

# TORTURE AND ILL-TREATMENT IN MOLDOVA, INCLUDING TRANSNISTRIA: SHARED PROBLEMS, EVADED RESPONSIBILITY

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





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# I. Introduction and presentation of the mission

In November 2012, FIDH sent an international fact finding mission to Moldova to investigate the administration of justice and the fight against torture and cruel, inhuman and degrading treatment. This mission fell within the ambit of FIDH's fight against the rampant impunity prevalent in the post-Soviet region.

This mission was conducted jointly, with invaluable assistance from Promo-LEX, a Moldovan NGO deeply involved with the administration of justice and the fight against torture. Promo-LEX operates throughout Moldova, and particularly in Transnistria. It initiates legal actions at national and international courts, including in Transnistria, and seeks to promote legislative reform by actively supporting civil society in Transnistria through publications, seminars and supporting the justice seeking actions of civil society groups. Promo-LEX also follows the development of the democratic process in Moldova very closely by organising electoral observatory missions for local and national elections.

The investigative mission was given the following objectives:

- document human rights violations committed in connection with the administration of justice, including cases of torture and degrading treatment, and try to establish lines of responsibility;
- meet local NGOs supporting victims of torture and inhuman and degrading treatment so as to identify the best ways to support these individuals;
- analyse the adequacy of Moldovan legislation in light of the international commitments of the Moldovan authorities;
- observe the application of legislative and legal reforms to combat impunity for the perpetrators of torture;
- assess access to justice and reparations for victims of the events of April 2009;
- investigate conditions of detention in Moldova;
- establish contacts with authorities and formulate recommendations on the issues raised by the mission;
- consider the formal and informal links between the Moldovan authorities and the de facto authorities of Transnistria, in particular concerning the Moldovan citizens residing in Transnistria;
- clarify the functioning of access to justice for the residents in Transnistria and document cases of torture and ill-treatment in detention in this region.

The mission was comprised of:

- Artak Kirakosyan, FIDH Secretary General and member of the Executive Council of the Armenian Association Civil Society Institute (CSI);
- Irène Ketoff, FIDH mission delegate, Eastern European expert;
- Pavel Sapelko, Belarusian lawyer. As a lawyer, Mr. Sapelko has represented several

political prisoners, including Andrei Sannikov, one of the candidates during the 2010 Belarus presidential elections who was abused while in detention. The Belarusian authorities revoked Mr. Sapelko's legal practice licence in 2011.

The mission delegates met with numerous stakeholders in the Moldovan capital of Chisinau, before progressing into the provinces to visit three penitentiary institutions located in the districts of Hincesti (north), Briceni (north) and Orhei (north-east). They also went to Tiraspol, the capital of the self-proclaimed Republic of Transnistria.

FIDH thanks Promo-LEX for its support in organising this mission and all interviewees who contributed to this report with their testimonies.

# II. The general legal framework

## Moldova in a few words

The Republic of Moldova located in the south of Eastern Europe shares a border with Romania to the west, and with Ukraine in the north, east and south. Moldova is composed of an area over 33,800 square kilometres, and has a population of 3.6 million of whom 25% live in the capital city, Chisinau.

Following the collapse of the Soviet Union, like other former Soviet republics, the Republic of Moldova declared independence in August 1991.

Moldova is currently organised into 32 districts (“raions”), two municipalities and an autonomous territory, Gagauzia. “Organic laws”<sup>1</sup> established the special status of autonomy shared by localities on the left bank of the Dniester (Transnistria). Although the Constitution guarantees the autonomy of these districts, tensions remain with Transnistria becoming a breakaway republic after the fall of the Soviet Union, whose independence from Moldova remains unrecognised by all states to date. Since signing a ceasefire in 1992, the Moldovan state, Transnistria, the Russian Federation, the Ukraine, the OSCE, the US and the European Union have tried to negotiate an end to the crisis. Moldova made several international commitments with Europe and the UN and started to reform its judicial system following the fall of the Soviet Union. New laws were adopted in accordance with international treaties. Moldova designates human rights as a fundamental principle of its legal arsenal.

However, in practice, it is clear that there is still a widespread practice of torture and other ill-treatment, mainly committed in the context of temporary detention (custody) and the penal enforcement of detention.

## A) The Republic of Moldova’s commitments regarding the protection of human rights

*This section will address (1) the Republic of Moldova’s commitments regarding the protection of human rights, in particular protection against torture and inhuman treatment; and (2) its adherence to these commitments in practice.*

### 1. Commitments regarding international cooperation and international treaties

As its numerous commitments illustrate, Moldova recognises the need to prioritise the defence of human rights.

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1. *The register of legal acts of the Republic of Moldova*; available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312874&lang=2>

Since its independence, the Republic of Moldova has ratified almost all the principal international human rights treaties among, including:

- The International Covenant on Civil and Political Rights, ratified on 28 June 1990 by virtue of Parliament decision No 217-XII and effective from 26 April 1993;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, ratified on 20 September 2006;
- The Optional Protocol to the International Covenant on Civil and Political Rights establishing an individual complaint mechanism, ratified on 23 January 2008;
- The UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, ratified on 28 November 1995;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, ratified on 24 July 2006.

The International Covenant on Civil and Political Rights, for example, makes specific reference to torture and inhuman and degrading treatment (Article 7), prohibits arbitrary arrest and detention (Article 9) and promotes the humane and respectful treatment of all persons deprived of freedom (Article 10).

Furthermore, Moldova has become member of a certain number of European bodies, as well as instruments and partnership programmes with the European Union:

- Moldova became member of the Council of Europe on 13 July 1995. As a member, Moldova ratified the European Convention on Human Rights and the majority of its protocols, including Protocols number 6 and 13 abolishing the death penalty. Moldova was the first state to ratify the Convention for Action against Trafficking in Human Beings in 2006, and ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1996, which became effective for Moldova in 1998.
- The Partnership and Cooperation Agreement (PCA) which constitutes the legal basis of relations between the European Union and Moldova, was signed in November 1994 and came into force in July 1998. Moldova is one of the sixteen countries of the European Neighbourhood Policy programme launched in 2004.
- The Republic of Moldova is a member of the Organisation for Cooperation and Security (OSCE) in Europe whose primary mandate since 1993 has been settling the Transnistria conflict in all its aspects. This mandate was subsequently extended to incorporate a section on human rights and democratisation in Moldova.

Through its membership of international treaties and European bodies, Moldova is required to have regular observation visits conducted by its European partners. It is also obliged to present periodic reports on the implementation of the rights enshrined in the aforementioned Covenants to the Human Rights Committee and the UN Committee against Torture, and to implement their recommendations.

Thus, in March 2006, the UN Human Rights Committee welcomed Moldova's decision to formalise the execution of its obligations to prepare periodic reports by establishing a commission charged with reviewing national reports, and responding to and implementing the final observations of UN committees.<sup>2</sup> It is important to note that the state anticipates that human rights defending NGO representatives will participate in the works of this commission.

## **2. Compliance with commitments and cooperation with its international partners**

Official visits from Moldova's international partners and reports submitted to the various UN committees provide an opportunity to assess Moldova's compliance with its human rights commitments, as well as its implementation of recommendations made by partners.

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2. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/461/48/PDF/G1246148.pdf?OpenElement> §211

If Moldova has made considerable progress in reforming its legal system, securing human rights in practice remains a considerable challenge requiring additional effort.<sup>3</sup>

#### **a) The International Covenant on Civil and Political Rights**

Since ratifying this Covenant, Moldova has submitted two periodic reports, of which the most recent was in 2009. A third periodic report is currently being drafted. The UN Human Rights Committee in 2011 published a list of questions for the Moldovan government to address in this report.<sup>4</sup>

This list of questions<sup>5</sup> highlights recurrent deficiencies already raised by the Committee in its final observations in 2009. The implementation of the Committee's recommendations specifically regarding the treatment of victims of the April 2009 repressions and measures to curb torture in temporary police detention centres and other detention facilities remains a priority.

For example, in relation to the former, the Committee insists on obtaining the official register of victims of human rights violations in the aftermath of the April 2009 protests, including the number of rehabilitated victims and those receiving financial compensation and psychological support. Moreover, it appears that those police officers accused of violence and inhuman treatment were tried only in very rare cases.

Whilst the Committee welcomed Moldova's second periodic report and the State's 2005 amendment of its Criminal Code to introduce a provision criminalising torture, the Committee's final observations<sup>6</sup> nevertheless noted that that report did not adequately address the implementation of these measures and their implications.

The Committee specifically indicated its concern about the absence of real progress in the implementation of several preceding recommendations, in particular on conditions of detention, human trafficking, the duration of pre-trial detention, and the independence of the judiciary.

The Committee noted with concern the incidence of torture and ill-treatment in police stations and other state-run detention centres. It expressed concern about the widespread practice of torture and the fact that torture complaints are often not properly registered or investigated, there being a tendency to dismiss such complaints by declaring them "manifestly unfounded". The Committee expressed particular concern at the numerous allegations of serious human rights violations committed against persons involved in post-election protests in April 2009, including reports of arbitrary arrests, the use of violent crowd control methods, including beating, and the torture and ill-treatment of those arrested in connection with these events.

Finally, the Committee noted that contrary to undertakings made by the Republic of Moldova in March 2006, civil society organisations were not invited to participate in drafting the periodic report to the Council.

Among its recommendations concerning particularly the torture and inhuman and degrading treatment, the Committee pointed out the need to:

- Concerning the repression of the April 2009 protests:

a) conduct thorough investigations into all complaints of abuse of power by officials of the security forces during the protests in April 2009 by an independent and impartial body whose findings should be made public;

3. United Nations, *Core document forming part of the reports of States parties*, September 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/461/48/PDF/G1246148.pdf?OpenElement>

4. UN Human Rights Committee, *List of issues prior to the submission of the third periodic report of the Republic of Moldova (CCPR/C/MDA/3)*, 28 November 2011, available at: <http://daccess-ods.un.org/TMP/4232496.61922455.html>

5. Ibid.

6. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/460/92/PDF/G0946092.pdf?OpenElement>



b) take steps to ensure that officers found responsible for inflicting torture and ill-treatment on demonstrators, including those in positions of command, be held accountable for their actions, including via prosecution and taking appropriate disciplinary action taken and that the officers involved should be suspended from their duties during the course of the investigation;

c) ensure that an appropriate amount of compensation is paid to the victims of acts of torture and other forms of ill-treatment, regardless of the outcome of the criminal prosecutions against those responsible, and that medical and psychological rehabilitation be offered to the victims;

- Take urgent measures to stop the practice of torture in police stations and other places of detention, including by providing appropriate training to police officers and prison officers, ensuring that all complaints of torture and other ill-treatment are investigated and that perpetrators are prosecuted and punished; ensure that the law prohibiting the admission of evidence obtained by torture is effectively implemented; and ensure that effective remedies are open and that compensation may be offered, as appropriate, to the victims of torture and other forms of ill-treatment.

### **b) The UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment**

Since its ratification of this Convention, Moldova has submitted two periodic reports, the most recent of which was published in 2007 (three years late – the report was initially due in 2004). The Committee against Torture (CAT) submitted its final observations in 2010. A third periodic report is currently being drafted. In 2012 CAT published its list of questions prior to the final review of the report submitted by Moldova.

In its final observations on Moldova in 2010,<sup>7</sup> the Committee emphasised the legislative reform progress made by the State so as to ensure better human rights protection through the ratification of several international instruments, including those outlined above, as well as through the introduction of new laws. These include:

- The revision of the Criminal Code, specifically the addition of Article 309/1 which puts Moldova's legislation in line with the definition of torture in Article 1 of the Convention.
- The introduction of paragraph 1 of Article 94 of the new Criminal Code of Procedure, which makes statements obtained under torture inadmissible as evidence, as well as the addition of subsection 3/1 to Article 10, which provides that the burden of proof in cases alleging torture in order to demonstrate that torture has been committed, and the responsibility of the institution in which the alleged victim was detained.
- Measures relating to the Code of Ethics and Professional Conduct for police officers and an obligation on doctors who find indications of torture to disclose such information to the prosecution.<sup>8</sup>

Nevertheless, just like the Human Rights Committee, the CAT underlined an important dichotomy between legislative reform and reality on the ground. Like the Human Rights Committee, the CAT expressed concern about the following:

- The widespread practice of torture and other forms of ill-treatment in detention centres and allegations of violence used to obtain confessions or information as proof in criminal proceedings, despite legislative changes.
- Acts of torture and other forms of ill-treatment committed in temporary detention centres under the auspices of Ministry of the Interior despite the State's intention to

7. [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MDA.2\\_fr.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MDA.2_fr.pdf)

8. Government Decision of 16 June 2006 on the adoption of regulations on the enforcement of sentences of convicted persons.

place these centres under the responsibility of the Ministry of Justice, as part of its Action Plan for Human Rights (2004-2008).

- The failure to respect basic guarantees such as unrestricted access of detainees to legal counsel and an independent doctor.
- The weakness of sentences applied to perpetrators of torture in comparison with the severity of the offence and the low conviction rate and disciplinary measures in contrast to the numerous allegations made of torture and inhuman or degrading treatment.

In its list of questions<sup>9</sup> to the Republic of Moldova, published by the CAT in 2012 for preparation for its third periodic report, the Committee focused very specifically on the concrete measures applied by the state since 2010, highlighting the significant efforts that remain to be made in enforcing and implementing its reforms.

Among other things, the Committee requested clarification on specific issues such as statistics on cases processed, measures taken to ensure that the use of detention is exceptional, and the establishment of a procedure for regular mandatory medical examinations for prisoners etc.

### **c) The Council of Europe**

The observations and recommendations of the Council of Europe are similar to those of the UN bodies.

At the conclusion of the official visit of the Council of Europe's Human Rights Commissioner, Mr. Thomas Hammarberg, between 26 to 28 April 2009 (following the post-electoral violence of 5 April 2009), the Commissioner recommended that decisive action be taken to adopt and reinforce a zero tolerance policy regarding ill-treatment in the legal system.

Similarly, in its Resolution No. 1666, adopted after the 5 April 2009 elections, the Parliamentary Assembly of the Council of Europe expressed concern about police violence during the post-electoral period, as well as violations of the right to a fair trial and efficient appeal, requesting an independent and in-depth inquiry.

