

# REPERCUSSIONS OF SEPARATISM OF TRANSNISTRIAN REGION FOR FULFILLMENT OF FISCAL OBLIGATIONS IN THE REPUBLIC OF MOLDAVIA

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## Abstract

*The given work represents a thematic analysis of the author concerning the alleged existence of the cause-effect correlation between the secessionist movements in the eastern districts and the southern part of Moldavia and the perturbations caused by these on the process of fulfilling the fiscal obligations faced by our state. Initially, the author succinctly describes the current situation in the Transnistrian region, making reference to a small part of the studies, articles, normative acts and case law of the European Court of Human Rights (ECHR), which refer only to some of the multiple abuses that resulted in the violation of the basic human rights and fundamental freedoms and interests that continue to be infringed.*

*The descriptive part of the article contains several kinds of activities of the national economy that constantly cause substantial damage to the national public budget. One of the key reasons for such a state of affairs is supposedly the inappropriate approaches to the subjects concerning the regulation and efficient fulfillment of the fiscal obligations in relation to the self-styled regime of the Transnistrian region. The last part of the article includes all the basic ideas that were formulated in the work as well as a number of *lex ferenda* proposals designed to foil fraudulent schemes, where separatism is one of the factors that favor their existence. Consequently, the author notes that the implementation of the formulated proposals will contribute to the substantial improvement of the whole process of fulfilling the fiscal obligations in the Republic of Moldavia.*

*Key Words: national public budget, fiscal obligations, fiscal revenues, fiscal sovereignty, residual fiscal sovereignty, Transnistria.*

## 1. Aspects of separatism in the Republic of Moldavia

At the current stage, when the secessionists are considerably extending their ambit in Ukraine, many world players concentrated their attention on this state. They do not directly become involved in the internal affairs of the given country, but monitor the developments in the region. It should be noted that a number of measures have been taken to thwart this process and temper the hotbeds of separatism, including outside Ukraine. A scenario that *volens nolens* should be taken into account is that a possible serious crisis in the Eurozone could cause a chain reaction of separatist dismemberments<sup>1</sup>.

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<sup>1</sup> D. Furtuna, *Europe's hotbeds of separatism*. Available at: <http://vox.publika.md/politica/focarele-de-separatism-ale-europei-504234.html>., accessed on May 15<sup>th</sup> 2014.

The Republic of Moldavia will inevitably be a first ring of this chain because, as it is well known, there are separatism claims in the breakaway republic of Transnistria and in the Autonomous Territorial Unit of Gagauzia (Gagauz-Yeri). The given trends appeared about 25 years ago and, regrettably, continue to exist, but have been somehow frozen up to now.

A broader description, starting with the origin of these hotbeds and the developments in the Transnistrian region, can be found in scientific works<sup>2</sup>, in decisions passed by the ECHR, in the cases: *Tanase versus Moldavia* §§ 11-18<sup>3</sup>; *Ilascu and others versus Moldavia and Russia* §§ 28-110<sup>4</sup>, *Catana and others versus Moldavia and Russia* §§ 3- 41<sup>5</sup>, *Pisari versus Moldavia and Russia* §§ 30-31<sup>6</sup>, and in a number of thematic reports.

The phenomenon of separatism in our country was and continues to be a rather sensitive subject that generated multiple expert analyses aimed at identifying solutions acceptable to all the sides involved in this process.

First of all, owing to the *status-quo* existing in the aforementioned regions, the national lawmakers satisfied their demands and granted special forms and conditions of autonomy to the territorial-administrative units<sup>7</sup>. If the autonomy in Gagauzia (Gagauz-Yeri) is a regulated one<sup>8</sup>, being to a certain extent administered by its representative bodies instituted and recognized by the central authorities of the state, in the Moldavian settlements from the left side of the Nistru, or the Transnistrian region, the situation is entirely different.

