

Human rights defenders under threat and pressure in the conflict and post-conflict zones of the Eastern Partnership region
Case of “Promo LEX” Association(Moldova) and its activities in the Transnistrian region

Information provided by “Promo Lex” for the Conference of INGOs, June 2016

General statements

In the conflict and post-conflict zones of the Eastern Partnership region, human rights defenders have a vital role for building a democratic society. The lack of independent public oversight, will lead to increase in grave human rights violations.

The key problems concerning the shrinking space for civil society and the security of human rights defenders present in the Eastern Partnership countries¹ include: the adoption and implementation of legislation that sets out serious restrictions on the registration, operation and funding of NGOs; arrests and trials of well-known human rights defenders on charges brought in retaliation for their work; obstruction of the legitimate work of human rights NGOs around elections; pressure directed at defence lawyers working on human rights issues e.g. by threatening them, disbarring them or even instigating criminal cases against them; harassment of activists promoting and defending LGBTI rights; restrictions of the freedom of movement and other particular challenges faced by human rights defenders working in conflict zones (*such as in Donbass, Crimea and Transnistria*).²

The defence and promotion of human rights in conflict and post-conflict regions constitutes a major challenge, including because this activity is proving to be extremely dangerous in those regions. Human rights defenders are often subjected to risks by all parties to the conflict.

The United Nations General Assembly³ and the Council of Europe⁴, has declared that States should adopt laws and policies that support civil society actors and organizations, and end impunity for abuses and attacks against them. In addition, it was reported that activists from certain countries are often “*subject to judicial or administrative harassment, to smear campaigns in the media*”, or lack of access to territories in conflict zones, such as Eastern Ukraine or Transnistria.

Human rights defenders continue to be intimidated and persecuted and their activity is limited by various forms: through defamation campaigns, restrictions on access to finance, through online surveillance or arbitrary arrests. A large number of such cases occur in the regions with internal disputes/conflicts, including the post-conflict regions (frozen conflicts). This creates a hostile environment for the work of human rights defenders, especially for those who have a sensitive area of activity, such as ensuring access to justice, the right to liberty and personal security, torture and ill-treatment, freedom of expression and other.

¹The Eastern Partnership is an EU policy initiative launched in May 2009 that aims to bring the six countries of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine closer to the EU.

² Speech delivered by IPHR Director Brigitte Dufour at Eastern Partnership Civil Society Forum, Kyiv, 20 November 2015.

³ United Nations General Assembly/ Seventieth session/ Third Committee/ Agenda item 72 (b) *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms/ A/C.3/70/L.46/Rev.1* from 18 November 2015 adopted on 17 December 2015.

⁴ Assembly debate on 28 January 2016 (8th Sitting) (see Doc. 13943, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Mailis Reps). Text adopted by the Assembly on 28 January 2016 (8th Sitting); Assembly debate on 28 January 2016 (8th Sitting) (see Doc. 13940, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Yves Cruchten). Text adopted by the Assembly on 28 January 2016 (8th Sitting).

The situation in the Transnistrian region

The Republic of Moldova is bound to international and European agreements that guarantee and protect fundamental human rights and freedoms. The freedom of association, assembly, and expression are aspects that propel the development of the activities of human rights defenders. Therefore, the Constitution of the Republic of Moldova along with its national laws and legislative acts guarantee and protect freedom of assembly, freedom of opinion and expression, the right to information and freedom of association.⁵ In addition, the UN tackled human rights defenders-related and civil society issues through the Universal Periodic Review (*UPR Moldova*)⁶, UN Special Procedures (*Rapporteur on the situation of human rights defenders*)⁷. However, most of the times, people living in conflict or post-conflict territories, do not have the possibility to defend their rights and fundamental freedoms. This happens for at least three reasons. First, because nobody monitors the human rights situation in these territories and, secondly, because there are no efficient human rights protection mechanisms in place and thus none of those who violate human rights is held accountable, which is hard to imagine in the 21st century. Third, because of impunity phenomenon, nobody is responsible for human rights abuses. This is true at least for the Transnistria region of the Republic of Moldova.