Moreover, in ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1997, the Republic of Moldova guaranteed its citizens a right of appeal to the European Court of Human Rights. The Court counts a total number of 227 dockets concerning Moldova up to 2011.<sup>10</sup> These dockets principally concern:

- the right to a fair trial;
- the right to liberty and security of person;
- the use of torture, inhuman or degrading treatment;
- lack of effective investigation; and
- the right to an appeal.

### **d) The European Union**

Moldova participates in the European Neighbourhood Policy (ENP). The EU-Moldova Action Plan defines the strategic objectives which are based on a commitment to common values and the effective implementation of political, economic and institutional reforms. Relying on its Partnership and Cooperation Agreement (PCA), the EU encourages and supports Moldova as it integrates gradually into the European economic and social structures.

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9. Committee Against Torture, *List of issues prepared by the Committee prior to the submission of the third periodic report of the Republic of Moldova (CAT/C/MDA/3)*, 11 July 2012, available at <http://daccess-ods.un.org/TMP/4715753.79371643.html>

10. [http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU\\_VIOLATIONS\\_EN\\_2011.pdf](http://www.echr.coe.int/NR/rdonlyres/2B783BFF-39C9-455C-B7C7-F821056BF32A/0/TABLEAU_VIOLATIONS_EN_2011.pdf)

The EU and Moldova are currently negotiating an Association Agreement as a successor to the Partnership and Cooperation Agreement. This Association Agreement will deepen the political partnership and the economic integration of Moldova with the EU.

In a note of 15 May 2012<sup>11</sup> concerning the progress observed in Moldova in 2011 under the PCA, the EU recommended intensifying the execution of judicial reforms and the application of the law by focusing specifically on the protection of human rights and the urgent need to curb corruption. The note reiterated the absence of final investigations and judicial action concerning April 2009 events.

## **B) The legal framework of the Republic of Moldova**

The Republic of Moldova has made the adaptation of its governmental system to democratic standards and the establishment of an independent judicial system to guarantee the integrity of justice and human rights protection a priority objective.<sup>12</sup>

### **1. Constitutional standards**

The Constitution of the Republic of Moldova was adopted on 29 July 1994 and enshrines the principle of the separation of powers.

The Constitution guarantees the fundamental rights and individual freedoms of citizens. In particular:

- Article 1 guarantees the supreme value of personal dignity;
- Article 16 specifies that the state is responsible for ensuring respect for and protection of individuals;
- Article 20 guarantees the right to a free and accessible justice system that protects the rights, freedoms and interests of citizens.
- Article 21 guarantees the right to the presumption of innocent until proven guilty by means of a legal public trial in which the accused benefits from all the guarantees required for his/her defence;
- Article 24 guarantees the right to life and prohibits torture and other cruel, inhuman and degrading treatment;
- Article 25 guarantees the inviolability of personal liberty and the security of person. It limits custody to 24 hours, requires that arrests be made only pursuant to a warrant and for a maximum of 30 days, and that persons detained or arrested be informed of the reasons for their detention or arrest as soon as possible. The accusation and reasons for detention must be brought to his/her attention in the presence of a lawyer;
- Article 26 guarantees the right to a defence and the assistance of a lawyer during trial;
- Articles 40 and 41 guarantee freedom of assembly and association, including in respect of social and political organisation;
- Article 53 guarantees to every person whose rights have been infringed by a public authority, by an administrative act or by the fact that his/her request has not been resolved within the period prescribed for by law, to obtain the withdrawal of the act and reparation of the prejudice by invoking the law. Article 53 stipulates that the state is legally responsible for damages following errors committed by the courts in criminal proceedings or by investigative and judicial authorities;
- Article 117 guarantees the public nature of court proceedings. Closed trial proceedings

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11. *ENP Country Progress Report 2011 – Republic of Moldova*, 15 May 2012, available at: [http://ec.europa.eu/world/enp/docs/2012\\_enp\\_pack/moldova\\_memo\\_2011\\_en.pdf](http://ec.europa.eu/world/enp/docs/2012_enp_pack/moldova_memo_2011_en.pdf)

12. [http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MDA.2\\_fr.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.MDA.2_fr.pdf)

are allowed only in cases established by law and must be conducted in accordance with the rules of procedure.

Finally, it is important to stress that regarding respect for human rights, Article 4 of the Moldovan Constitution guarantees the primacy of international standards, conventions and treaties on human rights to which the state is a signatory. This primacy operates over national legislation in case of conflict. Article 4 states that “the constitutional provisions on the rights and freedoms of man shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, including international covenants and agreements to which Moldova is a party.”

The prohibition of torture and inhuman and degrading treatment is enshrined in Article 24 of the Moldovan Constitution. This prohibition is therefore reflected in other legislation.

Article 166 of the Criminal Code of the Republic of Moldova provides: “Torture, i.e. any intentional act that causes physical or mental pain to a person or severe suffering to obtain from that individual or a third person information or a confession [...] shall be punishable by imprisonment of 6 to 10 years with deprivation of the right to occupy certain positions or engage in certain activities for a period of 8-12 years.”

On 9 September 2012, the Government submitted a bill to Parliament<sup>13</sup> amending certain provisions concerning torture. This bill was enacted by Parliament on 8 November 2012. However, it had not come into force during the FIDH mission. This new legislation extends the scope of Article 166 of the Criminal Code to all other types of inhuman and degrading treatment or punishment and harm to human dignity. It also provides that it will no longer be possible to reduce a sentence for acts falling within the scope of Article 166 of the Criminal Code or impose a suspended sentence.

The second paragraph of Article 309 deals also with torture, including cases of organising and instigating torture (punishable by a sentence of 3 to 8 years in prison).

Notably, under Articles 327 and 328 of the Criminal Code, torture can also be considered an aggravating circumstance of abuse of power or authority. It seems that in practice whilst a large number of torture complaints are dealt with under Articles 327 and 328, the acts committed are not recognised as torture under Article 309.<sup>1</sup> This was the case in the first judgements in this regard in December 2010.<sup>14</sup>

Since the 2010 establishment of a commission within the Attorney General’s office to combat torture, 70 so-called special prosecutors have been appointed within this framework and are responsible for conducting criminal investigations into allegations of torture or ill-treatment, especially within the police. However, this new institution has several important limitations, including a *de facto* lack of prosecutorial independence, a lack of effective control over investigations and a lack of expertise and specialised investigators.

## **2. The statute of judges**

The Moldovan judicial system consists of general courts of first instance (district courts) and appellate courts, specialised courts (economic and military affairs) and the Supreme Court of Justice, which is the final court of appeal. The Constitutional Court is not an official body of the judicial system but an institution independent of other public authorities.

The judiciary is overseen by the Superior Council of the Magistracy (SCM), which has responsibility for (i) the appointment, promotion and professional evaluation of judges, (ii)

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13. [www.parlament.md/LegislationDocument.aspx?Id=f971d70a-f5d5-40dd-86fb-50418b52cf17](http://www.parlament.md/LegislationDocument.aspx?Id=f971d70a-f5d5-40dd-86fb-50418b52cf17)

14. [http://www2.ohchr.org/english/bodies/hrc/docs/followup/ngos/NGOsContribution\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/followup/ngos/NGOsContribution_Moldova97.pdf)

the management of issues relating to discipline, and (iii) the preparation of the draft budget. Although the SCM is officially an independent institution, following an amendment to the composition of its members in 2009, the so-called political component of the institution was strengthened. Thus, of its 12 members, three are *de facto* appointments (the President of the Supreme Court of Justice, the Minister of Justice, the Attorney General), five (down from previously seven) are from the General Assembly of Judges, and four members (up from previously two) are nominated and approved by simple majority of a minimum of 20 members. The Centre for Human Rights of Moldova (CDH or apparatus of the Ombudsman) reports that the SCM's independence is mainly theoretical<sup>15</sup> insofar as the members appointed by the executive and legislature form the majority of its constituents and therefore hold the power of decision. As such, the Ombudsman submitted the *Superior Council of the Magistracy Act* No. 947 of 19 July 1996 to the Constitutional Court for a review of its constitutionality. By decision of 26 July 2011, the Constitutional Court dismissed the application for review of the Act.

The statute of judges is defined by the Constitution and the *Statute of Judges Act* of 26 October 1995. The Constitution guarantees their independence, impartiality and tenure. The President of the Republic appoints the judges of the general district courts, appellate courts and specialised courts on the basis of SCM recommendations. The SCM selects candidates on the basis of objective criteria, such as graduation from a university of law, graduation from the National Institute of Justice, and lack of a criminal record. However, many institutions emphasise the persistent climate of suspicion regarding the independence of appointments and interference of political power in practice, due to the composition of the SCM.<sup>16</sup>

Judges are appointed for an initial period of five years, after which they are eligible for a renewal of their office until the age of retirement subject to a qualifying examination. As pointed out many times by different institutions, including the Ombudsman, the American Bar Association and the UN Commission on Human Rights,<sup>17</sup> security of tenure is a major element in ensuring the independence of the judiciary and the temporary appointment of judges fails to guarantee their independence. In its concluding observations on Moldova's second periodic report in 2009, the UN Human Rights Council reiterated its previous recommendation that the state party review its legislation to ensure that the duration of judicial tenure is long enough to ensure judicial independence, in accordance with the requirements of paragraph 1 of Article 14 of the International Covenant on Civil and Political Rights. Whilst judges enjoy immunity in their official capacity, a judgment may nevertheless be challenged if it is found to have violated the fundamental rights and freedoms of individuals, if there is found to have been criminal activity on the part of the judge or if an administrative offence has occurred. Furthermore, to strengthen the disciplinary responsibility of judges, including ethics, Moldova adopted in early 2008, a new judicial code of ethics under which the SCM is responsible for monitoring the actions and facts that cast doubt on the credibility of the judicial system through the disciplinary college. Most observers<sup>18</sup> note with satisfaction the growing number of disciplinary measures taken: 11 measures were identified in 2007 against 65 in 2011, according to the 2011 explanatory memorandum of the Disciplinary College.<sup>19</sup> These included measures addressing non-compliance with the principle of impartiality.

Despite these significant changes, in practice questions about judicial independence and civil society's observation of widespread corruption in the judiciary prevail. In addition, the European Bank for Reconstruction and Development has reported that hearings are rarely public and

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15. *Observation Report on Human Rights in the Republic of Moldova*, 2011, available at: [http://www.ombudsman.md/sites/default/files/rapoarte/cpdom\\_raport\\_2011anexe\\_0.pdf](http://www.ombudsman.md/sites/default/files/rapoarte/cpdom_raport_2011anexe_0.pdf)

16. *Observation Report on Human Rights in the Republic of Moldova*, 2011 and *Judicial Reform Index for Moldova*, American Bar Association, June 2009, available at: <http://crjm.org/files/reports/aba.roli.reforma.justitie.2009.eng.pdf>

17. Final Observations, Periodical Report 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/460/92/PDF/G0946092.pdf?OpenElement>

18. Particularly, the European Bank for Reconstruction and Development (EBRD), Ombudsman, American Bar Association, Committee of Human Rights.

19. [http://www.csm.md/files/CDisciplinar/Nota\\_inform\\_\\_2011\\_CD.pdf](http://www.csm.md/files/CDisciplinar/Nota_inform__2011_CD.pdf)

public access to court decisions is limited.<sup>20</sup> In its list of questions for Moldova's third periodic report published in 2011, the UN Human Rights Committee<sup>21</sup> raised the issue of the handling of corruption cases and the prosecution of perpetrators within the justice system.

Processing times for cases remain a major concern and an obstacle to the right to justice and a fair trial despite revisions to the criminal and civil codes and their implementation procedure. In its 2011 report, the Ombudsman highlights that of the 1,655 applications received by the Centre for Human Rights in 2011, 361 involved challenges to the right to justice because of delay in the consideration of cases, failure to meet deadlines for drafting judgments and communicating the delayed decisions, and non-compliance with timely submission of copies of awards etc.

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20. *Commercial Laws of Moldova - An Assessment by the EBRD*, European Bank for Reconstruction and Development, March 2011, available at: <http://www.ebrd.com/downloads/sector/legal/moldova.pdf>

21. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/474/13/PDF/G1147413.pdf?OpenElement>

# III. Torture and inhuman treatment in Moldova today

This section is based on the findings of FIDH’s investigative mission to Moldova, including interviews with local experts in the field of human rights and the judicial system. The section addresses torture and inhuman treatment in Moldova and analyses reforms to date.

## 2009-2012: Torture remains a common practice that goes unpunished

According to statistics provided by the Office of the Attorney General on the number of investigations commenced following complaints of abuse, of just under 1,000 torture complaints per year since 2009 (see table below), a very small percentage led to the opening of an investigation (less than 18% – down to 11% in 2011), and only a small number led to the initiation of legal proceedings.

If the number of identified cases of abuse decreased between 2009 and 2010, the increase in the number of cases registered in 2011 could be explained by advances in recording these cases.

**Table 1: Statistics on investigations into abuse in Moldova**

Year	Recorded cases	Number of criminal investigations commenced	Percentage of investigations compared with recorded cases	Interrupted investigations	Percentage of interrupted cases	Trial proceedings	Percentage of investigations leading to trial proceedings
2009	992	180	18 %	75	42 %	36	20 %
2010	828	131	16 %	72	55 %	65	50 %
2011	958	108	11 %	92	85 %	36	33 %
2012	485	69	14 %	44	64 %	24	35 %

In 2012 over half of the total abuse complaints recorded were said to have occurred in police stations (c.54% of cases, i.e. 262 complaints), 26% in public places, and 8% in places of detention. This data confirms that in most cases, it is the police who are accused of carrying out such abuses.

Moreover, in the majority of cases, investigations are halted for lack of evidence. The low percentage of trials commenced indicates both a lack of effective investigation and a possible reticence to launch trial proceedings implicating police officers. These statistics do not indicate improvement in the effectiveness of investigations since 2009.

## **A) Reforms for the prevention of torture and inhuman treatment**

### **1. Implementation of a national mechanism for the prevention of torture and inhuman treatment**

#### *Creation of the national mechanism for the prevention of torture*

It is incumbent upon the state to ensure compliance with national and international obligations to respect human rights by all government bodies, including the judiciary. To do this, the Republic of Moldova has set up at the national level a number of specialised agencies. Thus, Parliament has a Commission for the Defence of Human Rights and Inter-ethnic Relations.

