



Strasbourg, 21 February 2008

Opinion no. 458 / 2007

CDL(2008)008
Engl.Only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW ON STATE SECRETS
(1994)

OF THE REPUBLIC OF MOLDOVA

Law on State Secrets (1994)

Law on State Secrets

The Parliament of the Republic adopts the present law.

The present law stipulates the way of distributing, applying, revealing and protecting the information that represents state secret for the sake of state security.

CHAPTER I GENERAL

Article 1

Application of the present law

The present law is applied on the territory of the Republic of Moldova and outside by the governmental authorities, state administration, local administration bodies, judicial authorities, legal entities, institutions, and organisation indifferently of their legal status and type of ownership, by officials and citizens of the Republic of Moldova that have assumed responsibility or are obliged according to their charter to execute the requirements of the legislation regarding the state secret.

Article 2

Notion of state secret

State secret constitutes the information protected by the state in the field of its military, economic, technical, scientific, external policy activity, counterintelligence and operative investigation, the dissemination, disclosure, loss, defalcation or destruction of which may infringe (further - dissemination) the security of the Republic of Moldova.

Article 3

Legislation regarding the state secret

Legislation regarding state secret is based on the Constitution of the Republic of Moldova, it includes the present law and provisions of by-laws that stipulate relations regarding to the protection of state security

Article 4

Mandate of the government authority and state administration, juridical authorities in relation to attributing and protection of the information on the state secret

(1) Parliament:

- a) regulates the legal basis of the relations in the field of state secret protection;
- b) approves articles of the republican budget in relation to implementation the governmental programs in the sphere of state secret protection;
- c) controls the application of legislation regarding state secret;
- d) concludes international treaties regarding the common use and protection of the information that constitutes a secret information.

(2) The President of the Republic of Moldova

- a) approves state programmes in the sphere of state secret protection;
- b) approves at the proposal of the Government, the structure and composition of the inter-department commission for state secret protection and its by-laws;

c) approves on the Governmental proposal the personnel, its functions and responsibilities on distributing information that represents state secret and also classification of information that is referred as state secret.

(3) Government

- a) organises the implementation of the Law regarding state secret;
- b) presents for Presidential approval the structure and composition of inter-departmental Commission for state secret protection and its by-laws;
- c) presents for Presidential approval the list of personnel with their functions and responsibilities and also the authority to refer information as state secret;
- d) establishes the procedure of classifying the information that is referred as state secret;
- e) organises the elaboration and realisation of state programs in the field of state secret protection;
- f) establishes the benefits, their volume and ways of attributing to the citizens who have a permanent access to the state secret, and to the employees of internal subdivisions of state secret protection;
- g) establishes the way of determining the volume of damage caused by the unsanctioned distribution of information that represents state secret, and also damages caused to the author of information as a result of its classification of information;
- h) signs inter-governmental agreements, undertakes measures for implementation of international agreements regarding common application and protection of information that constitutes state secret, to which the Republic of Moldova is party.

(4) State and local administration bodies:

- a) provide protection of state secret at subordinate enterprises, institutions and organisations according to the legislation requirements;
- b) provide, in the limits of their competence, control measures of the citizens that have access to state secret;
- c) implement the measures stipulated in the legislation regarding the limits of citizens' rights and provide benefits for those that have or have had access to information that represents state secret;
- d) present to supreme bodies of the state authorities and administration proposals regarding improvement of the state secret protection system.

(5) Judicial bodies:

- a) examine criminal and civil cases on violation of the legislation regarding state secret;
- b) provide judicial protection for citizens, state administrative bodies, enterprises, institutions and organisations in relation with their activity in the sphere of state secret protection;
- c) provide while examining the mentioned above cases the state secret protection.

(6) State authority and administrative bodies, judicial bodies within the limits of their competence resolve other problems related to the referring of information as state secret.