Since the dismemberment of the USSR until now, following the proclaiming of the independence of the so-called Moldavian Nistrean Republic (Transnistria),

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<sup>2</sup> M. A. Meyer, C. J. Borgen and others *Unfreezing of a frozen conflict: Legal aspects of the separatist crisis in Moldavia*. October 2006. Available at: [http://www.statistica.md/publications/137/ro/Raport\\_Transnistria\\_Meyer\\_rom.pdf](http://www.statistica.md/publications/137/ro/Raport_Transnistria_Meyer_rom.pdf), accessed on May 15<sup>th</sup> 2014. I. RURAC, *Separatism and its impact on the process of bulding the statehood of the Republic of Moldavia*. Institute of Public Policy, Chisinau, 2002. Available at: <http://www.ipp.md/lib.php?l=ro&idc=162&year=&page=2..>, accessed on May 15<sup>th</sup> 2014.

<sup>3</sup> Case of *Tanase versus Moldavia*, application No. 7/08, ECHR Decision of April 27, 2010. Available at: [http://justice.md/file/CEDO\\_judgments/Moldavia/TANASE%20\(ro\).pdf](http://justice.md/file/CEDO_judgments/Moldavia/TANASE%20(ro).pdf), accessed on May 15<sup>th</sup> 2014.

<sup>4</sup> Case of *Ilascu and others versus Moldavia and Russia*, application No. 48787/99, ECHR Decision of July 8, 2004. Available at: [http://justice.md/file/CEDO\\_judgments/Moldavia/ILASCU%20SI%20ALTHI%20\(ro\).pdf](http://justice.md/file/CEDO_judgments/Moldavia/ILASCU%20SI%20ALTHI%20(ro).pdf), accessed on May 15<sup>th</sup> 2014.

<sup>5</sup> Case of *Catan and another 27 versus Moldavia and Russia*, *Caldare and another 42 versus Moldavia and Russia*, *Cherkavski and another 98 versus Moldavia and Russia*, application No. 43370/04, 8252/05 and 18454/06. ECHR Decision of October 19, 2012. It is available only the decision concerning admissibility of June 15, 2010: [http://justice.md/file/CEDOdecisions/Moldavia/CATAN%0SI%20ALTHI%20\(ro\).pdf](http://justice.md/file/CEDOdecisions/Moldavia/CATAN%0SI%20ALTHI%20(ro).pdf), accessed on May 15<sup>th</sup> 2014.

<sup>6</sup> Case of *Pisari versus Moldavia and Russia*, application No. 42139/12, ECHR Decision of April 21, 2015. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"itemid\":\[\"001-153925\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\), accessed on May 18<sup>th</sup> 2015.

<sup>7</sup> The Constitution of the Republic of Moldavia, adopted on 29.07.1994, published in the Official Gazette of the Republic of Moldavia no. 1 of 12.08.1994, art. 110, par. (1) and (2), art. 111. The law on the territorial-administrative organization of the Republic of Moldavia no. 764 of 27.12.2001, published in the Official Gazette no.16/53 of 29.01.2002, art. 15 and art. 16.

<sup>8</sup> The law on the special legal status of Gagauzia (Gagauz-Yeri) of the Republic of Moldavia no. 344 of 23.12.94, published in the Official Gazette of the Republic of Moldavia no. 3-4/51 of 14.01.1995.

nobody from the international community recognized this region as an individual state, except for Russia. On the contrary, when Moldavia formulated territorial claims and made reference to a part of the treaties, including two Optional Protocols to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, it was stated that until the territorial integrity of the Republic of Moldavia is not fully restored, the provisions of the Convention will apply only to the territory that is effectively controlled by the Moldavian authorities. Furthermore, the European Convention on Human Rights communicated that Moldavia will be unable to guarantee the observance of the provisions of the Constitution as regards the omissions and actions taken by the bodies of the self-styled Transnistrian republic on the territory controlled effectively by such bodies, until the conflict in the region is not settled definitively.

Despite the aforementioned, the bodies of the international human rights organizations and those of the Council of Europe asked that Moldavia should withdraw the reserve and statements concerning the denial of the obligations related to the human rights in Moldavia on a territory considered an integral part of it<sup>9</sup>.

The ECHR repeatedly held that in spite of the lack of effective control over the Transnistrian region, the plaintiffs were within the jurisdiction of the Republic of Moldavia and thus Moldavia was obliged, in accordance with Article 1 of the European Convention, to take diplomatic, economic, legal and other kinds of measures to make sure that the rights and freedoms, guaranteed by the Convention, of all the persons within its jurisdiction are respected<sup>10</sup>.