The prevention of torture and inhuman treatment comes primarily from two institutions:

- The prosecutor's office is responsible for ensuring adherence to the law in temporary detention centres and prisons under the authority of the police and the Ministry of Justice, including through prosecution.
- The Centre for Human Rights (CHR) or Ombudsman is an independent national institute whose mandate is to promote and protect human rights. It is responsible for reviewing complaints from individuals, conducting fact-finding visits to closed institutions, proposing legislative amendments, reporting its findings publicly and making recommendations to public authorities.

Recognising that most cases of torture, inhuman or degrading treatment occur in the context of detention, in July 2007 Parliament enacted an amendment into law defining the status of the Ombudsman in establishing the National Mechanism for the Prevention of Torture (NMPT), charging the CHR to conduct regular preventive visits to detention centres. The NMPT receives funding from the European Union and the local UNDP mission.

As part of its monitoring mission, the CHR is assisted by the Advisory Council, a body created by the CHR whose operation was approved by the Parliamentary Commission for the Defence of Human Rights and Inter-ethnic Relations in January 2008. Since July 2011 the Advisory Council has been composed of nine members.

In 2011, 238 preventive visits were conducted by the CHR under the NMPT. Of these, 227 were conducted by the CHR alone, 16 in collaboration with the Advisory Council and 11 by the members of the Advisory Council. There has therefore been an 88% increase in visits, accounted for primarily by an increase in visits to police stations, pre-trial detention centres and solitary confinement facilities in prisons. According to the CHR, the increase in the frequency of visits to these specific locations contributed to improvement in the protection of detainees and response times of the authorities.

#### *Limits*

Despite the increased activity of the CHR and its Advisory Council, the NMPT still faces a number of limitations due to its organisation and a failure on the part of the authorities concerned to consider its resultant recommendations.

During his discussion with those leading the FIDH delegation, Ion Guzun, a member of the Advisory Council since 2011, highlighted two obstacles to the NMPT mission.



As part of their duties, members of the Advisory Council have the right to visit all detention centres and those employed in these centres must provide all information requested. However, a certain number of police officers, who until now never participated in visits, did not know, or claimed not to know, the mandate of Advisory Council members. Thus, at the beginning of November 2012, Ion Guzun was denied access to a medical report during one of his visits. Similarly, he was not allowed to speak with the detainees in solitary confinement.

The CHR noted similar obstacles in its 2011 report, encountered whilst visiting institutions under the authority of the Ministry of Defence and Border Patrol. According to the CHR, this reflects the slow compliance of governmental bodies responsible for fulfilling obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment. The CHR notes, however, that in 2011 no obstacle was raised during CHR member visits (except for Advisory Council members) to localities under the authority of the Ministry of the Interior. This is believed to reflect that Ministry's communication effort aimed at implementing the NMPT among its teams.

Ion Guzun also raises certain deficiencies concerning the functioning of the Advisory Council and collaboration with the CHR. Certain members have resigned from their positions due to the inherent difficulty of their mission, obstacles encountered in the field and a lack of financial support and means. Mr. Guzun expressed regret that the Advisory Council is not obliged to prepare a report after each visit, with only the CHR deciding which reports are to be published. This explains why very few reports are available on the CHR's official site. After conducting ten visits personally in 2012, following which he submitted reports to the CHR, only one of Ion Guzun's reports was published on the CHR website.

Mr. Guzun also highlighted the lack of effective communication between the Advisory Council and the CHR: there is no systematic feedback about shared information after visits. Neither may such information be forwarded by the CHR to authorities. By way of example, Mr. Guzun cited the lack of response following a report on the arbitrary detention of Eugene Fiodoruc in a psychiatric hospital, raised during one of his visits.

Generally, the CHR notes that little consideration is still given to recommendations to prosecute the perpetrators of violations by the authorities concerned. In its 2011 report, the CHR noted that of the nine requests, two for disciplinary measures and seven for criminal investigation, none was accepted by the authorities.<sup>22</sup>

## **2. Measures of the Ministry of the Interior**

In its 2011 report the CHR welcomes the adoption by the Ministry of the Interior of an action plan on human rights aimed at reducing the occurrence of torture and abuse in detention centres under the authority of the police. This plan is supported by the following measures:<sup>23</sup>

- Promoting the message of “zero impunity” in the subdivisions of the Ministry;
- Compliance with the registration procedure for persons brought to the police (time of entry and arrival);
- Transferring all persons in custody to penitentiary centres;
- Ensuring that the rights of those arrested are respected during the arrest process and that their relatives have been informed of which detention centre they are being held in; and
- Developing an electronic registry of those who have been detained, arrested and convicted.

22. [http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM\\_Raport\\_2011ANEXE.pdf](http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM_Raport_2011ANEXE.pdf), p.165

23. [http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM\\_Raport\\_2011ANEXE.pdf](http://www.ombudsman.md/file/RAPOARTE%20PDF/CpDOM_Raport_2011ANEXE.pdf), p.167.

These measures result from the adoption of Parliamentary Decree No. 90 of May 2011 establishing the National Action Plan on Human Rights for 2011-2014. This Decree contains a specific chapter guaranteeing the rights of persons deprived of their liberty and preventing and combating torture and other cruel, inhuman and degrading treatment.

In its response, dated August 2012, to recommendations following a visit by representatives from the European Committee for the Prevention of Torture in June 2011, the Moldovan Government highlighted the Ministry of the Interior's efforts to prevent torture and ill-treatment.<sup>24</sup> It also pointed out important steps taken to ensure that the Republic of Moldova is in compliance with its international obligations to protect human rights:

- All persons serving a misdemeanour sentence and those remanded into custody are transferred to penitentiary centres as required by law and recommended by the European Committee for the Prevention of Torture;
- Promoting a "zero tolerance" message amongst all employees in the criminal prosecution office remains a priority for the Ministry of the Interior. Thus, new modules on eliminating torture and related investigations were introduced into the curriculum of the faculty of law, safety and public order. Similarly, a series of seminars are available as part of the professional development of prosecutors, judges and police officers in the area of prevention and the fight against torture. According to representatives from the Ministry of the Interior who met with the FIDH delegation, 500 police officers have already been trained, 1,000 additional police officers should be trained in 2013, and 2,000 more over the next few years.
- Provision No. 11/3966 of October 2011 on the terms of explanation of the rights of persons in custody or deprived of their liberty has been approved in order to ensure immediate access to qualified legal services. This provision requires a report to be drafted upon the arrival of an individual deprived of their liberty at a place of detention, containing the date, time, place and reason for detention.
- The Internal Regulation Act No 11/3691 of October 2011 has been adopted, requiring that a forensic examination take place as soon as possible upon the request of the detainee, particularly in cases where body lesions have been caused by the police.

The limits of certain reforms were, however, underlined. Thus, the Ministry of the Interior continues to seek financial support in order to create specialised premises equipped with video for detainee interviews. Notably, a programme supported by the UNDP and the European Council was launched in April 2011 for the implementation of video-surveillance in police stations and detention centres, interrogation rooms and entrances to police stations.

Despite these reforms and Moldovan authorities' acknowledgement that torture is used by the keepers of public order, numerous obstacles still stand in the way of victims' access to justice.

## **B) The difficulties encountered by victims of torture and abuse in obtaining justice**

The FIDH mission identified four major problems associated with access to justice and the provision of evidence regarding torture or inhuman and degrading treatment:

- Making a record of those held in preventive detention at police stations is not always effective.
- Obstacles remain, preventing lawyers from offering adequate services to victims, despite reforms to tackle this.

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24. <http://www.cpt.coe.int/documents/mda/2012-22-inf-fra.pdf>

- Medical expertise, adducing evidence, is not always optimal, despite the abundance of training available from NGOs or international organisations supporting the implementation of the Istanbul Protocol.<sup>25</sup>
- Complaints concerning lawyers and judges often remain ineffective or inadequately punished, creating a general atmosphere of impunity.

### 1. First hours at police stations and legal aid

#### *Recording and the presence of a lawyer*

The presence of a lawyer must be guaranteed within the first hours of detention, and in principle, minutes should be drafted within three hours. A suspected person should not therefore be interrogated during this lapse of time if such individual does not have a lawyer present.

FIDH mission delegates found that about 80% of torture cases take place in police stations.<sup>26</sup>

The Office of the Ombudsman also confirmed that there are still cases of unregistered persons in preventive detention. Such registration is important as the protocol prepared enables the state of the person to be compared upon both arrival and departure. Ion Guzun, a member of the Advisory Council, has emphasised that this moment is crucial:

*“The first 6 or 7 hours may not be recorded. People are beaten and then released without medical examination.”*

Mr. Guzun also explained that whilst he should be able access all documents, including the registry of those arrested, the police systematically request authorisation from their superiors, who do not allow people in unrecorded detention to have legal representation.

Members of the mission were made aware of many cases of arrest and interrogation that took place without the presence of a lawyer, who would only be called afterwards. Thus, Martin Gramatikov and Nadejda Hriptievschi cite the case of a lawyer called during the night and invited to sign the minutes of the interrogation the next morning.<sup>27</sup>

Lawyers from the NGO Human Rights Embassy confirmed the occurrence of this type of practice among court-appointed lawyers. However, according to them, these last few years has seen the number of cases of concealment of victims decrease. Veaceslav Turcan, lawyer and director of Human Rights Embassy, explained the techniques used to conceal persons who have been abused during preventive detention and delay them meeting with their lawyer thus:

*“If it is a court-appointed lawyer, it is not certain that this lawyer is going to look for the victim. If he is serious, he will try to find him/her, but the police may mislead him or ask him to come back later. The search can last a long time, the time to obtain all the proper authorisations, if the lawyer requests them, etc.”<sup>28</sup>*

25. *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2005, United Nations, available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

26. Interview with Vladislav Gribincea of the Legal Resources Center, and Ludmila Popovici of MEMORIA

27. Martin Gramatikov and Nadejda Hriptievschi, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, 2012, available at: [http://www.soros.md/files/publications/documents/LAA%20Assessment\\_en\\_0.pdf](http://www.soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf)

28. Interview with the FIDH mission.

### *The workings and failures of legal aid*

The *Legal Aid Act* adopted in 2007 and effective since July 2008 brought changes to the legal aid system. In particular, it brought greater independence to lawyers, who are no longer appointed by criminal investigation bodies or courts.

Legal Aid is now composed of two parts: a primary aid to provide legal information and assistance with qualified legal consultation and representation before all judicial bodies. A lawyer who wishes to provide legal aid must file an application with the National Legal Aid Council (NLAC) with a request to participate in the legal aid mechanism, a copy of their ID and their licence to practise law. According to Martin Gramatikov and Nadejda Hriptievschi “*these are conditions that are very easy to fulfil, therefore theoretically, each candidate is eligible*”.<sup>29</sup>

Since 2009, court-appointed lawyers must prepare a report on the cases they handle. However, despite these new rules, problems remain about the effectiveness of the legal aid provided by some lawyers, whether in terms of their motivation, their independence or the difficulty to sanction them.

A troubling issue raised by those interviewed is the quality of legal aid provided, especially for decisions on issues at second and third instance. This is due to a lack of preparation on the part of court-appointed lawyers, who often appear on the day of the judgment without having prepared the file.<sup>30</sup>

Two major obstacles to effective legal assistance were reported to the mission: the concentration of lawyers in the capital, Chisinau, and the resultant difficulty in finding qualified lawyers in the provinces. Information from the National Legal Aid Council confirms this imbalance.<sup>31</sup>

Finally, salary is a disincentive for court-appointed lawyers. Indeed, they are paid up to a maximum of 200 lei (about EUR 12) per day, which may be exceeded if more than five cases are processed a day.

Despite changes in the law on legal aid in 2007, the acquaintances between police and lawyers are always on the agenda, the lawyers who are known to be the most accommodating are most often those “recommended” by the police.

Nicolae Bairactari outlined the problems he encountered when he was arrested on the night of 7 to 8 April 2009 in the wake of protests in Chisinau, and a court-appointed lawyer attended his interrogation:<sup>32</sup>

*“He told me that to resolve the situation it was better to confess. I explained him everything about how I found myself in Chisinau, but he told me to just sign all documents admitting my guilt. [...] He also called my parents asking them for 5,000 lei (EUR 300) because I risked a sentence of 15 years in prison. Later, my father told me that the lawyer would take money also from other families and then stop any communication. My father demanded that I be released before paying [...] We filed a complaint against the lawyer but he is still practising.*”

As all lawyers, public or private, are members of the Bar, it is up to this body to regulate such issues.

29. Martin Gramatikov and Nadejda Hriptievschi, *Impact Assessment of the Moldovan Law on State Guaranteed Legal Aid*, 2012, p. 23. Available at: [http://www.soros.md/files/publications/documents/LAA%20Assessment\\_en\\_0.pdf](http://www.soros.md/files/publications/documents/LAA%20Assessment_en_0.pdf)

30. Interview of Vladislav Gribincea of the Legal Resources Center of Moldova.

31. The website of the National Legal Aid Council. Available at: <http://www.cnajgs.md/en/legal-aid-providers.html>

32. Interviewed during the FIDH mission in Moldova.

### *Difficulties in punishing corrupt lawyers*

The Moldovan Bar Association has an ethics and discipline committee which reviews complaints against lawyers. It is composed of 11 members. However, several people spoken to by the mission deplored its passivity, the low number of cases admitted for review, and the fact that misconduct was very rarely met with the revocation of a lawyers' licence to practice. According to data provided to the Soros Foundation Moldova in May 2011 by the Council of the Union of Lawyers, between May 2009 and May 2010, the Committee considered 179 complaints of which only two were admitted, and between May 2010 and May 2011 only ten cases were considered eligible from a total of 192.<sup>33</sup>

In addition to the difficulties faced by victims in obtaining effective legal assistance, another difficulty lies in the integrity of the medical expertise which may be significant in cases of violence.

## **2. Medical expertise in temporary detention centres**

### *Changing medical findings*

Any person arrested must be examined by a doctor when any visible indication of possible torture is present. A resultant forensic report can bring hard evidence leading to justice. A lawyer may require an alternative forensic evaluation. Doctors conducting evaluations in detention centres are not connected to the department of forensic evaluations.