CHAPTER II INFORMATION REFERRED AS STATE SECRET

Article 5

Information that can be referred as state secret

The following information is referred as state secret:

1. from military sphere regarding:

- a) strategic and operative plans for providing the security of the Republic of Moldova;
- b) departments for development and elaboration of new military equipment and armament, types, reserves and places of storage of these;

c) technical and tactical characteristics and ways of application in war of models of armament and military equipment, properties, receipts or technologies of preparing explosives intended to be used at war;
d) dislocation, destination, level of protection of the objects under the special regime and of a special importance, their design and construction dislocation, organisational structure, armament supply and ability of the forces.

2. from the field of economy, science and technology regarding:

a) the content of the plans for preparation of the Republic of Moldova for possible military actions, mobilisation potential of the industry for production of armament and military equipment, volume of deliveries and strategic supplies received for storage, location and volume of state reserves;

b) volume and plans of production (in value or natural expression) of the armament, military equipment and other protection produce, existing capacities for such production and their increase, co-operation relations of the enterprises, authors or producers of the armament, military equipment and other production for protection;

c) scientific research, experimental works on construction and designing, technologies of great importance for protection or economy of the country that insures its security;

d) forces and means of civil protection, dislocation, destination and level of protection of the objects of financial administration, providing the security of the population;

3. from the field of foreign policy and economy:

foreign affairs, external economic relations (commercial, monetary, credit relations) of the Republic of Moldova the preliminary distribution of which can put under risk the interests of the country;

4. from the sphere of intelligence, counterintelligence and operative investigation activity on:

a) forces, means, sources, methods, plans and results of intelligence activity, counterintelligence and operative investigation, and also other data about financing of this activity, which upholds the above mentioned information;

b) persons that confidentially collaborate or have collaborated with the bodies that carry out involved in intelligence activity, counter-information and operative investigation;

c) governmental communication system and other types of special communication, state ciphers, methods and means of their analyses;

d) means and methods of secret information protection;

e) state programs and activities in the field of state secret protection.

CHAPTER III CLASSIFICATION OF INFORMATION

Article 6

Principle of information classification

(1) Information is classified in accordance with the principles of legality, reasoning and suitability.

(2) The legality of classification of information means that information to be classified should be in correspondence with the stipulations of the articles 5 and 8.

(3) The reasoning of classification of information means the establishment of the reasonable character of the classification of any definite information for preventing the gross infringement of the security of the Republic of Moldova.

(4) The suitability of classification of information means the establishment of restrictions concerning the distribution of this information from the moment of their receiving (elaboration) or beforehand.

Article 7

Levels of information classification and secrecy labels of the bearers of the particular information

(1) The level of classification of information that constitutes state secret should correspond to the level of damages that can be caused to the security of the Republic of Moldova in cases of dissemination of such information.

(2) There are established three levels of classification of information that constitutes state secret and respective references regarding classification for the bearers of this information in cases of "special compartment", "top secret", "secret". Application of these references for classification of information that does not constitute state secret is not permitted.

Article 8

Way of attributing the information on state secret

(1) The information is referred as state secret by the heads of the state administration bodies according to the list of responsible persons authorised to refer the information to state secret. These people are responsible for their decisions regarding referring information to state secret.

(2) Motivation of the necessity to refer information to state secret in accordance with the classification principles of information belongs to state administration bodies, enterprises, institution and organisation that have prepared (elaborated) that information.

(3) In order to promote a unique state policy in the field of information classification the Government has established an inter-department Commission for state secret protection that draws up a list of information that is referred as state secret. This list is approved by the President of Moldova, is published and reviewed if it is necessary. The list mentions the state administration bodies that are authorised to possess such information.

(4) State administration bodies whose heads are empowered to refer information to state secret prepares a detailed departmental list of information that should be classified. These lists include information to which the mentioned above bodies have the right to disposition and to establish the level of their classification. These lists are approved by the chief of respective state administration bodies and can not be published.

Article 9

Ways of classification the information

(1) As grounds for the classification of the information and for the marking the documents, information and works with ciphers serves their correspondence to :

- a) the list of information that is referred to state secret;
- b) departmental list, stipulated in the paragraph (4) of the Article 8.