## **2. Impediments created by self-proclaimed Transnistrian regime to collecting a number of fiscal incomes into Moldavia's national public budget**

According to the Ministry of Finance's reports on the amounts collected into the national public budget in the analyzed period, between 2005 and 2013, which were presented to the National Bureau of Statistics of Moldavia, the fiscal incomes account for over 82% of the total incomes of the national public budget. Moreover, over the last two budgetary years, these incomes were over 86% collected<sup>11</sup>. Therefore, it is very important to subject the fiscal law to an extensive study so as to

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<sup>9</sup> M. Merkviladze, *Juvenile justice. Situation in Moldavia's Transnistrian region in relation to the international standards*. Promo Lex Publishing House, Chisinau, July 2013, pp. 10-11. Available at: [http://www.promolex.md/upload/publications/ro/doc\\_1383811261.pdf](http://www.promolex.md/upload/publications/ro/doc_1383811261.pdf), accessed on 15.05.2014.

<sup>10</sup> *Ibidem*, p. 11.

<sup>11</sup> National Bureau of Statistics. Available at: <http://www.statistica.md/category.php?l=ro&idc=146&>, and that for 2013, p. 46 available at [http://media.rtv.net/other/201403/Moldavia-republica-raport\\_2013\\_rom\\_47677300.pdf](http://media.rtv.net/other/201403/Moldavia-republica-raport_2013_rom_47677300.pdf), accessed on May 17<sup>th</sup> 2014.

<sup>12</sup> C. Cozonac, *Phantom firms cause damage of billions to the state, law enforcement bodies do not find those to blame*. Journalistic Investigations Center. Available at: <http://www.investigatii.md/index.php?art=542>, accessed on May 17<sup>th</sup> 2014.

<sup>13</sup> G. Costandachi, *Moldavia prey for the underground economy and tax evasion*. Idis Viitorul, Chisinau, 2012, pp. 27. Available at la: <http://viitorul.org/doc.php?l=ro&idc=294&id=3985&t=STUDII-IDIS/Economie/ Moldaviaprada-a-economiei-subterane-si-a-evaziunilor-fiscale>, accessed on May 17<sup>th</sup> 2014.

identify the most vulnerable subjects and sectors that generate difficulties in achieving all the objectives in this area.

Despite the high percentage of fiscal incomes collected into the state budget, experts from the field warn that the VAT frauds alone annually exceed the value of a state budget of Moldavia<sup>12</sup>. A question appears thus here: “Which is the cumulative value of the damage caused to the national public budget by avoiding completely paying all the taxes and mandatory conditions set by the national legislation?”

To be able to combat these harmful phenomena, the most efficient thing we can do is to concentrate our attention on the region that raises the largest number of questions – the Transnistrian one.

#### **A. One of the facets of the underground economy**

Within a study that focused on the situation concerning the underground economy and tax evasion in the Republic of Moldavia,<sup>13</sup> it was established that the volume of contraband smuggled through the Transnistrian segment of the border had not been calculated or even estimated. The volume of bank transactions between Moldavia and the left side of the Nistru is not known. These transactions are performed through Russian and Ukrainian correspondent accounts located in banks in offshore areas. The underground economy on both sides of the Nistru River covers a wide range of activities, including criminal ones (trafficking in arms and drugs and others). An article in *The Guardian*<sup>14</sup> says the chicken meat imported into the region that is not controlled by the Moldavian authorities reaches 20 tonnes a year per capita. The imported meat is distributed to both sides of the Nistru. Regretfully, there are no relevant estimates about this in the Republic of Moldavia.

The separatist region located on the left side of the Nistru poses a serious threat to Moldavia’s economy because the economic and financial processes there are not controlled. The competent state services and bodies should join forces and deal with this threat.

The need to estimate the underground economy in the Transnistrian region must become a priority for society. Those from the left side of the Nistru should also be engaged in this process.

One of the real solutions that would bring important financial advantages to the Moldavian economy, including on the left side of the Nistru, is to reach a mutual economic compromise. Unquestionably, the process of economic integration would significantly reduce the volume of illegal activities. This process should involve the entrepreneurs and nongovernmental organizations from both sides of the Nistru River<sup>15</sup>.