Transnistria is the self-proclaimed (1990) entity, which is not recognized by any state; it has its own bank, currency, customs etc. Until today, the constitutional government does not exercise authority in the region, and the so-called Transnistrian administration governs through parallel administrative structures. There are regular reports of police engaging in torture, arbitrary arrests, unlawful detentions and gross violations of human rights. All facts and details are set out in the ECHR Decision on the case of *Ilascu and Others vs. Moldova and Russia*.⁸

Formal negotiations to reach a settlement on the Transnistrian conflict take place in a format referred to as the "5+2" talks. Since 2005, the talks have been held in the 5+2 format that includes Transnistria and Moldova, along with the Organization for Security and Co-operation in Europe (OSCE), Russia, Ukraine, the European Union and the United States serving as mediators and observers. The OSCE chairs the negotiation process, which was interrupted for nearly six years, but resumed in 2011. Since then, the 5+2 participants have been meeting periodically to discuss issues that affect the lives of the people on both sides of the Dniester/Nistru River.

In Transnistrian region, human rights defenders, human rights activists, bloggers and other civil society actors were subjected to intimidation and harassment, including judicial harassment, restrictions on freedom of expression, association, assembly, movement and arbitrary detention. The situation deteriorated during these years with the work of human rights defenders being seen as subversive and an attempt to undermine the regime and local administration.⁹ This is why human rights do not have a wider representation at the local level and no effective mechanisms and institutions can monitor the situation. The pressure placed on human rights defenders from the Transnistrian region intensified in 2013–2015.

According to the US State Department report on respecting human rights in the Transnistrian region, the so-called authorities severely restricted freedom of association. Separatist authorities

⁵ Article 31; Article 32; Article 40 Constitution of Republic of Moldova from 29.07.1994.

⁶ Report of the UN Working Group on the Universal Periodic Review/ Republic of Moldova from 14/12/2011 to see §69.

⁷ JOINT URGENT APPEAL FROM SPECIAL PROCEDURES, 18 June 2014/ REF: UA OTH 8/2014/.

⁸ ECtHR's Case of *Ilaşcu and others v. Moldova and Russia* no.48787/99, §§ 28-183, ECHR 2004-VII.

⁹ The foreign agents may appear in Transnistria <http://mediacenter.md/aktualno/444-v-pridnestrove-mogut-poyavitsya-inostrannye-agenty.html>.

granted the legal right of association only to persons they recognized as citizens of Transnistria. All non-governmental activities had to be coordinated with local authorities. Groups that did not comply faced harassment, including visits from security officials. Authorities strictly prohibited organizations favouring reintegration with the rest of Moldova.¹⁰

The *de facto* administration of the Transnistrian region interpret the organisation's peaceful and legitimate advocacy and litigation activities as destabilising the situation. In 2015, the negative effects of the Decree on response to extremist activities started coming into force.¹¹ The repressive bodies proceeded with abusive activities such as checking mail correspondence, tracking, threatening relatives, as well as forms of abuse that include pressure and intimidation. Lacking the mechanisms for protection at the local or national level, challenges had to be dealt with on their own. The first step was to oversee the activity of "extremist" netizens and to block suspicious websites, as a means to limit the freedom of expression of opinion in public. Thus, there were situations when pressure was exerted on the human rights defenders and activists who had an opinion other than the one promoted by the policies and propaganda of the region's administration. For example, on 17 of April 2015, the "KGB" (*the security agency*) of the Transnistrian region issued a statement describing civil society organizations that receive funds from abroad as a threat to Transnistrian security. The statement focused particularly on the activities of the human rights organization Promo-LEX¹² and said that a criminal investigation had been opened into what the "KGB" termed a "distinct threat" posed by the NGO's activities in Transnistria.¹³

Thus, by 2015, Promo-LEX was constantly monitoring and reporting to Moldovan authorities cases of human rights abuse committed in the Transnistrian region, having direct access to the victims or their families. However, starting with 2015, Promo-LEX can monitor the situation in the region using only indirect sources of information and the contact with its beneficiaries is very limited. In consequence, many victims of human rights abuse in the Transnistrian region remain silenced about their problems and the number of the reported cases decreased. This is not because of the decrease of the number of human rights abuses committed but because people fear/hesitate to report them, including to Promo-LEX. Despite of fear of detention and inability to travel in the region, Promo-LEX did not stop its activities in the region and continues to monitor human rights situation in the region.