(2) In the case that the received (elaborated) information can not be identified with the information that is included in the list in force, the responsible functionaries from state bodies, enterprises, institutions and organizations are obliged to provide the preliminary classification of the received (elaborated) information in correspondence with the assumed level of secrecy and within one month to send proposals for the completion (amendment) to the official who has adopted the above mentioned list.

(3) The officials who have approved the list in force are obliged within three months terms to organise an expertise of the received suggestions and take a decision on amendments/changes of the list in force or to withdraw the level of secrecy that was preliminary conferred to the information.

Article 10

Copyrights restriction for the enterprises, institutions, organisations and citizens on the information in relation to its classification

(1) The officials empowered as stipulated in the Article 8 to refer information to state secret, can take decisions about classification of information that is in possession of enterprises, institutions, organisations and citizens, if this information contains data that are referred to state secret. Classification of the mentioned information is done on demand of the owner of the information or respective state administration body.

(2) The material damage caused to the owner of the information because of its classification is covered by the state in amount defined in the agreement between the information owner and state body, in whose possession the information is transferred. The agreement shall stipulate the non-dissemination obligations of the information owner. If the owners of the information refuses to sign the agreement, he is warned in written about the liability for unsanctioned dissemination of information that constitutes state secret according to the legislation.

(3) The information owner has the right to appeal in court the actions of the official, who in his/her opinion has infringed his/her rights. If the court admits that official's actions were illegal, the procedure of compensating the damages caused to the information owner, is established in the court's decision according to the legislation.

(4) Officials entitled according to article 8 with the powers to refer information to state secret are liable for the unjustified reference of the information to state secret.

Article 11

Terms for information classification that represents state secret

(1) The information with the label "Special compartmented" and "Top secret" is classified up to 25 years, and the information with the label "Secret" is classified up to 10 years.

(2) In the case of the information that it is referred refers to special compartmented information on the basis of the notification of the governmental commission for state secret protection, the Government can establish longer terms for the classification.

(3) State bodies, whose heads are entitled to refer information to state secret are obliged periodically, but not less than once in five years, to review the content of the departmental list of information for classification.

Article 12

Information that should not be classified

(1) It is prohibited to classify the information on:

- (a) the violations of human and citizens rights and freedoms;
- (b) emergencies, catastrophes that threaten the security and health of people and their consequences, as well as the natural disasters, their forecasts and consequences;
- (c) real situation in the sphere of education, health protection, ecology, agriculture, trade, as well as the legal order;
- (d) cases of infringement of legality, inactivity and illegal actions of the state authorities and officials, if disclosure of this information will not endanger the security of the Republic of Moldova.

(2) Classification is not allowed if it negatively affects the implementation of the governmental and sartorial programmes for social - economic and cultural development, or if it restricts competition of economic agencies.

CHAPTER IV DECLASSIFICATION OF INFORMATION

Article 13

Reason and method of declassification

(1) Declassification of information (annulment of the restrictions introduced according to this law over the dissemination of information that constitutes state secret, and over the access to information bearers, as well as the reduction the level of secrecy can be performed earlier than the terms foreseen by the Article 11, according to the procedure stipulated by the present law.

(2) The reasons for the declassification are:

a) the change of the objective circumstances, as a result of which the further protection of the information referred to state secret is unreasonable;

b) the corresponding modification by the state bodies of the departmental lists on secret information. With the right to modify the lists are entitled the heads of the state bodies who have approved them and they bear personal liability for the appropriateness of the decisions on the classification of the information. Such decisions concerning modifications of the list of information referred to state secret, shall be coordinated with the inter-departmental commission for the state secret protection.

(3) The heads of the National Archive of the Republic of Moldova are entitled to declassify the information that constituted state secret and is stored in the closed funds of the archive, if the founder of the fund or the successor in rights delegates such powers. In the case of the liquidation of the founding organization and the absence of the successor in rights the issue concerning the declassification of information referred to state secret is examined by the inter-departmental commission for the protection of state secret protection.