#### **B. Correlation between volume of consumed fuel and volume of officially imported fuel**

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<sup>14</sup> Available at: [http://www.olvia.idknet.com/ol56-12-08.htm;http://press.try.md/item.php?id=12735\\_G](http://www.olvia.idknet.com/ol56-12-08.htm;http://press.try.md/item.php?id=12735_G). Costandachi, *op. cit.*, p. 27.

<sup>15</sup> *Ibidem*, p. 27.

If we refer to the oil products, estimates show that about 1.2 million tonnes of fuel are annually used on the domestic market<sup>16</sup>. However, according to the official information provided by the National Agency for Energy Regulation (ANRE), the imports of oil products in 2010 - 2013 varied between 562,000 and 641,000 tonnes a year<sup>17</sup>. (Annex No. 1)

Annex No. 1



Source: Diagram drawn up by ANRE.

The other part of the oil products consumed on the home market was smuggled into the country by using different fraudulent schemes. It is said that a chain of commercial relations was ‘improvised’, in which one of the participants in the alleged relations is a resident of the Transnistrian region.

Another ‘version’ is that the oil products were smuggled into the Transnistrian region and were then to be passed over the administrative line in a convenient moment, without anyone knowing something.

Comparing some measures that were recently taken by the self-styled Transnistrian authorities to significantly reduce the value of excises (Annex No. 2) during a period of about two months (01.01.2014 - 28.02.2014) and for only some of the importers<sup>18</sup>, we generally consider that the traders in fuel didn’t need to make considerable effort to take the contraband oil products into the Transnistrian region because, even so, the cumulative sum of the profit made from taking and selling oil products on the right bank of the Nistru is a rather advantageous one<sup>19</sup>.

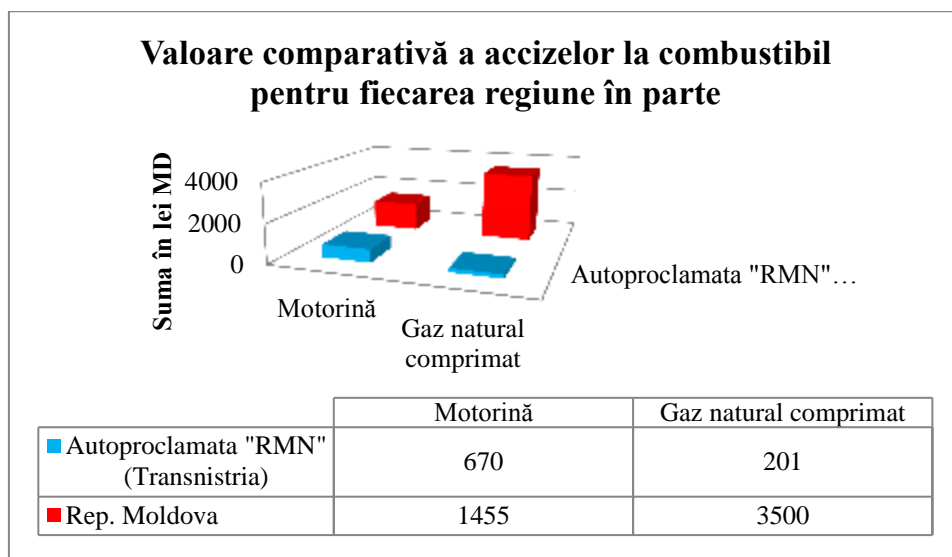
Annex No. 2

<sup>16</sup> I. Bordei, *Problems of implementation of the fiscal policy in the Republic of Moldavia*, in the quarterly methodological-scientific magazine „Public Administration” No. 3 (75), Chisinau, 2012, p. 131.

<sup>17</sup> Report on the activity of the National Agency for Energy Regulation in 2013, pp. 44. <http://www.anre.md/upl/file/Rapoarte/Raport%20annual%20de%20activitate%20a%20ANRE%20pentru%20anu%202013.pdf>, accessed on 19.05.2014.

<sup>18</sup> Available at: <http://m.noi.md/md/news/33662>, accessed on 17.05.2014.