However, members of the mission received testimony regarding changes to medical findings. Vitalia Zama, lawyer and member of the NGO Lawyers for Human Rights therefore insists that doctors who alter their medical findings should be held liable, citing a complaint brought before the European Court of Human Rights (ECHR) on this matter. Nevertheless, despite the existence of an ECHR decision, doctors in Moldova continue to be free from punishment for such actions.

The case of Léonid Ghimp, on which the European Court of Human Rights rendered a final judgement in January 2013,<sup>34</sup> provides a further example of the inaccuracy of medical evaluations. According to a police report, Léonid Ghimp was found intoxicated not far from Ciocana police station on the night of 10 December 2005 (according to his relatives, he would have been dropped off by a taxi). Having been beaten at the police station, Mr. Ghimp was released the next morning at 11:00am and went home, only to be urgently admitted to hospital the same night. Léonid Ghimp died on Sunday 12 December at 6:35am. The first two autopsies and forensic reports, dated 23 January 2006 and 31 March 2006, respectively, found the cause of death to be a blunt object.

On 9 July 2007, the district court of Ciocana convicted the police officers responsible for the abuse of Léonid Ghimp. However, these same officers were acquitted on 6 June 2008, because the medical expert (IC) of the 31 May 2006 report retracted his findings stating that Léonid Ghimp's wounds would have been caused before his detention, i.e. between 9 December at 6:35am and 10 December 2005 at 6:35am. The court of appeal appointed another medical expert who confirmed in a report of 1 November 2010 the statement of IC, who in the meantime had been appointed head of the National Institute of Forensics.

Another more recent case is that of the deceased Valeriu Boboc. This case is symbolic of the violence marking the parliamentary elections of April 2009. According to the police, on

33. Cited by Ed Cape and Zaza Nomoradze in *Effective Criminal Defence in Eastern Europe*, 2012, Legal Aid Reformers Network & Soros Foundation-Moldova, p. 329.

34. *Ghimp and others v. the Republic of Moldova*, Application no. 32520/09, 30 October 2012, European Court of Human Rights, available in English at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114099>

the night of 7 to 8 April 2009, Valeriu Boboc, a young man protesting against the fraudulent elections, died after inhaling a toxic gas. However, the autopsy conducted a day after his death revealed numerous wounds, bruised ribs and internal bleeding. On 15 June 2009, Mr. Boboc's body was exhumed for another autopsy upon the request of the deceased's family. A British expert found that blows, probably inflicted by rifle butts, were the cause of the deceased's death. One year after the facts, Valeriu Boboc posthumously received the decoration of the Order of the Republic, issued by presidential decree. On 6 April 2010, the authorities announced that Valeriu Boboc's alleged murderer, a member of the police force, had been arrested, without providing further details.

According to Human Rights Embassy, lawyers are entitled to call upon the services of an independent medical expert,<sup>35</sup> but, in reality, there is little chance of obtaining one without direct agreement from the authorities.<sup>36</sup> Ludmila Popovici, Director of Memoria,<sup>37</sup> a Moldovan NGO that works to rehabilitate victims of torture, insists on the importance of medical evaluations, without which it is very difficult to bring a case to justice. According to her, the authorities continue to ignore independent medical examinations.

It is also essential that the medical evaluation is carried out quickly so that it may be useful. Thus, Thomas Sergeï, detained in Lipcani prison, lodged a complaint at the office of the prosecutor at the beginning of 2013 for the abuse that other detainees had inflicted on him. No follow-up was ever made on his complaint, because he was only examined by a doctor almost two weeks after being beaten.

According to the director of Forensic Services, Ion Guvsinov, the past errors in evaluations were due primarily to a lack of experience among medical experts, who now have a better understanding of the Istanbul Protocol process. Training is in fact available through the UNDP and relations have been strengthened with the NGOs.

#### *The fear of reporting abuse*

Victims of abuse often fear testifying against their aggressors. Thus, Nicolae Bairactari, despite physical evidence, did not report abuse suffered during his transfer to the temporary detention centre (SIZO) No 13. He said:

*“At night, they took us out of the room. In the yard, there were police officers with dogs and clubs and we were hit again. I was taken to another place, I understood after that it was SIZO No 13, we were hit with clubs as we went outside. I had a medical examination. The doctor said that I had bruises on my back, but I didn't want to complain, I was afraid, we were all afraid.”<sup>38</sup>*

### **3. Immunity of judges**

Only the Superior Council of the Magistracy can agree to open a criminal case and to request the arrest and detention of a judge for a serious crime.

The Legal Resource Center,<sup>39</sup> a Moldovan NGO, emphasises that since 2001 no corruption case has ever been launched against a judge. Furthermore, a complaint may be lodged following the improper conduct of judicial proceedings. However, the majority of these complaints do not

35. Art. 142, Criminal Code of Procedure.

36. UNDP and EU, *Feasibility study on the forensic infrastructure in the Republic of Moldova and Findings of the external audit of the Centre of Forensic Medicine of Ministry of Health of the Republic of Moldova*, December 2011, p.67.

37. Interviewed during the FIDH mission.

38. Interviewed during the FIDH mission.

39. Briefing for the second round of the EU-Moldova Human Rights Dialogue, 24 April 2012.

make it past the first stage conducted by the president of the High Judiciary and therefore are not referred to the disciplinary committee.

Nicolae Bairactari states that several complaints were filed after 7 April 2009 when the courts moved to police stations and hearings were held in camera:

*“The hallways were filled, it was almost impossible to pass, they took me into a room where there was a judge, his assistant, a lawyer and a prosecutor. They handed me a sheet where it was written that my detention was extended by 30 days.”<sup>40</sup>*

## **C) Mixed results in 2012**

### **1. Few convictions following the events of April 2009 reinforces the impunity of perpetrators of torture**

A very small number of police officers were convicted following the post-electoral violence of April 2009. These events were marked by the inhuman and degrading treatment of protesters during arrest and preventive detention. The police officers convicted were predominantly charged with “abuse of power” and not torture.

There are very few statistics on prosecutions. According to a Promo-LEX publication,<sup>41</sup> in December 2010 two police officers sentenced to two and four years in prison, respectively, were acquitted by the appellate court of Chisinau. On 4 May 2011, three other police officers were sentenced to two years in prison for abuse of power, but given suspended sentences. Finally, on 15 July 2011, two police officers were convicted of torture and sentenced to 5 and 6 years in prison. In all, on 17 April 2012, of the 58 cases reviewed for abuse, 19 police officers were acquitted and only seven convicted.<sup>42</sup>

This number of convictions seems very low in comparison to the number of persons suspected of having taken part in abuse, particularly during the questioning. Nicolae Bairactari, arrested after the protests of 7 April 2009, said:

*“I took a minibus to get home where on board were adult men and grandmothers... It was stopped by men wearing masks who climbed aboard armed with pistols and automatic weapons, and said that they would shoot if any one of us moved. [...] We arrived at a circular yard, without knowing where we were. We had to put our hands up in the air and we were each bludgeoned in the back. We had to stand for four or five hours, facing the wall, hands against the wall, it was very cold, we had frozen hands and legs and when they saw us move our hands they beat us in the back [...] They were bringing people one by one through a door which was immediately closed, I heard noises. My turn came, they pushed me into a corridor where six men stood on each side, I tried to cover my head to protect myself from the beatings. Down the hall stood a large man with a moustache, he had a very long white baton, he hit me in the front and I fell back. [...] In another office, I was struck once again, they forced me to undress and do push-ups.”<sup>43</sup>*

Since 2009, Mr. Bairactari has sought to obtain reparation by raising both a civil case and a second criminal case in order to ensure that the perpetrators of the violence inflicted upon him be

40. Interviewed during the FIDH mission.

41. Report on Human Rights in Moldova 2009-2010, Promo-LEX, Chisinau, 2011, p.391.

42. Пытки и жестокое обращение в Молдове. Правовой Ресурсный Центр. Брифинг для второго раунда Диалога по правам человека ЕС-Молдова, 24 апреля 2012 г.

43. Interviewed during the FIDH mission

brought to justice. These cases have sought to hold both the police chief and the former Minister of the Interior responsible. However, three years later, the prosecution has still not taken place having been subject to delay three times, officially due to illness of either the accused or the judge.

The only outcome of Mr. Bairactari's litigation strategy so far has been a civil award for 55,000 lei (about EUR 3,300) for moral damages. This was finally granted by the Supreme Court following a trial decision ordering 80,000 lei in damages and an appeal at which only 5,000 lei was awarded.

## **2. Despite an increase in the number of complaints of torture, investigations remain rare**

Complaints of abuse by police officers may be addressed directly to the Ministry of the Interior and are then forwarded to the department of security and internal investigations. These inquiries may lead to disciplinary action and where the facts are found to substantiate a complaint, the Ministry of the Interior may later forward them to the prosecutor.

However, few complaints result in prosecution. During the first quarter of 2012, 159 complaints were recorded of which 12 concerned abuses inflicted by officials of the Ministry of the Interior. Among them, only one case was confirmed and the police officer involved punished. Of the remaining eleven 11 sent to the prosecutor, ten are being reviewed.<sup>44</sup> Moreover, in 2011, 958 complaints were filed and in only 108 cases were criminal proceedings commenced. These included 28 proceedings for torture (art. 309) and 58 for abuse of power (art. 328), 19 for acts of violence against a person belonging to the armed forces and three for abuse or excess of power or failure in the exercise of authority (art. 370).<sup>45</sup> Only 36 of these cases were the subject of legal proceedings.

During the first half of the year 2012, 526 complaints (including on-going complaints from the previous year) were recorded.

Among them:

- judgments denying referral to criminal prosecution were rendered in 388 cases;
- criminal prosecutions were commenced in 68 cases;
- on 1 July 2012 internal investigations were still on-going in 70 cases.

The 68 cases that were referred to criminal prosecution during the first quarter of 2012 were distributed as follows:

- 29 criminal cases under Article 309 (1)
- 25 criminal cases under Article 328 (2) and (3);
- 13 criminal cases under Article 368 (physical violence against subordinates in the army).<sup>46</sup>

The low proportion of legal proceedings launched is related to the fact that investigations are not conducted extensively enough to collect all the necessary evidence. This is a violation of Article 3 of the European Convention of Human Rights.<sup>47</sup> The particularly high acquittal rate gives perpetrators of torture a sense of impunity.

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44. Response of the Government of the Republic of Moldova to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Moldova from 1 to 10 June 2011, CPT/inf. (2012)22, 28 August 2012, available at: <http://www.cpt.coe.int/documents/mda/2012-22-inf-fra.pdf>

45. Ibid.

46. Ibid.

47. Case of MĂȚĂȘARU AND SAVIȚCHI v. MOLDOVA, (Application no. 38281/08), judgement of 2 November 2010



Generally, acts of torture and inhuman and degrading treatment tend to occur during preventive detention in police stations rather than in places of detention where the number of complaints of ill-treatment is less. Although the Moldovan government has embarked on reforms of the prison system in order to align itself with European standards, deficiencies in the treatment of detainees persist.

## **D) Conditions of detention**

At the time of the FIDH mission, there were 6,521 detainees in 18 Moldovan penitentiary institutions under the Ministry of Justice.

Article 72 of the Moldovan Criminal Code divides the penitentiary institutions where prison sentences are served into three categories:

- minimum security prisons for offences committed by negligence (unintentional);
- medium security prison for intentional offences that are of low gravity (maximum two years imprisonment), average severity (maximum 5 years imprisonment) or severe; and
- maximum security prisons for people convicted of crimes of particular gravity (more than 15 years' imprisonment) or exceptional gravity (life imprisonment), as well as repeat offenders.

### **1. Visit to the penitentiary institutions**

The FIDH mission, accompanied by a member of the Human Rights Centre, visited three penitentiary institutions in three different locations. These included a women's prison and a prison for adults and minors.

**Women's prison No 7 in Ruska** is in the Hincesti district and houses 290 detainees of whom two thirds are in the general regime and one third in the "initial" regime (a detention regime that provides freedoms and benefits, such as the ability to roam freely and use money within the confines of the prison). This institution was renovated thanks in part to cooperation between the Department of Prisons and the Moldovan Ministry of Justice and in collaboration with the Swiss Cooperation and Development Agency and the NGO Caritas.

Detainees under the general regime are held on three floors with between two and six prisoners per cell. They have access to a hygiene facilities block which includes a bath and half-dozen showers. According to an inmate on the first floor, these facilities are sufficient if all the showers work; they get hot water twice a week and otherwise heat up water in the room. Mission delegates noted that in different parts of the prison there was a sulphurous smell coming from the drains. Detainees told mission delegates that water has to be left to decant for a long time to reduce the smell.

On the ground floor of the building, detainees under the "initial regime" are held four to a cell and are entitled to two hours of walking per day, morning and evening. This floor also has similar cells for inmates who have broken prison rules.

In one of the cells visited by the mission, delegates met three young women convicted for the first time and an older repeat offender (second conviction). And yet, part 1 of Article 205 of the Criminal and Civil Procedure Code of the Republic of Moldova obliges prison authorities to separate first time offenders from repeat offenders: "persons convicted for the first time should be separated from those who have already been convicted and served a sentence in prison and have a criminal record".



Kitchen in the penitentiary institution in Lipcani.





Bathroom in the penitentiary institution in Lipcani.

A second building houses the medical office and detainees with children. These children can remain with their mothers until the age of three and a half years.

**Penitentiary institution No. 2 in Lipcani**, is located in the district of Brien and houses a total of 90 detainees, divided into two very old buildings, one for adults and one for children and young adults up to 23 years old. Of 37 youths detained, 17 were minors. The building for adults also houses detainees under the semi-free regime. Some inmates are placed in the “closed” regime due to their past, which may result in them being subjected to violence or reprisal from “regular” prisoners (e.g. former security forces officials).