Article 14

Declassification of information on request of citizens, enterprises, institutions, organisations and state bodies

(1) Citizens, enterprises, institutions, organisations, state bodies have the rights to address to the interdepartmental commission for state secret protection, to the enterprises, institutions, organisations including and state archives, with the request to declassify the information referred to state secret or unreasonably classified.

(2) State bodies, enterprises, institutions, organisations that have received such a request are obliged within three months to examine them and to give a motivated answer. If it is not in their competence to solve the issue of declassification of the information, the request shall be sent, within one month from its receiving to the state body entitled with such powers or to the inter-governmental commission on state secret protection, about which the applicant is informed about.

(3) The officials who evade from the examination of the request bear administrative (disciplinary) liability in accordance with the legislation

(4) Grounds for referring the information to state secret can be appealed in court. If the court decides that there were no ground to classify the information it must be declassified according to the established procedure foreseen by the present law.

CHAPTER V DISPOSING OF INFORMATION THAT REPRESENTS STATE SECRET

Article 15

Mutual transmission of information that represents state secret by state bodies, enterprises, institutions and organisations

(1) Mutual transmission of information that represents state secret by state bodies, enterprises, institutions and organisations that do not have subordinate relations and do not perform joint works is done with the permission of the state body, which disposes these information.

(2) The state bodies, enterprises, institutions and organisations that request the above mentioned information, are obliged to create conditions in order to ensure the protection of this information. The heads of these organisations bear full personal liability for neglecting the requirements for information protection and non-disclosure of the received data.

(3) The information referred to state secret shall be sent to the enterprises, institutions, organisations or citizens in relation with the performance of mutual and other works by the beneficiary of the work with the permission of the state body, which possesses this information, and only in the amount necessary for execution of these works. At the same time, before the transition of the information referred to state secret, the transmitting party is obliged to check if the enterprise, institution and organisation has the license to perform such works using the information of certain level of secrecy, but citizens – corresponding permission.

(4) During the performance of the mutual works and other works and in connection with the appearance of the necessity to use information referred to state secret, enterprises, institutions and organisations can conclude with enterprises, institutions and state organisations contracts of using the services for the state secret protection, by their interior subdivisions, fact which is notified in the licenses issued to the both contractual parties for the execution of the respective works, which need the usage of the information referred to state secret.

(5) The contract for the execution of mutual and other works, concluded in accordance with the legislation, stipulates the mandatory mutual obligations of the parties to ensure the integrity of the information referred to state secret, both within the process of works' execution and their finalisation, as well as the conditions of financing the services on state secret protection.

(6) The client is responsible for control over the efficiency of state secret protection during the execution of mutual works in accordance with the stipulations of the concluded contract.

(7) If during the mutual works and other works the executor infringes its obligations on state secret protection, the beneficiary has the right to suspend the execution of the assignment until the removal of the infringements, but in the event of repeated violations - can ask to cancel the assignment and the license allowing to perform works with using information referred to state secret and the guilty persons should be hold liable. The material damage caused to the state by the executor of the works should be recovered in accordance with the legislation.

Article 16

Transmission of information referred to state secret to other states

(1) Information referred to state secret can be transmitted to another state only if there is an expert's opinion from the inter-departmental commission for state secret protection that approves the transmission of the information on the basis of corresponding Governmental decision.

(2) The contract signed with the party that receives information should stipulate the obligations of the parties.

CHAPTER VI PROTECTION OF STATE SECRET

Article 17

Bodies for state secret protection

(1) State secret protection bodies are:

(a) inter-departmental commission for state secret protection;

(b) state bodies, judicial authorities, enterprises, institutions, organisation and their departments on state secret protection.

(2) Inter-departmental commission for state secret protection is a collegial body that coordinates the activity of the state bodies on state secret protection. The functions of inter-departmental commission and its superior power are realised in accordance with the Regulation on inter-departmental commission for state secret protection, approved by the President of the Republic of Moldova.