<sup>19</sup> As an example, we can compare the situation of last year when only three months of the coming into force of the VAT of 0% on sugar, the authorities had to restore the VAT of 8% on sugar products owing to the contraband sugar smuggled from Ukraine, which seriously affected the national sugar industry. Recently, the largest sugar producer of the country, Südzucker Moldavia, announced that owing to the VAT of 20%, last year it sustained losses of four million lei, even if it’s turnover was one billion. Available at <http://www.contabilsef.md/newsview.php?l=ro&idc=13&id=9400>, accesat la 17.05.2014.



Source: Diagram drawn up by the author based on mass media reports and data from the Fiscal Code of the Republic of Moldavia

### C. Phenomenon of phantom companies registered in the name of residents of Transnistrian region

There were identified a series of situations when a lot of people living in the Transnistrian region are registered as founders or administrators of different companies with considerable turnover and transactions with excessively high sums in a short period of time and about which, these (the presupposed founders or administrators of commercial organizations) in most of the cases know absolutely nothing<sup>20</sup>.

Within other investigations carried out as part of criminal cases, there were discovered complex schemes to import and sell medicines on the market of the Republic of Moldavia. It was reported that a large consignment of medicines was smuggled from the People's Republic of China. The important rings of this chain

<sup>20</sup> Ex.: I Vieru lives in Grigoriopol town. Two years ago, he decided to go to Chisinau to look for a job because he could not overcome the poverty in which he lived. He went to a firm that offered workplaces abroad. He was told what documents he needs and how much money he had to bring. When he was heading home, concerned that he needed to make a foreign passport, two men approached him and told him that they can help him legalize the necessary documents. Ion didn't know that those from the Transnistrian region enjoy concessions on making identification papers and could himself obtain a passport. He accepted the assistance and indeed received the document in three days, without paying something. He was even offered money for signing a number of documents. Afterward, he managed to go to Russia and worked there. In a year, he was invited to the Tax Inspectorate and then to the National Anticorruption Center. There, he found out that he is the manager of three companies that, during a year, had a turnover of several million lei. „When I went to the police, I realized that something was wrong. Earlier I didn't think that there could be something illegal in that affair. The people who helped me were dressed in suits, looked well and came by a luxury car. I needed money and was glad that they offered me their help. I had only to sign some papers. That day I bought fruit and candies for my kids. Afterward I found work,” related Ion. Detailed information available at: <http://www.investigatii.md/index.php?art=542>, accessed on 17.05.2014.

included Transnistrian companies. According to estimates, the given firms caused damage of over 90 000 000 lei to the state by their illegal activities<sup>21</sup>.

### **3. Reactions with which Moldavia met when trying to amend provisions of budgetary-fiscal legislation covering Transnistria too**

Given the factors stated above, related to phenomena that allegedly continue, we think these represent only a small part of the ‘iceberg’ of the economic activities. The mentioned illegalities, *de facto*, are developed continuously and not even bring no financial resources to the national budget, but even affect it somehow.

Such a situation is possible namely because the subjects involved in these illegal schemes are mainly based and work in the region that is not controlled by the constitutional authorities, which is in Transnistria.

According to the author, an important step towards combating these illegal activities was the joining by Moldavia of the World Trade Organization in May 2001. As a result, in September 2001, Moldavia introduced new customs stamps, annulling the old ones. The given decision foiled a large part of the import-export operations of Transnistria, whose foreign trade since 1990 has been performed with the customs stamps of the Republic of Moldavia. At that moment, the relations became tense not only with the unrecognized Transnistrian authorities, but also with the authorities of Ukraine. Even if Ukraine recognized unconditionally Moldavia’s right to establish new customs rules, it considered that the old customs stamps should continue to be used given that the new ones were not coordinated with the self-styled authorities of Transnistria, in accordance with the provisions of the international law. This situation continued until May 15, 2003, when there was signed the Moldavian-Ukrainian protocol according to which, the transportation of products through the customs control services on the Moldavian-Ukrainian border, including Transnistria, will take place only based on the official commercial and customs documents of Chisinau<sup>22</sup>.

After such measures were taken, the Government of Moldavia decided that the Transnistrian economic entities can become involved in international commercial relations only after they register with the State Registration Chamber of Moldavia. Though Tiraspol took ‘compensatory’ customs measures, the Transnistrian firms adjusted themselves to the new realities. In 2003, there were registered 320 economic entities. Currently the figure stands at over 890 so that most of the large exporters of Transnistria have been already registered legally in Chisinau. Consequently, even if the regional authorities declared that they are subject to an ‘economic blockade’, the companies of the region followed a more practical path<sup>23</sup>.