The human rights NGOs voiced concern about the exerted pressures on human rights defenders in Transnistria. They pointed out the verbal and physical threats that human rights lawyers and defenders were subjected to in the region, with a number of human rights activists and lawyers reportedly banned from the area.¹⁴ So, there have been cases of intimidation of lawyers and human

¹⁰ US State Department/Moldova 2015 human rights report; page.21

¹¹ Decree No 241 issued by E. Sevcuic on response to extremism/ Tiraspol, 2014 / Available on: <http://president.gospmr.ru/ru/news/ukaz-prezidenta-pmr-no241-o-nekotoryhmerah-napravlennyh-na-preduprezhdenie-ekstremistskoy>

¹²Promo-LEX is leading independent human rights NGO in Moldova with special consultative status with the UN, which works across the country (*including Transnistrian region*) to promote legislative reform and defend human rights. The Association closely follows the democratic process in Moldova and manages national and international missions to monitor electoral processes. For more information, see the web site of the Association at <http://www.promolex.md>. Promo-LEX is a founding member of the Civic Solidarity Platform (*The Civic Solidarity Platform is a network of more than 65 human rights NGOs from throughout the OSCE region, established in 2011. For more information about the Civic Solidarity Platform see the Platform's web site: www.civicsolidarity.org*).

¹³ US State Department/MOLDOVA 2015 HUMAN RIGHTS REPORT page.21.

¹⁴12/12/2014 URGENT APPEAL FIDH/ Transnistria: *Concern on the situation of human rights defenders* <https://www.fidh.org/en/region/europe-central-asia/moldova/16642-transnistria-concern-on-the-situation-of-human->

rights defenders trying to defend the rights of people in the “courts” of the Transnistrian region or who are trying to investigate corruption issues (cases of S. Popovschi, V. Maimust¹⁵, A. Zubco¹⁶; cases of N. Buceatchi, L. Dorosenco¹⁷). The local activists have been persecuted by threats that they would be placed in a mental institution (I. Vasilachi's case), prosecution initiation and wanted announcements (Cases of O. Hvosevschii, A. Inozemtev and others), intimidation and harassment (Cases of I. Scerbinina¹⁸, I. Sergheeva¹⁹), and conviction (Cases of A. Bartos²⁰, S. Ilcenco²¹, A. Reazanov²²).

In 2015, the non-governmental sector from the region faced new types of pressure such as restrictions being placed on the carrying out of activities under the pretext that they undermine the security of the region; intimidation by representatives of the “KGB”; public denigration of the image of the civil society, threatening of heads of NGOs by the “KGB”.

Even with the appeals from a number of different civil society actors regarding the investigation of some intimidation and threatening actions by the *de facto* authorities of the Transnistrian region (security services, militia etc.), the Republic of Moldova failed to carry out effective investigations on reprisals of the civil society actors. The list of intimidation, threatening actions and other attacks towards the activists and human rights defenders presented in this draft resolution, is not an exhaustive one.

Congruent with this, concerns were raised by the Committee on Legal Affairs and Human Rights of the Council of Europe adopting a report on the protection and role of human rights defenders, the Legal Affairs Committee has expressed deep concern about increased reprisals against them in certain Council of Europe member states. It also voiced particular concern about the situation in annexed Crimea and other territories outside states' control. The rapporteur, Mailis Reps (Estonia, ALDE) stated that too many human rights defenders are paying a high price for their work and their fate should receive much greater attention from the Council of Europe's institutions and member states.²³

rights-defenders; 15/12/2014 Joint Open Letter: *Concern on the situation of human rights defenders from the Transnistrian region* <https://promolex.md/index.php?module=press&cat=0&item=1648&Lang=en>;

¹⁵ TRANSDNIESTRIAN tried to blow up the independence of lawyers <http://tiras.ru/kriminalnoe-chtivo/38471-v-pridnestrove-pytalis-vzorvat-nezavisimogo-advokata.html>