Prison authorities have assured members of the mission that adults and young prisoners never come into contact with one another. The first *“have a dining room on the first floor of their buildings where meals are brought to them prepared in the kitchens of another building while the young detainees take their meals in a room adjoining the kitchen.”*

This prison has very large cells, such as a room 66 square meters for fifteen (15) inmates and another of 90 m<sup>2</sup> for 20 inmates. The three dormitories for young prisoners are those in the greatest need of repair: the floor is concrete with no covering, the beds are along the walls and there is no wardrobe, shelf or table, only a few inmates have bedside tables. The director of the penitentiary attributes this lack of furniture was to “recent works”.

Outdoor  
toilets in the  
penitentiary  
institution in  
Lipcani.

The sanitation facilities are particularly dilapidated in the building for adults, with only a “bathroom” with Turkish toilets and wash basin on the ground floor for all detainees, supplemented by outside toilets. All these facilities are in a deplorable state. While communal showers were installed in another building, renovated by a foreign NGO, to which prisoners have access once a week, there is no separation between the showers and there is therefore no possibility to wash with any modicum of privacy.



**Institution No 18 in Branesti**, in the district of Orhei houses 500 detainees. Significant works were also done on the cells and the common living areas: dining room, gym and rooms for long visits where prisoners can meet their families in privacy.

## 2. Violence against the detainees

### *Complaints and requests for transfers from detainees*

Ludmila Popovici, director of the NGO Memoria, conducted a survey among juvenile and young adult prisoners confirming that guards had wide decision-making and arbitration power, which they sometimes appear to abuse.

In 2012, 14 complaints were made by detainees of which 12 were handed over to the general prosecutor. The prosecutor has opened two investigations from Penitentiary Institution No. 13 concerning violence against women. One of them resulted in a conviction on 7 December

2012.<sup>48</sup> The perpetrator was an employee of Penitentiary Institution No. 13 who was demoted initially before being transferred to Prison No. 5. He was finally sentenced under Article 328 of the Criminal Code of the Republic of Moldova for abuse of authority with violence to one year in prison with a restriction on practising his profession for three years.

According to the people interviewed by the mission, the majority of complaints relate to the conditions of detention and requests to change institution. However, according to the prison department, requests to change institution are often “little justified” given the size of Moldova, and are qualified as “prison tourism.” Thus, no action is taken regarding the majority of requests, except transfer requests for medical reasons. The inmates at Lipcani questioned FIDH delegates about this and complained about not being able to be transferred to other institutions, such as those nearer to their homes, or when in conflict with other inmates or for other personal reasons. For example, inmate T., a former policeman, complained that the administration did not consider any of his requests for transfer to another prison when he was constantly being attacked by other inmates. Thus, for example, he was beaten when his parents failed to send 9,000 lei (EUR 600) in time for the “common fund” imposed by the criminal community of the prison, paid into the account of the company responsible for supplying the prison with wood. The receipt of the payment obtained by inmate T’s mother is difficult to use to demonstrate the extortion to which he fell victim.

According to the administration, inmate T’s transfer is practically impossible because the prison at Lipcani is the only prison where former law enforcement officials can serve their sentences.

#### *The possibility of being held in segregation for safety reasons*

A change of cell may officially be obtained upon request if justified by the inmate’s personal safety needs. The prison administration may itself take the decision to affect a cell transfer if there is a conflict between prisoners, knowing that large dormitories promote the development of inter-prisoner violence.

Responding to the European Committee for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment’s report,<sup>49</sup> the Moldovan Government assessed the number of detainees requesting greater protection for the following reasons to number 532:

- conflict between detainees;
- theft of articles and goods belonging to other detainees;
- mismatch conditions of detention and the number of inmates in the cell;
- debts to other detainees; and
- collaboration with the justice system.

However, when an application for protection is granted, a detainee may be placed in disciplinary quarters with three other detainees until the inmate requests to be returned to shared cells, as the mission observed in Branesti prison.

### **3. Life on the inside**

#### *Little for young prisoners at Lipcani to do*

According to the person in charge of the Lipcani correctional facility, young prisoners can access two outside sports fields subject to a predetermined timetable, as well as an inside room, a games room and a library.

48. [http://ru.publika.md/link\\_714911.html](http://ru.publika.md/link_714911.html)

49. <http://www.cpt.coe.int/documents/mda/2012-22-inf-fra.htm>



Sports hall in the penitentiary institution in Lipcani.

On the morning the FIDH mission visited the facility, however, the young inmates gave the impression of having very little to do, with only two of them using the small, unattractive library, and the others being either outside or in their dormitories.

As for training programs, there are 12 instructors employed to offer courses. However, these instructors are not real teachers and belong instead to the prison's administration personnel. In the dormitories, there were no indications that any classes were actually taking place (no workbooks, textbooks...).

A workshop offers professional training in woodwork, but given its small size, there were only four people working during the mission visit.

### *Prison work programs*

On top of training courses, some prisoners work for an income. This is particularly important for the most vulnerable among them: those who receive no financial help from their relatives. In Ruska prison, the women work in a weaving workshop, while the detainees at Lipcani work in the fields. At Branesti, the prisoners work in a quarry and in vineyards. Any work the prisoners do inside or outside the prison, in the kitchen for example, earns them 75 lei per day (about 5 euros) and also leads to a reduction in their sentence. According to Article 238 of the Civil and Penal Code<sup>50</sup> it is possible for the prisoner to gain a four-day sentence reduction for every three days worked. Prisoners working in the fields or those working under difficult and dangerous conditions, according to a predetermined list, may get a three-day reduction for every two days worked.

However, because state funds are so tight, not all the prisoners who want work are able to. In fact, securing work has become a way of encouraging prisoner good behaviour. Those who infringe prison rules are denied the right to work.

In Ruska prison, a young female detainee on her first prison placement complained that because she was unable to access funds from family outside, she had been unable to buy soap from the prison shop where basic necessities are sold and where prisoners can make special purchase requests. Prisoners are largely dependent on what their relatives can send them, since any humanitarian assistance is rare. Women, for example, only receive six sanitary products per month. All the prisoners wear their own clothes, and several of them said they had only been able to get clothes thanks to NGO help.

Furthermore, inmates at Ruska prison said that special clothing for prisoners working in the workshops had only recently become available.

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50. Available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=336538&lang=2>

### *Parcels and visits*

There was no limit to the weight or frequency of the parcels prisoners were able to receive, except when they were in an isolation cell, when nothing came through.

Long, 72-hour visits are only authorised four times a year, and only for a legitimate partner or children. In addition, two long visits can be added for good behaviour.

In the female prison, “open door” days are organised twice a year so that families can meet. Children who have been placed in an orphanage can also visit their mother in prison every six months.

### *Isolation cells and punishment*

In the three prisons visited, the isolation cells were similar and very old. Inside there were two iron bars chained to the wall as a bed base which had to be kept up during the day.

In Lipcani prison, mattresses are removed from the cells in the morning at 6 am and brought back at 10pm. The maximum stay in an isolation cell is seven consecutive days for minors and 15 days for adults.

The isolation cells in Branesti prison were undergoing renovation during the mission visit, with renovation also due to start soon in Ruska prison. A total of 12 women had been placed in these cells over the year. Other punishments are used more often, such as non-payment for work. This latter form of punishment may be considered forced labour, which is prohibited under article 1 of ILO Convention (No. 105) concerning the Abolition of Forced Labor.

## **4. Access to medical and psychological care**

The medical service provided in penal institutions is organised by the Justice Ministry. The mission was assured that in every institution there is a psychologist, a doctor and a dentist. Whenever an inmate arrives at a facility, he/she undergoes a medical examination and is placed under quarantine for two-weeks. Those who suffer from tuberculosis are separated from others.

### *Access to medical care*

In the Branesti and Ruska facilities, at least one doctor is present during the day (between 9am and 5pm). If there is a nighttime emergency, the emergency services are called. At Lipcani, only a nurse was on duty when FIDH mission members visited.

Medical services are clearly limited. For example, there was no place reserved for dental care or the taking of X-rays. A lack of services and information translates into a significant increase in the number of prisoners diagnosed with AIDS: between 1998 and 2008, the figure went from 6 to 168. In the Ruska women’s prison, a gynaecologist attends one day per week, which seems very little given the number of prisoners. The supply of medication is likewise restricted. One prisoner reported to the mission that no matter what her symptoms were, she was always given paracetamol. Another explained that if relatives brought medicines in, these were kept by the doctor for the sole use of that particular person.

### *Psychological care*

Psychologists are on hand but they seem not to have the inmates’ trust. They are not considered to be independent or professional, and are in fact part of the prison administration. A young woman in Ruska prison thus explained that she could not touch on personal details during her consultations. Someone else said that after numerous requests, she was finally given a consultation that lasted a mere 15 minutes.

In Lipcani prison, there were two psychologists who set out to see 5 or 6 minors each day, usually to deal with their personal problems or to attempt to rebuild links with their families.

However, the fact that the psychologists were in uniform seems inappropriate for fostering prisoner confidence.

## **5. Prison release**

### *Requests for conditional release*

An internal commission examines prisoner requests for conditional release, taking into account the applicant's declarations and their behaviour as reported by the area supervisor and the social worker. However, according to a representative of the Department of Corrective Services, "*it is easier to come to an arrangement with the court that decides on applications for conditional release*".

The criteria for conditional release lack transparency and this type of release seems rare. One female prisoner said that the answer is often a negative one even if no infraction has been committed during detention, and delays are long. The prisoner had been waiting for an answer to her appeal for eleven months when the mission made its visit.

Another problem raised was the inability of inmates to have their sentence reviewed when the penal code has been changed and the punishment reduced. This was the case for a female prisoner who had served ten years of her fifteen-year sentence, even though the prison sentence for the type of crime she had committed was now only seven years. This contradicts article 15(1) of the International Covenant on Civil and Political Rights, which stipulates that after a sentence has been brought down, in the event that the law now sets a lighter punishment, the prisoner should be afforded the lesser penalty.

### *Rehabilitation and preparation for life post-prison*

In principle, six months before the end of their prison sentence, prisoners should receive training to help them re-adapt to normal life and thus avoid re-offending.

Of the three adult establishments visited, only Branesti authorised short and temporary discharges; four prisoners who had benefited from this possibility were flagged up to the mission.

Most prisoners were not concerned about re-adapting to life on the outside. When questioned about this, one female prisoner, jailed for nine years and finishing her sentence in four months, seemed to have no definite idea about the current cost of living, such as the price of a bus ticket.

Abuse, and the relative ease with which the police and judicial authorities place people in detention, contribute to a high percentage of people in the prison population. In Moldova, for example (not including Transnistria), the number of people denied their liberty has risen to 175 per 100,000 inhabitants,<sup>51</sup> twice as high as the average for member countries of the Council of Europe. However, this figure appears to dwindle in significance when compared to the prison population in Transnistria, which rises to a record 564<sup>52</sup> per 100,000 inhabitants. This considerable difference is symbolic of the conditions and treatment afforded people in prison in the region.

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51. <http://www.idcr.org.uk/wp-content/uploads/2010/09/WPPL-9-22.pdf>

52. *Report on Human Rights in Moldova 2009 – 2010*, Promo-LEX, Chisinau 2011, p.27.



# IV. The specific case of Transnistria

## A) The judicial framework

### 1. Status of Transnistria

Transnistria, with a land area of 4163 km<sup>2</sup>, is located on the left bank of the Dniester River, on the official border between Moldova and Ukraine. This region declared unilateral independence on 2 September 1990 under the name “Moldavian Soviet Socialist Republic of the Dniester”. Later renamed the “Moldavian Republic of the Dniester” in November 1991, Transnistria has to this day not been recognised by any country or body in the international community, including Russia.

Since the signing of a ceasefire with the Moldovan Republic in July 1992, various parties have tried to negotiate an end to the crisis. Thus, since 1997, the OSCE has been overseeing the conflict resolution process, known more commonly as the “5+2” format, in which seven parties participate: the Republic of Moldova, the Transnistria region, Russia, Ukraine, the OSCE as mediator and the United States and the European Union as observers.

The *de facto* authorities in Transnistria function according to the model of an entirely separate state with its own institutions: a parliament, a supreme council, an elected president, ministers and its own currency.

#### *Constitution*

Transnistria has a constitution adopted following a referendum held on 24 December 1995 and promulgated on the 17 January 1996. The following fundamental principles apply:

- Article 16 affirms that the protection of human and citizens’ rights and liberties is obligatory for the *de facto* authorities of Transnistria.
- Article 22 affirms that no one can be considered guilty of a crime unless declared guilty by law following judgement by a court. The accused is not obliged to prove his/her innocence.
- Article 46 guarantees everyone judicial protection of their rights and liberties, and enshrines the right to recourse in a court of law against any illegal action or decision taken by state organs, civil servants or public associations.

Transnistria’s constitution conflicts with that of Moldova on a number of points, in particular the abolition of the death penalty. In this respect, article 19 guarantees the right to life but stipulates that the death penalty may lawfully be applied as an exceptional measure, by decision of the court, for a serious life-threatening crime. The Supreme Council of Transnistria, in its decision of 1 January 1999, placed a moratorium on capital punishment, but it has not been abolished as it has in Moldova.

#### *International treaties*

Given that Transnistria is not recognised as an independent State by the international community, it cannot in fact be a party to international treaties. However, the Supreme Council of Transnistria affirmed in its resolution no 226 of the 22 September 1992, that, irrespective of its official

non-membership of the international organisations which drew up the following covenants and conventions, they nonetheless apply in Transnistria:

- The International Covenant on Civil and Political Rights
- The European Convention on Human Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention for the Prevention and Punishment of the Crime of Genocide

It should be noted that among the conventions cited, there is no mention of the Convention against Torture and Other Cruel, Inhuman or Degrading Crimes, nor the European Convention for the Prevention of Torture.

## **2. The Republic of Moldova's obligation to ensure the protection of human rights in Transnistria**

Although Transnistria considers itself to be an independent State, the Republic of Moldova is responsible for the observance of human rights in this territory.

Moldova's responsibility in this regard was particularly highlighted and emphasised by the ECHR and the UN Human Rights Committee.

In its final observations for November 2009, the Committee emphasised that despite Moldova's difficulty in exercising effective control over Transnistrian territory, the Moldovan State retains the obligation to guarantee respect for the rights recognised under the applicable treaties, especially in the International Covenant on Civil and Political Rights, with respect to the population of Transnistria.