(3) State bodies, enterprises, institutions, organisations ensure the protection of data that constitute state secret in accordance with the assigned tasks and within the limits of their competence. The head of the state bodies, directors of institutions and organisations bear responsibility for organisation of state secret protection. Depending on the volume of works that involve state secret, the heads of state bodies, enterprises, institutions and organisations create structural departments for state secret protection, whose functions are determined by the above mentioned heads in accordance with normative acts approved by the Government and taking into account the specific character of works.

Article 18

The access of officials and citizens to the state secret

(1) An official or a citizen has access to state secret on voluntary basis and presupposes that the person:

(a) undertakes the obligations not to disclosed information referred to state secret, which have been entrusted to them;

(b) agrees to have temporary restrictions of their rights in accordance with the Article 22;

(c) gives a written consent for performance of inspection measures by authorises bodies in his respect;

(d) establishes the kinds, volume and modality to grant facilities stipulated by the present law;

(e) is familiar with the legislation concerning state secret, that stipulates responsibility for its violation;

(f) the chief of the state body, director of the institution or organisation takes decision to give the hired person access to the data that constitutes state secret.

(2) Inspection measures are performed in accordance with the legislation in the volume depending on the level of information secrecy to which the hired person will have access.

(3) The purpose of mentioned inspection measures is disclosure of reasons stipulated in the Article 19.

(4) Officials and citizens that are admitted to state secret on a permanent basis have rise in wages depending on the level of information secrecy to which they have access.

(5) Employees of the structural departments for state secret protection, additionally to incentives, established for officials and citizens admitted to state secret on the permanent basis, have rise in wages for working experience in the mentioned departments.

(6) The mutual responsibilities between the administration and hired person are reflected in the labour agreement. Conclusion of the labour agreement before the finalisation of the control by the competent bodies is not allowed.

(7) Three types of admission to state secret are established for the officials and citizens which correspond to those three levels of information secrecy that represent state secret: special compartmented information, top secret information and secret information. If the official or citizen is admitted to the information of special importance, it means that he/she can have access to the information of lower level of secrecy.

(8) Terms, circumstances and modality of observance of the access of the citizens to the state secret are established by the normative documents adopted by the Government.

(9) Stateless persons, foreign citizens, emigrants and re-emigrants are admitted to state secret according to the procedure established by the Government.

Article 19

Ground for refusal to provide access for an official or a citizen to state secret

(1) Reasons for refusal to an official or a citizen to have access to state secret may serve:

(a) the person has criminal record for committing extremely dangerous crimes against the State or other grave crimes that are mentioned in the Criminal Code of the Republic of Moldova, and in the Criminal Code of other states; a person is on a trial or is prosecuted for performing the mentioned crimes; the person is declared by court a dangerous recidivist, with limited capability or incapable;

(b) the person has medical contra-indications to work with using information that represents state secret, according to the list, approved by the Ministry of Health;

(c) the person is a permanent resident abroad or registers the document to receive a permanent residence in another state;

(d) the person avoids inspections or presents wittingly false application data;

(e) the person commits actions that can cause threat to the security of the Republic of Moldova.

(2) The head of the state administration body, director of an organisation or institution takes the decision to refuse an official or a citizen to have access to state secret in each individual case taking into consideration the results of inspection. The official or a citizen has the right to appeal against this decision in the hierarchically higher institution or in the court.

Article 20

Conditions in which an official or a citizen cease to be admitted to state secret

(1) The access to state secret for an official or a citizen can be ceased on the decision of the head of the state administration authorities, organisation, institutions in the cases of:

a) a labour agreement (contract) with him/her was terminated because of organisational measures and modification of the number of personnel;

b) the commitments under the labour agreement concerning the state secret protection have been violated once;

c) appearance of the circumstances that in accordance with Article 19 can serve ground for a refusal to the officials or citizen to have access to state secret.

(2) Cessation of access to state secret for an official or a citizen can serve additional basis to terminate the labour agreement with him, if such conditions are stipulated in the labour agreement. At the same time, the official or a citizen is not released from the commitment not to divulge data that refer to state secret.