¹⁶ NGO report: Human rights defenders are oppressed in Transnistria <http://www.moldova.org/en/ngo-report-human-rights-defenders-are-oppressed-in-transnistria/>; Newsletter Promo-LEX https://promolex.md/upload/ebulletin/en/nr95_1422613427en.pdf

¹⁷ Civil Rights Defenders urges the government of Transnistria to protect human rights <http://www.civilrightsdefenders.org/news/civil-rights-defenders-urges-the-government-of-transnistria-to-protect-human-rights-in-an-open-letter/>

¹⁸ Odessa Daily News Agency Article / Odessa, 2015 / Available on: <http://odessadaily.com.ua/news/stilet-id79525.html>

¹⁹ Report “Observance of Human Rights in the Transnistrian Region of the Republic of Moldova 2015 Retrospect” p.9 https://promolex.md/upload/publications/en/doc_1456905480.pdf

²⁰ Narodnoe Edinstvo statement “They are afraid to release from detention the activist Allen Bartos” / Tiraspol, 2015 / Available on: <http://edinstvopmr.ru/news/735-aktivista-narodnogoedinstva-alena-bartosha-boyatsya-vypuskat-na-svobodu.html>

²¹ Video statement “The arrest of Serghei Ilenco” / Odessa Crisis Media Centre / 2015 / Available on: <https://www.youtube.com/watch?v=pn4EPqRCs0&app=desktop>

²² JOINT URGENT APPEAL FROM SPECIAL PROCEDURES/Human Rights Council Twenty-eighth session Communications report of Special Procedures doc: A/HRC/28/85 pag.14.

²³ 08/12/2015 Legal Affairs and Human Rights: *too many human rights defenders are paying a high price for their work*: <http://www.assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5936&lang=2&cat=>

In that regard, the state's support for human rights defenders should consist of not only statements of support, but also of concrete actions that would offer support for achieving the goals that benefit society. Moldova should undertake much more in order to consolidate the human rights defenders who are working to improve the situation of protection of human rights in the Transnistrian region.

According to the UN Civil Society Resolution²⁴, domestic legal and administrative provisions and their application should facilitate, promote, and protect an independent, diverse, and pluralistic civil society and strongly reject all threats, attacks, reprisals, and acts of intimidation against civil society actors, while underscoring that States should investigate any such alleged acts, ensure accountability and effective remedies, and take steps to prevent any further such threats, attacks, reprisals, or acts of intimidation. Considering the international principles on defenders' rights in particular, and civil society in general, States should take proactive steps to counter smear campaigns against and the stigmatization of human rights defenders, especially in the Transnistrian region, as this region continues to be a source of serious human rights violations, which require efficient mechanisms for continuing monitoring of the situation, and can only be approached by an independent, active, and viable civil society.

Despite the existence of an international legal framework that establishes clear guarantees on the protection of human rights defenders and the obligation of States to implement them and also bearing in mind to the recent Parliamentary Assembly Recommendations 2085 (2016)²⁵ and 2086 (2016)²⁶, this motion call the Assembly to reflect the gravity and urgency of situation for defenders in the conflict and post-conflict zones and to determine how to improve the existing standards for interaction between State authorities, de facto authorities (non-state actors) and NGOs in order to establish favourable legal, political and economic conditions for the effective functioning of civil society and elaborate some specific recommendations on how the national Governments can reinforce the implementation of these standards.

In this context, this motion calls on the Conference of INGOs of the Council of Europe to make specific recommendations which are relevant to the Transnistrian region.

²⁴ Human Rights Council Resolution 23/09/2014 A/HRC/27/L.24 concerning the Civil society space.

²⁵ Assembly debate on 28 January 2016 (8th Sitting) (see Doc. 13943, report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Mailis Reps). Text adopted by the Assembly on 28 January 2016 (8th Sitting).

²⁶ Assembly debate on 28 January 2016 (8th Sitting) (see Doc. 13940, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Yves Cruchten). Text adopted by the Assembly on 28 January 2016 (8th Sitting).

