

Absence of a Torture Prevention Mechanism in the Eastern Region of the Republic of Moldova and the Impunity of the Moldovan Legal Authorities

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Torture, inhuman and degrading treatment are recognized as serious human rights violations in the official documents of European and international organizations.

The problem of the use of torture and other ill treatments in Moldova, including the statistical data regarding our state's convictions in the European Court of Human Rights, point to the weaknesses in the work of prosecution, police and courts, and show the need to establish an independent internal mechanism (National Preventive Mechanism in Moldova) to monitor the current situation and to initiate, develop and propose strategies, public policies and regulations in this field.¹

Article 17 of the Optional Protocol to the UN Convention provides that the States have the responsibility to establish such National Mechanisms in order to observe the provisions of

the Convention on their entire territory; the Republic of Moldova assumed this obligation by ratifying the Convention.

Unfortunately, we noted that the National Preventive Mechanism is not enforced on the entire territory of the Republic of Moldova, as provided by the country's international obligations.

The 2011 Report of the Center for Human Rights states, in the chapter on the Ombudsman's activities related to the provisions of the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that the Ombudsman only visited penitentiaries controlled by the Moldovan legal authorities. Moreover, according to the Report, between 2008 and 2011, the Ombudsman did not visit prisons in the Transnistrian region.² The authors of the Report cited impediments, such as an existing ban to visit detention facilities in the region. The activities of the National Preventive Mechanism in that sense were limited largely to sending petitions to the human rights commissioner in Tiraspol.

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¹<http://www.undp.md/publications/doc/Baseline%2010%20mai%20final.pdf>

²¹ <http://ombudsman.md/md/anuale/>

Transnistrian detention facilities are not part of the Moldovan penitentiary system. The Moldovan constitutional authorities or other persons, including international bodies, do not have access to these institutions absent the permission of the Tiraspol administration. Thus we believe that these institutions may be treated as individual/private enterprises, because they lack a legal status and are run by people who unlawfully assumed those duties.

Detention Conditions and Ill Treatment in places of detention in Transnistrian region

According to the Annual Report of the “local ombudsman”, in 2013, in the three prisons, one colony for women and one juvenile detention facility in the region there were 2,164 detainees, including 33 minors and 149 women. The “ombudsman” remains concerned with the negligent attitude of the Tiraspol administration to persons in detention. Most prisons do not meet the minimum requirements for long-term accommodation of people. Cosmetic renovations were made in two preventive detention facilities, while conditions in the rest of the prisons remain inhumane. The cells are small and overcrowded, ventilation is absent or obsolete, beds are made of planks and don’t have bedsheets, buckets with lids are used as toilets. The local “ombudsman” was also concerned with the lack of adequate medical care for detainees, absence of specialized doctors and medical equipment to treat patients. He stated a serious problem in the women’s colony, where there is no gynecologist or necessary medicines, and where, in consequence, most women suffer from gynecological diseases. The “ombudsman” described this treatment as inhumane. According to him, in 2012, there were 17 deaths registered in Transnistrian prisons, including 4 violent deaths, 7 deaths of TB patients, 4 deaths of HIV/AIDS, and 2 deaths of cardiovascular diseases.

We recall that, in his report, the UN human rights expert Thomas Hamarberg described the situation in Transnistrian prisons as alarming. The expert stressed the urgent need to improve the health care and the detention conditions in these prisons, to review the incarceration policy and to provide social assistance for the rehabilitation of detainees.

Regional Regulations

Article 21 of the so-called “constitution” of the region provides that no one shall be “subject to torture, cruel, inhuman or degrading treatment or punishment, or medical experiments.”¹ While the “criminal code” passed on 19 April 2006 does not contain a definition of torture as required by the Convention Against Torture, it criminalizes “istyazanie” (torment), which is punishable by up to three years in prison (Article 114), and states that, if combined with “torture”, it is punishable by up to seven years imprisonment.² The norm however does not provide that the use of “torment” by an official is an aggravating circumstance. Thus according to the regional law, victims of “torment via torture” cannot complain against the actions of the local “law enforcement officers” (police, security service). There is no mechanism for submission of complaints and monitoring or internal torture prevention mechanism; the local “prosecution” is in charge of control, and the “regional ombudsman” – of monitoring detention facilities. Several interviewees expressed reserves with regard to the work of these institutions, which were often the ones hiding facts of torture and ill treatment.

Although changes were made in the “local criminal law” at the end of 2012, torture was not included as a criminal offense. Also, none of the recommendations made in that sense by UN expert Thomas Hammarberg were taken into account by the de facto administration of the region.