At the same time, since that period, from 2001 until now, this category of legal entities, which are classed as “economic entities that are located on Moldavia’s

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<sup>21</sup> Available at: <http://cna.md/ro/evenimente/companii-farmaceutice-suspectate-spalare-bani-evaziune-fiscala-fals-acte-si-livrare>, accessed on 20.05.2014.

<sup>22</sup> F. E. Stiftung, V. Boian, *Republic of Moldavia’s relations with Ukraine*. Available at: <http://www.ape.md/libview.php?l=ro&idc=152&id=854>, accessed on May 17<sup>th</sup> 2014.

<sup>23</sup> V. Prohnitski, A. Lupusor, Adriana, *Transnistria and the Deep and Comprehensive Free Trade Area: little strokes fell great oaks?* Independent Analytical Center “Expert-Grup”, Chisinau, 2013, p. 13.

territory, but do not have fiscal relations with its budgetary system”<sup>24</sup>, were exempted from paying duties on the import of raw material. However, the Moldavian authorities decided to annul these concessions<sup>25</sup> starting with the current budgetary-fiscal year so that the fiscal subjects that are within Transnistria’s jurisdiction must pay the same taxes when performing import-export operations.

Following the annulment of these concessions, the unrecognized Transnistrian authorities asserted that in January-April this year they sustained losses of 27 million lei.

As a result, the *de facto* authorities of the Transnistrian region reacted, erecting obstacles and banning access to the farmland of the owners and lessees from Dubasari district, especially those from Dorotskaya village. They also set a discriminatory system of paying for public utilities for teachers, police officers and other functionaries who work at institutions recognized as being founded constitutionally, but who live in the Transnistrian region.

#### 4. Conclusions and recommendations

The author of the given article considers the representative bodies of the Republic of Moldavia, despite the position they have, do not make use of all the existing legal instruments in implementing the budgetary-fiscal policy of the state so as to achieve the pursued goal. But the fundamental institutions where the international fiscal legislation became deep-rooted long ago can no way be ignored.

According to the author, it would be normal for the setting of key objectives on which the promotion of any legislative initiative in the financial-fiscal area should be based and which would have a direct impact on the Transnistrian region, to be preceded by the creation of conjunctures so that the self-proclaimed authorities of Transnistria could not oppose the legalization and implementation of the juridical framework concerning the fiscal obligations. Only owing to such circumstances could the customs stamps of the Transnistrian authorities be withdrawn in 2001. It was much the same in the case of the adoption of the law on the special legal status of the settlements from the left side of the Nistru (Transnistria)<sup>26</sup>.

I.First of all, we believe that before putting forward legislative initiatives that would stipulate that “the import-export operations performed by the economic entities that are located on Moldavia’s territory, but do not have fiscal relations with its

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<sup>24</sup> This is the typical formulation used by the Moldavian authorities for legal entities that are based and work in the Transnistrian region, but must register inclusively with the State Registration Chamber in Chisinau in order to be able to perform import-export operations.

<sup>25</sup> The law to amend and complement a number of legal acts no. 324 of 23.12.2013, published in the Official Gazette of the Republic of Moldavia no. 320-321/871 of 31.12.2013.

<sup>26</sup> The law on the basic provisions of the special legal status of the settlements from the left side of the Nistru (Transnistria), no. 173 of 22.07.2005, published in the Official Gazette of the Republic of Moldavia no. 101-103/478 of 29.07.2005. This legal act was adopted and represents a result of the fact that in May 2005, the then President of Ukraine proposed a plan for settling the Transnistrian conflict called the Yushchenko Plan. Viktor Yushchenko’s initiative centers on the democratization of the eastern districts of Moldavia as a major objective for an easier subsequent reintegration of Moldavia. The Yushchenko Plan served as a framework for developing and drafting relevant documents for Moldavia (nominated „*super-*”). Available at: <http://www.ape.md/libview.php?l=ro&idc=152&id=854>, accessed on May 17<sup>th</sup> 2014.



budgetary system are exempted from paying the tax for performing the customs procedures in the way approved by the Government<sup>27</sup>, the Moldavian authorities should condition the implementation of these provisions by creating particular real guarantees for the national economy. By the simple registration of these categories of subjects at the State Registration Chamber of Moldavia, the interests of our state are not protected from the aforementioned illegalities. On the contrary, they are somehow compromised.