The European Court of Human Rights (ECHR), in its decisions, despite the absence of recognition of Transnistrian independence, recognises not only Moldova's responsibility for this territory, but also deems Russia to carry some responsibility by virtue of its military and economic presence on the territory.

In the July 2004 case of *Ilaçu v. Moldova and Russia*, the ECHR based its decision on article 1 of the European Convention on Human Rights, which states that "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention". It found that the jurisdictional competence of Moldova extended throughout its territory, despite its limited State authority in Transnistria. The Court therefore considered that the Republic of Moldova was obliged to take all diplomatic, economic and judicial measures, or others, in accordance with international law, to ensure the rights guaranteed by the Convention. It also found that Moldova would be liable for any breach.

The ECHR also ruled that under to article 1 of the Convention, Russia's on-going military presence in Transnistria renders it the *de facto* financial supporter of the authorities, thereby giving rise to Russia's own responsibility in respect of the territory.

In its decision of 19 October 2012 concerning the case of *Catan and others v. the Republic of Moldova and Russia*,<sup>53</sup> the ECHR confirmed Russia's unique responsibility for protecting human rights in de Transnistria by virtue of its effective control.

### *Collaboration of the Republic of Moldova with the de facto authorities in Transnistria*

Although the authorities in the Republic of Moldova insist that they have no control over Transnistria and do not recognise its self-proclaimed authority, informal collaboration between the Republic of Moldova's law enforcement arm and those of Transnistria nevertheless exists.

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53. [http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-114222#{%22itemid%22:\[%22001-114222%22\]}](http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-114222#{%22itemid%22:[%22001-114222%22]})

Whilst the number of collaborative endeavours between these entities is undocumented due to their unofficial nature, in 1999 Moldova's constitutional police force and the Transnistrian militia signed a cooperation agreement to combat criminality and human trafficking.

Thus, for example, Ilie Cazac, an employee of the fiscal inspectorate in Tighina and accused of spying for the Moldovan State by the Transnistrian authorities, was arrested by Transnistrian special services even though he was on Moldovan territory at the time, specifically the high security zone. This zone acts as a buffer between the Republic of Moldova and Transnistria in which only the Transnistrian militia and the Moldovan police have the right to be present, since it is a demilitarised zone in which the presence of military and paramilitary forces is forbidden.

Ala Gherman, the sister of a Moldovan citizen imprisoned in Transnistria, explained to the mission that:

*“[the de facto authorities] approached the Moldovan Ministry of the Interior, saying that a case had been opened against my brother, and here [in Moldova], they sent all sorts of information about our property and income, even those of my husband and his parents. [...] Even though we live on this side [Republic of Moldova], they keep us under surveillance, I always see the same car with tinted windows, registered in Transnistria, I told the police about it.”*

### **3. Its own judicial system**

Transnistria has its own legal system which enacts local laws substantially corresponding to Russian law. This applies particularly to the local Code of Criminal Procedure, the local administrative code, the local penal code, and the local law relating to the detention of suspected or sentenced offenders. Transnistria has a number of courts, including a constitutional court, an economic tribunal and six territorial courts of first instance. The independence of judicial power is questionable, given that the president nominates judges for five-year terms, and that they can then be appointed for life.

Transnistrian legislation does not conform to regional or international norms regarding the prohibition, punishment and prevention of torture. Furthermore, because of its non-recognition as an independent State, the illegality of its courts of justice and the judgments they render undermine the right to a fair trial.

In fact, the courts and their judicial representatives are functioning illegally in so far as Transnistria and its authorities remain unrecognised. Accordingly, the Promo-LEX Association, in its 2011 report,<sup>54</sup> highlighted the low credibility and application of the law in practice. This regional situation has led to the unlawful detention of a large number of people following illegitimate judgments rendered by unlawful courts of unrecognised competence lying out with international oversight and accountability. In its conclusion to its 2012 report on the Transnistria region<sup>55</sup> Promo-LEX commented:

*“The uncertain situation and the lack of tools and mechanisms protecting human rights and fundamental freedoms in Transnistria foster confusion, and continue to hold the population captive.  
The lack of measures to guarantee the right to a fair trial transforms the judicial system into a repressive machine pitted against the region's population.”*

54. [http://www.promolex.md/upload/publications/en/doc\\_1340372019.pdf](http://www.promolex.md/upload/publications/en/doc_1340372019.pdf)

55. [http://www.promolex.md/upload/publications/ro/doc\\_1355473506.pdf](http://www.promolex.md/upload/publications/ro/doc_1355473506.pdf)

### **a) Legal loopholes**

#### *No definition of torture*

Until October 2012, the Transnistrian Penal Code did not define torture or ill-treatment. Victims were unable to report any act of torture committed by local authorities, particularly the local militia.

Thus, although Article 21 of the Constitution condemns torture, according to the Transnistrian ombudsman, Vassily Kalko<sup>56</sup> the fact that no article of the penal code defines or punishes such acts means that it is treated as a “subjective notion”. The only articles Mr Kalko could conceivably refer to was that relating to the abuse of power, or article 114 (inflicting physical or psychological suffering).

In October 2012, article 114 of the Penal Code was amended with the introduction of a note defining torture as an act causing physical and mental suffering so as to obtain by force statements or actions against a person’s will and with the aim of punishing or inflicting punishment on someone. However, this definition is more restrictive than the definition recognised in international law. Furthermore, there is no punishment applicable to cases of torture, nor a mechanism by which complaints may be lodged or torture prevented.

#### *Unlimited extension of arrest warrant*

Although the Code of Criminal Procedure stipulates that a criminal investigation must not go beyond 18 months and that the time limit in which the case must be heard cannot exceed 6 months, in practice an arrest warrant can be indefinitely extended for a period of 2 to 6 months each time. The court of first instance can hear a case without being subject to any time limit and without regard to the state of health of the accused or other reasons negating the justification for preventive detention. Under this framework, there are many abuses relating to arrests, investigations and detentions, especially because Transnistria does not have a legal regulatory authority.

Mission interviewee, Ernest Vardanean<sup>57</sup> was arrested on the 7 April 2010 and saw his detention extended three times. On 9 April 2010, two days after his arrest, the court in the town of Tiraspol sentenced him to two-months of detention until 7 June 2010. Then, from the beginning of June, this detention was prolonged by the same court and the same judge twice more for a month at a time and finally for a third time, this time for a period of two months, at the end of July 2010.

Vardanean’s request on the 27 April 2010 to be placed under house arrest was refused because he was suspected of “having collaborated with Moldovan special services”.

Another case is that of Vitalie Eriomenco,<sup>58</sup> who was arrested on the morning of the 29 March 2011. Mr Eriomenco was initially placed in temporary detention for a period of 60 days by the Tiraspol tribunal. This was extended on 26 May 2011 until 29 July 2011 without regard to his planned admission to hospital on 8 June 2011.

Eugene Popushoi<sup>59</sup>, a seriously ill individual on haemodialysis, has been waiting for his judgment since the 1 November 2011 in the temporary SIZO detention centre in Bender with no possibility of release or a change in his detention status.

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56. Interview during the FIDH mission

57. Interview during the FIDH mission

58. Interview with Ala Gherman, the sister of Vitalie Eriomenco.

59. Journal *‘Tchelovek i ego prava’ (Human Rights)*, 25 July 2012.

## **b) Recent reforms**

Recently Transnistrian law has been amended. In order to prevent an explosion in the prison population and to «humanise» the Penal Code, a reform was launched in December 2011 concerning the punishments applied to minors and the decriminalisation of certain crimes not considered a danger to society by replacing detention with fines, release on bail or correctional work.

## **4. Measures to prevent torture**

### **a) The role of the Ombudsman**

On the ground, currently, the main measure taken to guarantee respect for human rights in Transnistria was the enactment of Law No. 657-K3-II on 3 November 2005, and coming into force on 1 January 2006, creating the office of Ombudsman in Transnistria. The Transnistrian Supreme Council chose Vassily Kalko as the first Ombudsman on 7 June 2006. His mandate was renewed on 6 July 2011 and allows him to visit detention centres throughout the territory.

Mr Vassily Kalko did not opt to make prison improvement a priority. In an interview with the FIDH mission, he explained that “each prisoner already costs 70 roubles per day and that pensioners, children and the sick are a higher priority”.

In the absence of a torture prevention policy, monitoring and investigation are the sole preserve of the ombudsman. He himself cannot initiate complaints about inhuman and degrading treatment, as any information he has must be sent to the Transnistrian Office of Public Prosecutions and, since 28 September 2012, to the Committee of Enquiry<sup>60</sup> recently created by presidential decree.

The Ombudsman, however, does not have independent statistics on the number of cases involving ill-treatment. Likewise, Vassily Kalko seems to consider torture and mistreatment cases to be rare:

*“We are a small country, everyone knows everyone else by sight, has family ties, and if something happens to someone, everyone will know about it the very next day, so this kind of thing is not very common. Sometimes it does happen, but that represents very few cases.”<sup>61</sup>*

Promo-LEX says in its 2012 report<sup>62</sup> that the majority of lawyers it interviewed in Transnistria spoke of their unanimously significant mistrust of the Ombudsman and the Office of Public Prosecutions.

### **b) Failure to apply a national preventive mechanism and the absence of a rehabilitation and victim protection mechanism**

The UN Special Rapporteur against Torture’s recommendation to extend the operations of Moldova’s national mechanism for the prevention of torture to Transnistria<sup>63</sup> has not been implemented; thus no mechanism applies in the region. Furthermore, numerous impediments restrict the ability of observation missions from international organisations and representatives from the Republic of Moldova from conducting monitoring.

60. Interview during the FIDH mission

61. <http://president.gospmr.ru/ru/news/ukaz-prezidenta-pmr-no658-ob-utverzhenii-polozheniya-o-sledstvennom-komitete-pridnestrovskoy>

62. Interview with the FIDH mission.

63. [http://www.promolex.md/upload/publications/en/doc\\_1355473063.pdf](http://www.promolex.md/upload/publications/en/doc_1355473063.pdf)

Temporary detention centres and prisons run by local authorities are not accessible to NGOs and official representatives, as is the case in Moldova. Promo-LEX calls these detention centres private prisons. Access to the prisons and visiting rights can only be authorised by a decision of the government in Tiraspol.

Similarly, Transnistria has no system for the rehabilitation and protection of victims. If a victim's relatives report abuse, acts of torture or other mistreatment, they themselves are often targeted with intimidation, threats and possible prosecution by the local authorities.

Moldovan human rights defenders condemn the failure of the Moldovan authorities to support the prosecution of human rights violations in Transnistria and their denial of responsibility in this regard. The result is that their own citizens fall prey to an illegal system of justice. Promo-LEX, in its 2012 report, highlights the Moldovan government's persistent failure to live up to its obligation to protect human rights in the region, excusing this inaction to European and international partners with the assertion that the region is out of its control.<sup>64</sup>

Promo-LEX calls on the Republic of Moldova's justice system to instigate legal proceedings and enquiries in line with legal provisions, in respect of reported instances of death in detention, torture, arbitrary detention, and wrongful conviction, etc.

## **B) Examples of arbitrary justice at the hands of the *de facto* authorities in Transnistria**

Recognised as a region of Moldova, Transnistria is the subject of observations and conclusions by Moldova's European and international partners. In his report of 22 February 2009,<sup>65</sup> UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, voiced grave concerns about:

- violence committed against people detained at militia posts ;
- the transfer of prisoners in crowded metal railway carriages;
- detention conditions at the militia headquarters in Tiraspol, which include overcrowding and many cases of inhumane treatment; and
- the absence of a mechanism to flag any inhumane and degrading treatment, as well as a monitoring mechanism.

These observations from 2009 remain current in 2012, as confirmed by local human rights defenders (CDH, Promo-LEX) and by the FIDH mission. Promo-LEX particularly highlighted in its 2011 report a decline in the freedom and security of people in Transnistria and a substantial gap between local law and international norms.

The mission observed that these serious human rights violations translated on the ground into fabricated cases and accusations against residents in the region. These individuals then found themselves defenceless before the Transnistrian court system and subject to physical and psychological pre-trial violence, as well as abuse inflicted concurrently to proceedings.

### **1. Increase in fabricated cases**

A common trend regarding victims of human rights violations in Transnistria is that they have been the target of sham accusations, put together using false witnesses and falsified documents.

64. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/72/PDF/G0910772.pdf?OpenElement>

65. [http://www.promolex.md/upload/publications/ro/doc\\_1355473506.pdf](http://www.promolex.md/upload/publications/ro/doc_1355473506.pdf)

*Trumped up charges linked to the possession of illegal drugs or economic crimes*

Nicolae Buceatchi,<sup>66</sup> editor-in-chief of the journal *Human Rights*, with a circulation of 250 copies in Tiraspol, gathers testimonies, investigates cases and publishes them in his journal, urging the *de facto* authorities to respond. Thus his journal takes on the role of a more conventional NGO.

Mr. Buceatchi highlights the current use of fabricated charges involving the possession of cannabis where resulting convictions can lead to the deprivation of liberty for up to 12 years. On 5 September 2012, for example, the journal reprinted a letter from a young woman who had been the victim of a trumped up case and sentenced to 12 years of imprisonment in a strict-regime penal colony, along with the confiscation of her belongings, on 21 August 2008 by a court in the town of Slobodzia. Some cannabis had apparently been planted under her stall in the local market where she worked and in her apartment. She says that her statement protesting her innocence was not taken into consideration at all.

The use of accusations of misappropriation of funds by business people seems heavily tied up with the Sheriff company, which is closely aligned with the *de facto* authorities and has branches in many sectors, including bread-making, petrol stations, supermarkets, a mobile phone company and television station, building construction and others.

Natalia Mozer<sup>67</sup> explained how her son, an employee of the Interdnestrcom company, was accused of having misappropriated 100,000 dollars from his company and the Sheriff company. Despite having no link to the latter, he was arrested on 28 November 2008. Only at his court hearing was he told how he had supposedly managed to misappropriate such a huge amount of money.

Vitalie Eriomenco is another victim of the ties between the Sheriff company and the *de facto* administration in Transnistria. An entrepreneur and the owner of three businesses – the Vitavit brewery, a small company called Rustas akwa and a bread factory – Mr. Eriomenco obtained the necessary authorisation from the Republic of Moldova to sell products from his bakery, based in Transnistria, in Moldova from the beginning of September 2010.