(3) The official or citizen can appeal in hierarchically superior organisation or in court the decision of administration to cease access to state secret and terminate the labour agreement on that basis.

Article 21

The modality to authorise the access to the information that represents state secret for an official or a citizen

(1) Procedures to be followed in order to provide access to information that represent state secret for an official or a citizen are stipulated by normative acts, approved by the Government.

(2) The head of the respective state authority, an enterprise, institution, respective organisation or its department on state secret protection shall be assigned to provide access for an official or a citizen to information that refers to state secret, who bears full responsibility for creation of such conditions in which the official or a citizen can get only the information and in such amount that is necessary to fulfil his/her functional responsibilities.

Article 22

Restriction in rights of an official or a citizen that have or had access to state secret

The official or the citizen that have or have had access to the state secret may be temporarily limited in their rights. The limitations may refer to:

- a) the right to temporarily leave abroad for the term stipulated in the labour agreement in the case of his/her legalisation of the access to the state secret.
- b) The right to disclosure of the information referred to state secret and the usage of the discovering and inventions that contain such information.
- c) The right of inviolability of private life during control measures in the period of the legalisation of the access to the state secret.

Article 23

Access of enterprises, institutions, organisations to the works related to the usage of information referred to state secret

Enterprises, institutions, organisations get the access to the works connected to usage of information referred to state secret, creation of information protection means, as well as performance of actions or providing services on state secret protection in accordance with the procedure stipulated by the Government.

Article 24

State secret protection within international cooperation

Treaties (agreements) on cooperation with foreign states, as well as within international organisations Moldova is a party of, which contain information referred to state secret are concluded according to the procedure adopted by the Government.

Article 25

Protection of secret information of foreign states and international organisations

(1) Secret information of foreign states and international organisations handed over to the Republic of Moldova on the basis of contract (agreements) is protected in full accordance with the obligations undertaken by the parties.

(2) State bodies that have signed the treaty (international agreement) bear full responsibility for protection of handed over secret information and its correct application.

Article 26

Liability for disclosure of state secret

The persons who have violated the legislation on state secret bear the responsibility in accordance with the legislation.

CHAPTER VII FINANCIAL SUPPORT TO STATE SECRET PROTECTION MEASURES

Article 27

Financing state secret protection measures

(1) Activities carried out by the state bodies, budget organisations, institutions and organisations in protecting state secret are financed from respective budgets, the activity of

other entities, institutions and organisations are financed from means received from their main activity that involves usage of information that represent state secret.

(2) State budget should include a separate paragraph that stipulates allocation of means for financing state programmes in the sphere of state secret protection.

(3) Heads of state authorities and administration, heads of entities and organisations, customers and specially authorised representatives of the Ministry of Finance should perform control over the expenses of finances allocated for the state secret protection activities. If the performance of this control is associated with access to the information that represents state secret, than the mentioned persons should have access to the information of the respective level of secrecy.

CHAPTER VIII CONTROL AND SUPERVISION OF STATE SECRET

Article 28

Parliamentary control

The parliamentary control over observance of the legislation regarding state secret and related expenditures is performed by permanent parliamentary commissions. State administration bodies, protecting state secret are obliged to provide all necessary information to the mentioned commissions.

Article 29

Inter-departmental and departmental control

(1) The Ministry for National Security is responsible for inter-departmental control for providing protection of state secret in state bodies, at factories, institutions and organisations.

(2) Heads of state bodies are obliged to control the efficiency of state secret protection in all subordinate bodies of state administration, at factories, institutions and organisations involved in common activity.

(3) Control for providing state secret protection in the Parliament, Presidential apparatus, the Government, juridical bodies is managed by the heads of these bodies.

Article 30

Prosecutor's supervision

(1) The Prosecutor of the Republic of Moldova and subordinate public prosecutors are responsible for adherence to the legislation when protecting state secret and legitimacy of adopted decisions.

(2) Access of persons performing prosecutor's supervision to the information that represents state secret is stipulated by present law.