The possible guarantees related to the import-export of goods by the above-mentioned subjects include the creation of real conditions for monitoring their activities. Such a measure can be implemented by:

- presentation of financial reports and other confirmative data, in accordance with the standards and conditions stipulated in the legislation of the Republic of Moldavia.

- creation of possibilities for determining the possible overlapping of the information presented by the competent authorities from all over Moldavia.

- obligation to keep booking records and to make payments only in the currency that is recognized at international level, namely in the Moldavian leu<sup>28</sup>.

- after these requirements are set, the competent bodies of the Republic of Moldavia should be obliged to regularly stage, together with the involved economic entities, seminars, meetings, roundtable meetings and other categories of activities that will lead to the continuous promotion of the national fiscal legislation.

Therefore, we consider that a part of the ‘corridors’ through which consumer goods are smuggled into Transnistria by the aforementioned economic entities, which benefit from exemption from paying imports duties, but which later sell these goods on the markets from the right bank of the Nistru without paying taxes into the national public budget, will be blocked to a certain extent.

The main rationale is that the implementation of the fiscal legislation is closely related the principle of territoriality of taxes and duties, which is directly dependent on the fiscal sovereignty of the state<sup>29</sup>. The fact that this principle is applicable including when exercising control over the fulfillment of the fiscal obligations is incontestable and the Moldavian constitutional authorities should take this argument into account.

An additional argument that should be taken account of and regarded as a real opportunity of creating benefits for the aforementioned legal entities only when the conditions stated above are met, resides in the fact that the given subjects could

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<sup>27</sup> The bill to amend and complement legal acts registered with Moldavia’s Parliament under No. 127 of 26.03.2014, Article II, point 1, for complementing art. 4 par. (5) of the law Nb. 1380-XIII of 20.11.1997 concerning the customs duty (published in the Official Gazette no. 40-41/286, 07.05.1998). Available at: <http://www.parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/2232/lingua/ro-RO/Default.aspx>, accessed on May 17<sup>th</sup> 2014.

<sup>28</sup> The law on money no. 1232 o 15.12.92, published in the Official Gazette no. 3/51 of 30.03.1993, art. 1, 3 and 4.

<sup>29</sup> R. Postulache, *Financial law*, C.H. Beck Publishing House, Bucharest, 2009, p. 178.

benefit from the effects of the treaties on the avoidance of double taxation, which were signed by Moldavia and particular states<sup>30</sup>.

In the same connection, we should also note that such a phrase as *fiscal residual sovereignty* crystalized in the Community law as a competence of the member states in terms of taxation. Thus, based on constant jurisprudence, the member states exercise the fiscal residual sovereignty in accordance with the Union's law. In other words, fiscal residual sovereignty intervenes when the competence is divided between the institutions of the European Union and the national institutions<sup>31</sup>.

From the viewpoint of the fiscal and financial public law, the fiscal legislation applies both to the taxable activities carried out on the territory of the member state by private individuals or legal entities with the nationality of this state and the taxable activities carried out abroad by private individuals or legal entities that are residents of the given state<sup>32</sup>.

Furthermore, we must analyze the addressed subject in comparison with the regulations of the fiscal legislation of the EU member states, after the 'physical' borders between these states were removed. Thus, in order to avoid double taxation, the fiscal authorities of a member state *have the right to ask from the taxpayer for proofs* considered necessary for determining if the conditions concerning the provision of a fiscal advantage stipulated in the relevant regulations are met and if, consequently, the given advantage should be provided or not<sup>33</sup>.

In the absence of the mentioned information, the Moldavian fiscal authorities cannot establish if the imported goods will be indeed used for the declared purpose. As, by imposing import-export duties, *the state does not pursue only the immediate objective of collecting fiscal incomes* into the national public budget because the given categories of customs duties have a much wider range of functions, such as the economic ones. In some countries, there are situations when the state imposes duties on the export of raw material in order to determine its processing in the country, while in other countries these are imposed on the export of half-made or finished products that account for an important share of their exports<sup>34</sup>.