Authorisation was revoked by the Transnistrian authorities on the pretext of a lapse in quality. Eventually, Mr. Eriomenco's former partner accused him of defrauding his own company of 500,000 roubles, leading to the further accusation that he had brought about its bankruptcy. Under arrest since 29 March 2011, Mr. Eriomenco was still in preventive detention in Tiraspol when the FIDH mission visited. His sister, Ala Gherman, demanded a thorough audit as no enquiry by the tax office had been undertaken since Mr Eriomenco's arrest, and audits carried out prior to his arrest had revealed no hint of fraud.

*Political accusations: spying and incitement of terrorist acts*

Ilie Cazac,<sup>68</sup> a former tax inspector from the town of Tighina, and Ernest Vardanean,<sup>69</sup> a journalist then living in Tiraspol, were arrested in front of family members by officers of the Transnistrian Ministry of State Security (MGB) on 20 March 2010 and 7 April 2010 respectively. Both were accused of high treason and spying.

Compromising documents concerning two subsidiaries of Russian companies based in the town of Bender – subsidiaries that Mr Cazac was supposed to audit – were allegedly found among

66. A/HRC/10/44/Add.3

67. Interview during the FIDH mission

68. Interview during the FIDH mission

69. Interview during the FIDH mission

Mr Cazac's personal effects. In an interview with Radio Free Europe on 13 November 2011, Mr Cazac talked about the reason for his arrest:<sup>70</sup> *"Something I did at work bothered people [...] I don't know why I was singled out. [...] I wasn't involved in any political activity, I just did my work. One thing is true: I was the only one in the tax office who got in without a 'protector'."*

Ernest Vardanean was initially called in as a witness by the security services (MGB). He was then accused of treason against the *de facto* Republic of Transnistria and of being on the payroll of the Republic of Moldova.

Alexander Bejan,<sup>71</sup> who was a minor at the time of his arrest and a student at the Moldovan Lucian Blaga School in Tiraspol since 2010, was also targeted by the security services. The simple fact of his being a witness in 2009 to a fight between classmates led to the opening of a trial in which he was accused of engaging in acts of vandalism.

Following the security services' receipt of an anonymous letter threatening an act of terrorism, Mr Bejan was initially summoned to appear in the spring of 2011 so that his handwriting could be compared with that in the letter. He was summoned again and required to rewrite the letter eight times as the authorities insisted that the threatening letter had been written in his handwriting. According to Ion Iovcev, the principal at Mr Bejan's school, the Latin alphabet is always used at the school and not the Cyrillic, as the *de facto* authorities claimed. Alexander Bejan was made an example of, to create a climate of uncertainty among the students and staff in schools with a "Moldovan tendency":

*"People say we're a school for terrorists. There is pressure: people are afraid to bring their children to school and students are afraid when they speak to one another in Moldovan in the street. I've hung the school banner outside, it's day two now and at the moment it's still there [usually the banner is vandalised in no time or ripped down]."*

These accounts of fabricated cases are all also attended by reports of violence, threats, deprivation of fundamental rights and mistreatment at all stages of the process, from initial arrest to actual trial.

## **2. Torture and mistreatment in temporary detention centres**

### **a) Mistreatment**

According to those met by the FIDH mission, the inhumane and degrading treatment being meted out in Transnistria can take the form of physical beatings, deprivation of food and water, denial of toilet access and sleep deprivation. These are all intended to wear the victim down.

Nicolae Buceatchi published 10 related articles between May and October 2012 about the mistreatment inflicted on prisoners. These articles were based on testimonies sent to his journal and surprisingly provoked no reaction from the *de facto* authorities.

The employment of means of physical violence designed to leave no visible marks, such as the use of plastic bottles filled with water, are reported. The *de facto* authorities mostly turn a blind eye to the actions of the police.

On 5 September 2012, Nicolae Buceatchi published an article on Transnistrian residents who have been mistreated while in temporary detention, in particular Andrei Badanov. Mr. Badanov was arrested on 8 August 2012 in the town of Bender. Released for lack of evidence after being

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70. Ibid.

71. <http://www.svoboda.org/content/transcript/24407024.html>



detained in an isolation cell for 72 hours, he was then subject to a new accusation without the Office of Public Prosecutions authorising his arrest. Three days later, on the night of 11 to 12 August, he was escorted to hospital. Two doctors identified multiple injuries during his admission examination. These included nasal and jaw fractures, 8 missing teeth, numerous cuts on his arms and legs, heavy concussion and many bruises on his face. According to the police authorities, Andreï Badanov inflicted all these injuries on himself while in temporary custody.

Natalia Mozer<sup>72</sup> reported the psychological state her asthmatic son was in on the day following his arrest:

*“He still had his coat on even though it was hot, I told him to take it off as I could see he was all red, uptight, I saw his face was all sweaty, he was very unwell. They sat him in a corner with us opposite; I asked if they had hit him, he told me he was ‘all right’. [...] he told us to sign everything, as that would lead to his release. After just one night in detention, he was ready to say anything, do anything – what had they done to him?”*

In the ten hours after Vitalie Eriomenko’s arrest after which he was thrown into isolation cell on 29 March in Tiraspol, his family learned that he had then been subjected to a mock execution on the banks of the Dniester. Moreover, Mr Eriomenko’s captors told him that if he did not sign the documents as they demanded, a trumped-up charge of drugs possession would be brought against his son, with the drugs being planted among his son’s personal effects.

Ernest Vardanean, arrested at 6pm on 7 April 2010, was interrogated in the Security Ministry complex until 4am the following morning, and was given no food or drink until later that same evening.

*“I really wanted to sleep, I could hardly follow anything. At one point I even fell asleep during the interrogation.”*

For the first three days of his detention, Mr. Vardanean had to spend the night in the investigations office located in the cellar of the Tiraspol temporary prison where there were just a table and two stools. Mr. Vardanean explained that he agreed to everything that he was being accused of because he feared for the safety of his wife and two children. On 30 April 2010, after learning the written text of the charges imputed to him verbatim, he was forced to repeat these fabricated details in a recording for local television, which was broadcast on 11 May 2010.

#### **b) Offenders in isolation: no lawyer or other guarantor for underage offenders**

Testimonies compiled by the mission highlighted the absence of a lawyer during initial official questioning as well as the denial of all outside contact, all with the aim of increasing the pressure on detainees.

This was the case for Alexandre Bejan, referred to above. Neither his family nor his school’s administration were informed when he was led away by security forces. Ignorant of his rights, and without a lawyer present, he underwent questioning alone, even though he was underage at the time of these events.

*“I was questioned; there was nobody with me, my mother only found out the next day [...]. They threatened me with 16 years’ imprisonment, so I signed everything, I was scared. A lawyer arrived at the end of the session, he told me to sign everything as well.”<sup>73</sup>*

72. Interview during the FIDH mission

73. Interview during the FIDH mission

Ernest Vardanean, having a greater awareness of due process, demanded a lawyer as soon as he was arrested. Nevertheless, his interrogator responded that specific rules concerning the right to a lawyer applied in the Security Ministry, and that he would not be able to access one until after the first twelve hours of his arrest. It was not until the day after his arrest (8 April 2010) that Mr. Vardanean was able to present a list of the lawyers he wanted to contact. However, none of these lawyers accepted Ernest Vardanean's case, and so an assigned counsel was allocated.

During Vitali Eriomenco's detention he was forced to sign a waiver saying that he had refused legal assistance.

### **3. Psychological pressure on victims' families**

The cases reported here show how the *de facto* authorities seek to maximise the isolation of detainees. Generally, if they were not there for the detainee's arrest, family members will only find out later about the temporary detention of their relative.

Moreover, while the detainee is in isolation, members of their family can be subject to pressure and threats themselves, which often take the form of house searches. As Natalia Mozer emphasised, detainees' family members often become indirect victims of abuse because of the permanent pressure under which they live and the lack of information at their disposal.

*Example: the cases of Natalia Mozer and Ala Gherman*

Upon her return from trip away, Natalia Mozer tried several times to ring her son and was surprised that there was no answer. Late that night, agents from the anti-organised crime unit called at her house to conduct a search.

*"They showed us leaflets but wouldn't hand them over to us. They were very aggressive, they went into all the rooms, they found \$150 and asked who the money belonged to. They took away the computer and mobile phone. They turned everything upside down, looked at and touched everything. They did not tell me where my son was."*<sup>74</sup>

Ala Gherman, Vitali Eriomenco's sister and a resident of Chisinau, explained that at first her brother's family were not worried about his absence because he usually came home late at night. His wife only learned of his arrest when her home was searched and then sealed off.

*"They [agents of the anti-organised crime unit] ransacked his home, and asked my sister-in-law if she had any money or diamonds. They found nothing. Soon after that she and her son were chased out of the apartment without being able to take any belongings with them and the apartment was sealed off."*<sup>75</sup>

### **4. The right to effective recourse**

*The right to a fair trial*

International and local observers all agree that access to justice within a reasonable time and the lack of legal recourse are virtually impossible for victims of arbitrary detention or torture in Transnistria.

Furthermore, in its 2011 and 2012 reports Promo-LEX highlights the fact that trials are systematically conducted in Russian. This contravenes Transnistrian law and the Constitution, which affirms that documents relating to a case must be translated into the accused's mother

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74. Interview with the FIDH mission

75. Interview with the FIDH mission

tongue and that the trial must be conducted in one of the official languages (Moldovan, Ukrainian, and Russian) or in a language acceptable to the majority of people concerned. Promo-LEX cites cases of individuals who were denied the ability to present proof of their innocence in Romanian, or were refused access to an interpreter.<sup>76</sup>

The Republic of Moldova has regional courts assigned to the Transnistria region, but these courts are not physically situated in Transnistria. Moreover, Moldova has not appointed judges to the city of Tiraspol, the capital of Transnistria.

#### *Difficulty of accessing a competent lawyer*

Few independent lawyers operate in Transnistria. Residents of Transnistria, even if they have Moldovan nationality, have great difficulty securing the services of a Moldovan lawyer, who would be considered a “foreigner” by the *de facto* authorities. In order to engage the services of a Moldovan lawyer, one must first secure a Transnistrian lawyer who then co-opts a Moldovan lawyer by registering them on their licence. As a result, a client is forced to pay for the services of two lawyers. This may be a barrier to people obtaining an effective defence if they have little money.

According to Veaceslav Turcan of the Human Rights Embassy,<sup>77</sup> these limitations stem from economic considerations; namely, ensuring that the money stays in Transnistria. “*I had to pay for two lawyers, and pay more on top of that for the Chisinau lawyer to be authorised to practise in Transnistria*”, commented Ala Gherman during her interview.

A local lawyer can even be in league with the *de facto* authorities and the companies associated with them. This was the case with the Sheriff Company, with which Natalia Mozer was forced to negotiate on the advice of her lawyer:

*“The lawyer told us to go and talk with the Sheriff head of security, it was the 2<sup>nd</sup> or 3<sup>rd</sup> December, they threatened us. This man told us to sign everything, otherwise he would be sentenced to 20 years of imprisonment; he said his influence went very far – that was the least horrible thing he said to us. At the end, I fainted.”<sup>78</sup>*

Promo-LEX reported numerous complaints<sup>79</sup> concerning the poor quality of local lawyers, linking this to the pressure exercised by the administration and lawyers’ fear of being persecuted for mounting an effective defence of people’s rights.

#### *Lack of transparency concerning case evidence*

Victims maintained that it was hard for them to access documents concerning accusations, or even to have them checked for authenticity, especially in cases relating to economic matters. Thus, the amounts allegedly defrauded by Natalia Mozer’s son changed according to the people she tried to negotiate with or from whom she tried to secure information. Before the trial, no one ever told her how her son could have managed to defraud such sums.

In her case, Ala Gherman demanded to see the expert audits carried out on her brother’s companies before he was accused, none of which had thrown up any evidence of fraud. However, the *de facto* Minister of Finance responded by saying that because the information was confidential, he was not able to divulge anything. “Confidential information” or “state secrets” are excuses regularly used to block access to information, as highlighted in the Ilie Cazac case, when he was accused of spying.

76. [http://www.promolex.md/upload/publications/en/doc\\_1340372019.pdf](http://www.promolex.md/upload/publications/en/doc_1340372019.pdf), p.11

77. Interview with the FIDH mission

78. Interview with the FIDH mission

79. [http://www.promolex.md/upload/publications/en/doc\\_1340372019.pdf](http://www.promolex.md/upload/publications/en/doc_1340372019.pdf), c.12

### C) Prison conditions in Transnistria

The prison population is spread across three penal establishments and prison n°1. In addition, Transnistria has a number of closed work camps where the length of confinement is also determined by a judge.

In his 2011 report, the Transnistrian Ombudsman acknowledged 284 communications received from inmates or their relatives concerning detention conditions in institutions operated by the Ministries of the Interior or Justice. One in five related to medical care.

The testimonies compiled pointed to a lack or denial of care to prisoners whose health had deteriorated because of the deplorable conditions in detention.

Often the only way for inmates to improve their conditions is to get caught up in the racket and pay for whatever is needed. In respect of her son's imprisonment Natalia Mozer told the mission,

*"We paid \$200, \$300, everything is expensive, and everybody knows it. We paid for a phone, or that he might have a 'less worse' cell, he told me what the cost would be over the phone."*<sup>80</sup>

Given the ever-present possibility that temporary detention might be extended, many people are crowded into the basement of the Tiraspol temporary detention centre; the hygiene conditions are far outside international norms and the medical care is inadequate, and can even be totally absent.

According to eyewitness accounts,<sup>81</sup> cells are very small (9m<sup>2</sup> and 16 m<sup>2</sup>) and house a high number of inmates, as a result of which prisoners are forced to take turns to sleep. In a situation where there are as many as seven prisoners sharing one cell, only three of them can lie down at any one time. Furthermore, in certain cells bedclothes and blankets are not supplied.

Finally, the light is constantly on. There is no access to daylight, nor any kind of external ventilation, and smokers are not separated from non-smokers.

#### *Sanitary conditions*

Despite the cells being equipped with toilets and a wash basin, there is a very strong and pervasive smell from the plumbing and the cells are all extremely damp. In this tight space, temporary detainees are forced to wash and dry their clothes.

