in vaccine access for marginalized groups, including the elderly, Roma communities, and people with disabilities. The Ombudsman urged the Ministry of Health to ensure the vaccination campaign adhered to WHO guidelines on equity and non-discrimination.

Freedom of Movement and Quarantine Restrictions: In response to restrictive mobility measures imposed under Law No. 212/2004 on the State of Emergency, the Ombudsman

cautioned against the indiscriminate application of lockdowns that lacked legal precision and disproportionately impacted daily wage earners and informal workers (Mirza, 2021).

Rights in Detention and Institutionalized Settings: The Ombudsman issued a special report on penitentiaries and quarantine facilities, calling attention to inadequate medical infrastructure, lack of PPE, and mental health deterioration among detainees. The report reiterated Moldova's obligation under Article 3 of the European Convention on Human Rights to prevent inhuman and degrading treatment (Odagiu, 2023).

Gender-Based Violence and Domestic Abuse: A public statement issued in November 2020 addressed the surge in domestic violence cases during lockdown, urging the state to increase shelter capacity and allocate emergency funding for victim support services. This advocacy was in line with Moldova's obligations under the Istanbul Convention, which it ratified in 2021.

As legal scholar Radu Mirza noted, the Ombudsman's public positions on mobility, health, and gender justice "served as important legal interpretations of the proportionality principle in emergency law" (Mirza, 2021).

Advocacy Through the Media and Parliament.

The Ombudsman's office actively engaged in media outreach, appearing on national television and issuing statements through digital platforms to educate the public about their rights during quarantine and lockdowns. This public-facing approach complemented legal analysis with accessible messaging, especially vital in a low-trust environment where misinformation about COVID-19 proliferated.

Simultaneously, the Ombudsman used its constitutionally protected right to address the Parliament directly, presenting annual reports with specific chapters dedicated to pandemic-related violations. In the 2021 Annual Report, the Ombudsman recommended legislative amendments to:

- Establish stricter procedural safeguards for the declaration of emergency;
- Mandate impact assessments for all restrictive decrees;
- Guarantee the availability of independent judicial review for emergency-related complaints.

As Freedom House observed, these reports helped maintain a rights-based dialogue within Moldova’s legislative process, even when the political will to act on the Ombudsman’s recommendations was uneven (Freedom House, 2022).

Impact and Limitations of Advocacy

Thematic reporting and advocacy enabled the Ombudsman to act as a moral authority and legal conscience during the pandemic. However, their practical impact was often constrained by the non-binding nature of recommendations. Reports were sometimes ignored by ministries, and implementation lacked follow-up mechanisms.

Nonetheless, the influence of these reports extended beyond state borders. Their findings were cited in civil society submissions to the UN Human Rights Committee, the Committee on the Rights of Persons with Disabilities, and the Universal Periodic Review. These international references reinforced the legitimacy and visibility of the Ombudsman’s work.

As noted by the United Nations Human Rights Council, “The visibility of Moldova’s NHRI in international forums increased significantly during COVID-19, due in part to its consistent thematic advocacy”.

5. LEGAL CHALLENGES AND OVERSIGHT LIMITATIONS FACED BY THE OMBUDSMAN

While the Moldovan Ombudsman maintained a visible and proactive profile during the pandemic, its institutional authority and operational effectiveness were constrained by several enduring legal, political, and structural challenges. These limitations directly impacted the scope and implementation of the Ombudsman’s recommendations, ultimately affecting the realization of human rights protections in times of crisis.

Limited Enforcement Powers

The People’s Advocate is constitutionally mandated to monitor and report on human rights but does not possess binding authority to

enforce decisions. This legal limitation is codified in Law No. 52/2014, which provides the Ombudsman with the power to issue recommendations, notify public authorities of violations, and propose legislative amendments – but not to compel compliance or initiate prosecutions.

As Popescu-Marin (2021) notes, “The Ombudsman’s strength lies in moral authority rather than coercive capacity,” a structure that proved insufficient in the face of executive inaction during the pandemic.

Budgetary and Staffing Constraints

The institution’s effectiveness was further hindered by chronic underfunding. The 2021 state budget allocated less than 0.02% of public expenditures to the Ombudsman’s Office, limiting its ability to:

- Conduct nationwide monitoring missions,
- Hire independent investigators or data analysts,
- Translate and disseminate reports to international partners.

This financial dependence on parliamentary approval compromises the Ombudsman’s functional independence, a key requirement under the UN Paris Principles for national human rights institutions.

Political Pressures and Institutional Isolation

At various points during the pandemic, high-ranking officials questioned the Ombudsman’s findings and downplayed its warnings. In some cases, recommendations related to emergency legislation were ignored or dismissed in parliamentary debates without consideration. This political marginalization weakened the Ombudsman’s capacity to influence legislative deliberations at a time when rapid policymaking lacked due scrutiny. Moreover, the institution’s access to critical government databases – such as health and mobility statistics – was restricted, impeding real-time monitoring of rights violations. As reported in Nations in Transit 2022, “The People’s Advocate issued warnings on digital surveillance and rights in detention, but these went largely unheeded due to a lack of institutional leverage” (Freedom House, 2022).

6. CONCLUSIONS

The COVID-19 pandemic was not only a public health emergency but also a profound test of the resilience and integrity of democratic institutions and human rights systems. In the Republic of Moldova, a country marked by fragile governance, systemic inequality, and territorial fragmentation, the pandemic amplified pre-existing structural vulnerabilities. Amid this complex crisis, the People's Advocate (Ombudsman) emerged as a key factor in the defense of fundamental rights, using its constitutional and legislative mandate to monitor abuses, advocate for policy reforms, and engage both national and international stakeholders.

This article demonstrates that the Ombudsman's institutional response during the pandemic was multifaceted, legally grounded, and strategically aligned with international human rights standards. Through thematic reports, detention monitoring, digital rights oversight, and civil society collaboration, the Ombudsman contributed substantively to the preservation of rights-based governance during Moldova's state of emergency. It consistently emphasized the principles of proportionality, necessity, and non-discrimination – principles enshrined in both national law and international instruments such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Yet, the impact of these actions was constrained by legal, political, and structural limitations. The Ombudsman lacks binding enforcement powers, depends on parliamentary funding, and is occasionally marginalized in legislative processes. These institutional weaknesses hindered the implementation of critical recommendations related to detention conditions, digital surveillance, and emergency legal reforms. Furthermore, the exclusion of the Ombudsman from Transnistria, a region outside the de facto control of the central government, created a human rights vacuum that Moldova has yet to resolve effectively.

Nevertheless, the Ombudsman succeeded in carving out a space for public accountability, normative guidance, and humanitarian advocacy.

It maintained visibility in the public sphere, engaged in collaborative reporting with civil society and the United Nations, and sustained its monitoring duties under highly restrictive conditions. In doing so, it fulfilled its core mission of ensuring that even during a pandemic, the rule of law and the dignity of the individual remained central pillars of governance.

The Ombudsman demonstrated institutional resilience by issuing critical thematic reports and challenging excessive or discriminatory pandemic policies, despite the risk of political backlash. The use of legal analysis and evidence-based recommendations enabled the Ombudsman to influence both domestic policy debates and Moldova's profile in international human rights mechanisms. Partnerships with NGOs, the UN, and OSCE significantly expanded the Ombudsman's reach, particularly in data gathering and public advocacy, compensating for its structural limitations.

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