**II.** Taking into account the place and role of Ukraine in implementing the law on the basic provisions of the special legal status of the settlements from the left side of the Nistru River (Transnistria) and making a correlation with the current state of the phenomenon of separatism and its effects confronting the neighboring state, we

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<sup>30</sup> All the treaties/conventions "For the avoidance of double taxation and the prevention of tax evasion with respect to taxes on income and capital gains" signed so far by the Republic of Moldavia and particular states; are available at: <http://www.fisc.md/Tratatepentru evitarea dublei impuneri.aspx>, accessed on May 17<sup>th</sup> 2014.

<sup>31</sup> M. I. Niculeasa, *Fiscal and financial public law treaty*, 2<sup>nd</sup> edition, Universul Juridic Publishing House, Bucharest, 2012, pct. 1082-1083, pp. 507. Conclusions of general lawyer Verica Trstenjak, presented on March 8<sup>th</sup>, 2011, Case C-10/10, European Commission against the Republic of Austria.

<sup>32</sup> *Ibidem*.

<sup>33</sup> M. I. Niculeasa, *Fiscal and financial public law treaty*, 2<sup>nd</sup> edition, Universul Juridic Publishing House, Bucharest, 2012, pct. 1089, pp. 510. Decision of October 03, 2002, Danner, c-136/00, Rec., pp. I-8147, pct. 50, Decision of June 26, 2003, Skandia and Ramstedt, C-422/01, Rec., pp. I-6817, pct. 43, and Decision of January 27, 2009, Persche, C-318/07, Rep., pp. I-359, pct. 54.

<sup>34</sup> For more information, see I. Vacarel, G. Anghelachi, and others. *Public finances*, second edition, „Didactică și Pedagogică” Publishing House, Bucharest, 2000, pp. 459-460.

consider increased effort should be made to contribute to counteracting this scourge in Moldavia too. Joint measures should be taken to strengthen the Moldavian-Ukrainian border, especially on the segment where it borders the Transnistrian region, so as to combat all the forms of smuggling and other categories of illegalities.

**III.** Ultimately, the investigative measures should be stepped up in order to discover and counteract the multiple fraudulent schemes to smuggle consumer goods, oil products and meat (poultry and pork), medicines and other goods into Moldavia, which were and could be yet used on Moldavia's territory, and to annihilate the stimulation of the establishment of economic relations with so-called 'phantom companies' that, on the one hand, cause damage to the national public budget, while on the other hand, represent an essential source of 'fueling' separatism in Transnistria.

### References

1. I. Bordei, *Problems of implementation of the fiscal policy in the Republic of Moldavia. The quarterly methodological-scientific magazine "Public Administration"* No. 3 (75), Chisinau, 2012;
2. G. Costandach, *Moldavia prey for the underground economy and tax evasion*. Idis "Viitorul", Chisinau, 2012. Available at: <http://viitorul.org/doc.php?l=ro&idc=294&id=3985&t=/STUDII-IDIS/Economie/ Moldaviaprada-a-economiei-subterane-si-a-evaziuni-lor-fiscale>, accessed on May 17<sup>th</sup> 2014;
3. M. A. Meyer, C. J. Borgen and others. *Unfreezing of a frozen conflict: Legal aspects of the separatist crisis in Moldavia*. October 2006. Available at: [http://www.statistica.md/publications/137/ro/Raport\\_Transnistria\\_Meyer\\_rom.pdf](http://www.statistica.md/publications/137/ro/Raport_Transnistria_Meyer_rom.pdf), accessed on May 15<sup>th</sup> 2014;
4. M.I. Niculeasa, *Fiscal and financial public law treaty*, second edition, S.C. Universul Juridic SRL Publishing House, Bucharest 2012.
5. I. Vacarel, G. Anghelache and others, *Public finances*, second edition, Didactică și Pedagogică Publishing House, Bucharest, 2000;
6. *Case of Pisari versus Moldavia and Russia*, application No. 42139/12, ECHR Decision of April 21, 2015. Available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{ "itemid" :\["001-153925"\] }](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{ ), accessed on May 18<sup>th</sup> 2015;