With detention conditions akin to being in a damp cellar, the prisoners' health declines rapidly. It was nearly four months after his arrest before Boris Mozer was authorised to be examined for his asthma despite repeated asthma attacks.

When requests for a change of detention location are lodged, the *de facto* authorities frequently respond that there is no more space in the SIZO. Natalia Mozer said that she had had to write numerous letters to the Ministry of Justice and the public prosecutor to obtain the eventual transfer of her son from his cell in April 2009.

One alarming case brought to the FIDH mission's attention was that of Vitali Eriomenco, who was refused care throughout his 20 months in the Tiraspol temporary detention centre.

With no dentist there, his sister offered to pay for medication and petrol for the car so that he

80. Interview with the FIDH mission

81. Testimonies compiled during FIDH mission

could be escorted to a specialist. Thanks to her payment, a dentist finally managed to operate on him on site in very unsanitary conditions.

### **1. Sizo n° 3**

#### *Detention conditions*

According to Ilie Cazac<sup>82</sup> who spent three months there, Sizo n°3 is the “model” prison shown to foreign delegations, mainly because of the projects that have been carried out there. Natalia Mozer confirmed that detention conditions are “better” there than in the temporary detention centre, although it too is affected by the problem of overcrowding. According to Ernest Vardanean there are “4 beds between 5 or 6 people, one 20 m<sup>2</sup> room for 8 people usually”.<sup>83</sup>

Testimonies agree that Sizo n°3 does not stock even essential drugs. With medical assistance available, once an appointment has been requested, it may take a half-day or a day before a doctor can be seen.

#### *Visiting rights*

Because of the administrative burdens, obtaining permission to visit an inmate is a difficult ordeal for the prisoners’ relatives. Such permission is refused many times for different reasons, and the FIDH mission was told that paying a sum of money would facilitate obtaining a permission. Natalia Mozer explained the battle she endured to gain visiting rights, with many refusals, even though she went through the proper official channels. Her Tiraspol lawyer told her she had to pay some money to get the permission easily. The strategy used is simple: since many administrative documents have to be filled in to progress one’s application, the slightest mistake can result in the visit’s cancellation.

During visits, the prisoners remain behind bars and conversations are monitored. Furthermore, prisoners are forbidden to use their mother tongue and must speak Russian.

### **2. Prison n°1 in Glinoe**

From the testimonies received, the prison conditions in Prison n°1 in Glinoe are the worst in the region.

Tubercular prisoners are housed in a separate building, but their conditions seem to be similar to those of the other prisoners, though they are entitled to an extra hour of daily exercise – two hours all together.

#### *Insufficient access to water*

The prisoners are regularly short of water. Even during 6 weeks of the summer in 2011, when temperatures were very high, there was no running water in Glinoe prison. All water was rationed at between 1.5 litres and three litres per day for drinking and washing. The showers were unusable.

#### *Visits and communication with the outside*

Visiting rights are very strictly controlled and are based on a scale to which the prisoners are subject. Four categories of prisoner have been identified. Long visits are only assigned

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82. Interview with the FIDH mission

83. Interview with the FIDH mission

to family members. Short visits occur using a telephone to talk through a window. If the prisoner is in an isolation cell, he loses his visiting rights. All letters are censored.

**Table 2: Visits allocated to four prisoner categories at Prison n°1 in Glinoe**

<b>Category of prisoner</b>	<b>Number of short visits</b>	<b>Number of long visits</b>
<b>Ordinary Prisoner</b>	6	4
<b>Strict-regime prisoner</b>	4	3
<b>Generally severe-regime prisoner</b>	4	2
<b>Particularly severe-regime prisoner</b>	3	1

#### *Food*

The individuals interviewed by the FIDH mission<sup>84</sup> who had been held in prison n° 1 in Glinoe, stated that the food hardly ever varied and it was not really edible. Ilie Cazac agreed, for example, that he only ever ate the food his mother sent in food parcels.

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84. Ilia Cazac and Ernest Vardanean

# V. Conclusion

Since the post-election violence in April 2009, the Moldovan authorities have made a concerted effort to combat torture and re-establish the people's trust in their institutions, especially the police and the justice system. To this end, police training and the installation of surveillance cameras in areas where questioning is conducted, can be very beneficial. Nonetheless, there is no doubt that mistreatment and torture continues to occur in police stations. The lack of protection for people who have been detained and the impunity enjoyed by their aggressors, as evidenced by the small number of convictions for such acts, remain central problems.

A strategy to reform the judicial system was approved in November 2011 and supported by the Council of Europe and the European Union. Still in its early stages, it comprises seven pillars: the judicial system, the criminal justice system, access to justice and the enforcement of judicial decisions, the integrity of actors working in the justice field, the role of the judicial system in economic development, human rights in the justice sector and a well-co-ordinated, organised and responsible judicial system. An important aspect of this reform is co-operation with local Moldovan NGOs, with whom the mission managed to meet during the visit.

The judicial reform adopted by the Moldovan parliament on 8 November 2012 strengthened punishments for those guilty of torture by denying them conditional sentences and amnesty. However, people responsible for mistreatment or acts of torture are rarely convicted. Furthermore, the psychological and physical consequences for victims of such actions are not recognised.

Places of detention remain overcrowded and very basic. Prisoner access to medical care, legal information and judicial means, particularly to secure release on parole, should be strengthened and made more transparent.

Finally, the Transnistrian population must be the object of particular attention from the Moldovan authorities, given the particularly alarming human rights situation there.

Indeed, the *de facto* authorities enjoy a certain lack of responsibility because of their non-recognition by the international community – so much so that the ECHR and UN Human Rights Committee can only hold the Russian Federation or the Republic of Moldova liable for the abuses committed in Transnistria, whether those abuses are committed through unfair trials or physical and/or psychological ill-treatment.

Additionally, it seems important to highlight the lack of official recognition by the *de facto* authorities of torture carried out in their territory, as well as the free hand given to its militia and security forces, in contravention of Transnistrian law. While judicial reforms have been undertaken recently, their positive results are still awaited, especially in so far as they relate to prison overcrowding and sanitary conditions, which are very divergent from regional and international norms.

# VI. Recommendations

## **To the Moldovan authorities**

- Continue to reform the judicial system to guarantee respect for human rights and eliminate all forms of torture and cruel, inhumane or degrading treatment.
- Strengthen the autonomy of the Human Rights Centre's Consultative Council by facilitating visits by its members to places of detention and by widening its composition.
- Systematically publish the conclusions of the Human Rights Centre's Consultative Council following its visits.
- Strengthen access to information on the appeals process for prisoners and more generally for citizens wishing to take action against torture.
- Set up independent and impartial enquiries into alleged cases of torture and establish penal, civil and disciplinary sanctions in cases of procedural violations concerning the arrest, questioning or treatment of detainees.
- Stop issuing suspended prison sentences for police officers responsible for acts of torture and systematically remove them from their positions.
- Quickly develop and implement measures to prevent the police from proceeding with ad hoc detention and questioning, thereby guaranteeing respect for procedure.
- Keep to a minimum the period between the start of legal proceedings or the arrest of a suspect and the definition of his/her legal status so that the suspect can be notified without delay of his/her judicial rights and guarantees (access to a lawyer, the right to remain silent etc.)
- Question suspects in places specifically designed for that purpose (for example special rooms for questioning equipped with surveillance cameras).
- Improve detention conditions for people held in custody. Given the lack of resources to renovate existing cells or build new ones, replace as far as possible custodial measures for accused persons with alternative measures such as house arrest, the posting of bail or other guarantees.
- Continue efforts to improve the prison system to bring it into conformity with international and regional norms and to eliminate any form of recourse to torture and cruel, inhumane and degrading treatment.
- Eliminate the inertia currently entrenched among the majority of prison administrations concerning access to quality primary health care. Improve the recruitment of qualified doctors in sufficient numbers by keeping an up-to-date medical register, or transfer the prisoner health service to regional health establishments.
- Organise an efficient system of rehabilitation and preparation for life outside the prison walls by providing professional educational training for prisoners, especially minors.



- Make the practice of prisoners gaining early release more transparent and accessible, so that they are not denied a positive incentive to maintain good behaviour during their sentence.
- Recognise responsibility for human rights violations in Transnistria. In general, take effective steps to guarantee the rule of law, including the right to a fair trial. The limited hold Moldovan authorities have over a part of their territory should not be an excuse for inaction regarding human rights violations in Transnistria.
- Ensure that all institutions of government (police, public prosecutors, a court system, etc.) necessary to realize the right to fair and impartial judicial proceedings are operating and functioning within Transnistria.
- Identify and effectively punish those guilty of torture and of treatment that is inhumane and demeans human dignity regardless of where these acts were committed and whether or not the government was in control of the territory where they were committed at the time.
- Promote the expansion of existing mechanisms for preventing torture as well as inhumane and degrading treatment in Transnistria.
- Implement the March 2010 recommendations of the UN Committee Against Torture.
- Submit State reports on time to the Committee Against Torture (by 20 November 2013), the Human Rights Committee (by 31 October 2013) and the Committee on the Elimination of All Forms of Racial Discrimination (by 24 February 2014)
- Implement the recommendations accepted by the state within the framework of the 2011 Universal Periodic Review, in particular those relating to detention conditions, torture, transparency and penal reform.

## **To international entities**

FIDH calls upon:

### **The UN Special Rapporteur on the independence of judges and lawyers**

- Send a request to visit to the Moldovan authorities in order to gain an overview of the judicial system and the independence of the country's magistrates, within the framework of the permanent invitation extended by the Republic of Moldova on 2 June 2010.

### **The European Union**

***Adopt a global approach to maintain the fight against torture and other forms of ill-treatment:***

- With the European delegation and the embassies of Member States in Moldova, develop an integrated prevention strategy so that EU Guidelines for combating torture can be implemented at the local level. Through these diplomatic missions, take steps to ensure that confirmed cases of torture are investigated (particularly by immediately opening an effective, independent and impartial enquiry), publish declarations, obtain precise

information about alleged torture or other ill-treatment, and oversee the trial provisions for people suspected of having been tortured, as required.

- Ensure that torture is a priority in the national human rights strategy, which leads to coherent action encompassing political and technical tools as well as co-operation arrangements.
- Treat justice, police and prison reform as a key part of the future planning framework for Moldova 2014-2020. Ensure that an approach respecting human rights is applied, with a particular focus on torture. Set a timetable for the use of precise indicators dealing with prevention, prosecution, legal remedies and rehabilitation.
- Pay particular attention to torture cases and develop indicators for technical assistance based on the Plan for Justice Reform, the Technical Assistance and Information Exchange Instrument, the Global Program for the Strengthening of Institutions, the Program of Support for Democracy, as well as the Eastern Partnership Integration and Co-operation Program.
- Ensure that the global approach seeks at least to reform, help and train:
  - the police in order to prevent acts of torture and to strengthen their investigative capacity in reported cases ;
  - the justice system, the Prosecutor's Office and the legal profession to combat impunity and offer effective legal remedies to victims;
  - the penal sector in order to prevent ill-treatment, to renovate facilities, to improve detention conditions in line with international norms, and to guarantee that prisoners have access to medical care and legal information, etc.;
  - health and social workers to promote victim rehabilitation;
  - ensure that support is included in the global approach to national monitoring mechanisms (in particular the Human Rights Centre's Consultative Council and the National Mechanism for the Prevention of Torture) and strengthen their capacities. Encourage the Human Rights Centre's Consultative Council to systematically present reports and urge the authorities concerned to provide appropriate responses. Support the implementation of national strategies aimed at dealing with the question of torture and improving the protection of fundamental rights, especially within the framework of the National Plan of Action for Human Rights and the strategy to reform the judicial system; and
  - strengthen Moldovan civil society's capacity to collaborate with the authorities to apply these strategies and enhance the effectiveness of monitoring mechanisms.

***Rely on dialogue and a monitoring mechanism to consolidate any gains:***

- As a matter of priority, seek an update on the torture situation in the next discussions with Moldova on policy, technical problems and human rights, referring to the previously established deadlines. Insist, during the political discussion, that the Moldovan authorities pay particular attention to the facts surrounding torture during

their current probe into the events of April 2009. This enquiry must be transparent and impartial so that all those responsible for acts of ill-treatment are convicted. More broadly, emphasise the integration of concrete measures aimed at preventing torture and facilitate access to adequate legal remedies.

- Make sure the question of torture figures prominently in the next follow-up report on progress towards the implementation of the European Neighbourhood Policy in Moldova. In doing so also rely on the recommendations of UN mechanisms aimed at protecting human rights (especially those of the Committee Against Torture published in March 2010).
- Regularly evaluate the impact and effects of EU actions concerning torture by consulting civil society and publishing the results of these evaluations.

***Regarding Transnistria:***

- Work together with the main mediators in the 5 + 2 talks on Transnistria, namely the Presidency-in-Office of the OSCE and members of the organisation's mission in Moldova, so that the question of torture features in negotiations. Insist on NGOs being able to access prisons, recourse to national and international mechanisms for the prevention of torture and, more generally, recognition by the local de facto authorities of the regional problem of ill-treatment.

**The OSCE**

- The Office for Democratic Institutions and Human Rights (ODIHR) should closely monitor detention conditions in the Republic of Moldova, and consider the possibility of getting involved in technical co-operation projects in the area of the human dimension activities.
- The OSCE Parliamentary Assembly should ensure that matters raised in this report are followed up, and invite Moldovan members to take the necessary legislative initiatives so that national legislation conforms to international human rights norms in this area.







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## Supporting civil society

### training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

## Mobilising the international community

### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting

### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**FIDH**  
represents **178**  
**human rights organisations**  
on **5** continents

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**FIDH - International Federation for Human Rights**

17, passage de la Main-d'Or - 75011 Paris - France  
CCP Paris: 76 76 Z  
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80  
[www.fidh.org](http://www.fidh.org)

Director of the publication: Karim LAHIDJI

Editor: Antoine Bernard

Authors: Irène Ketoff, Artak Kirakosyan, Pavel Sapelko

Coordination: Alexandra Koulaeva

Design: CBT

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

# fidh

Find information concerning FIDH's 178 member organisations on [www.fidh.org](http://www.fidh.org)