¹<http://vspmr.org/?Part=216>

²<http://vspmr.org/?Part=235&ClassType=35>

Legal Rehabilitation of Torture Victims in the Transnistrian Region



Local criminal procedure rules provide a series of legal guarantees for defendants involved in criminal proceedings, which are more or less declarative and formal. Local investigators have the right to detain people for up to 72 hours on any allegations of offenses or crimes. The investigation officer, prosecutor and judge are entitled to apply one of the following preventive measures: house arrest, personal or organization' written undertaking, bail, arrest and military surveillance. Preventive measures have no set deadlines. The actions of the investigation officer may be appealed with the prosecutor, and

those of the prosecution – with a higher-ranking prosecutor or judge. There are no investigation judges, so it is common that the same judge can order the arrest and rule on the criminal case. There is no basis for objections on this ground.

Investigation acts, prosecutor orders to refuse/terminate criminal proceedings or other acts infringing the constitutional rights of the parties involved in the trial or in other ways impeding access to justice may be challenged in court. According to local regulations, appeals against acts/actions of the law enforcement shall be submitted upon paying a “state tax”.

A defense attorney is admitted to proceedings at the time of presenting the charges, and, in the case of detention – at the moment of reading the arrest report. Foreign lawyers are allowed provided they work jointly with an attorney from the region, after paying a special fee and seeking the agreement of the regional bar association. All the actions and complaints are lodged in Russian.

A forensic examination may be ordered only if the investigation officer deems it necessary. Thus a torture victim has little chance of obtaining medical evidence of ill treatment. The examinations are carried out mostly by forensic centers that are controlled by the “interior ministry”. Examinations conducted outside the region are not allowed.

According to the local procedural law, only those unlawfully prosecuted, convicted, subjected to preventive measures or forced medical treatment, removed from work or who had their wealth confiscated can demand rehabilitation by the means of compensation of damages. The law does not provide for the right to rehabilitation of victims of torture and or ill treatment. There are no convictions in cases of ill treatment in the local judicial practice.

Alexandru Zubco,
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Torture in Transnistrian region: Isolated Cases or a Flawed System? *A roundtable discussion dedicated to the International Day in Support of Victims of Torture*

In 1997, at the recommendation of the Economic and Social Council, the UN General Assembly declared June 26 the International Day of United Nations in support of victims of torture (International Day in Support of Victims of Torture).

This day is aimed at eradicating torture and the ensuring the effective functioning of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, which entered into force on 26 June 1987.



Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind.

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Most of the world - 145 countries on all continents – have ratified, to date, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Torture in Transnistria: Isolated Cases or a Flawed System?

On the eve of the International Day in Support of Victims of Torture, the office of the public association "Media Center" brought together to a “roundtable discussion” relatives and friends of those affected by torture and ill treatment, lawyers, members of the public, representatives of the investigative committee, the prosecutor's office and the ministry of justice. The commissioner for human rights of the region, Vasili Calco, moderated the meeting.

Nicolai Buceatchi, chief editor of the newspaper “The Man and His Rights”, was invited to the roundtable meeting as a representative of the media covering human rights, in particular, cases of torture. He presented numerous examples of the use of torture and ill treatment during the investigation.

Relatives of torture victims shared bitter stories from their own lives. They too can be considered victims, because the closest people cannot remain indifferent to the sufferings of the dear ones. The experiences they went through had an extremely negative impact on their health and wellbeing.

The participants shared many examples of “abusive treatment” by law enforcement representatives, and a natural question arose: are these isolated cases or is it a problem of the system?

Nicolai Buceatchi is convinced: it's the system. Between May 2012 and January 2013, the newspaper he heads received about forty complaints related to this problem.



Regional ombudsman Vasiliu Calco believes that not all the complaints of “abuse of power by investigation officers” are legitimate therefore one cannot say there is a systemic problem. These are isolated instances. The representatives of the investigation committee, the ministry of justice and the prosecutor’s office share this opinion: there are instances of torture and ill treatment, but they are not widespread.

Be that as it may, such things still happen, which is absolutely unacceptable. This is about the physical and mental health of a person, his fate, even his life. The participants at the meeting mentioned cases of deaths from injuries suffered as a result of torture.

How was this even possible?

The ombudsman believes that the situation is connected with the reporting system in the law enforcement, where conclusions about

the effectiveness of the work are drawn based on the percentage of crimes solved. It would be better, the ombudsman suggests, to focus on crime prevention and the “percentage of trust” of the population in the representatives of the interior ministry. Citizens should not be afraid of the police, but rather see it as their protector. Unfortunately, at this moment, it isn’t quite so.

“Media Center” lawyer Oleg Garnitchi recalled the recommendations of Senior UN expert on human rights in Transnistria, Thomas Hammarberg, who emphasized the need to promote “zero tolerance” for torture and inhumane detention in prison. “The respective articles should be introduced in the criminal code,” Garnitsky believes, “those using torture must be punished.”

**Luiza Dorosenco
Media Center**

Photo by Alexandr Dorosenco

The roundtable meeting was organized as part of the project "Improving the Legal Culture of the Transnistrian Residents," implemented by Media Center with the support of the Promo-LEX Association's Small Grants program to promote community initiatives in the Transnistrian region of the Republic of Moldova. The Small Grants program is funded by the National Endowment for Democracy (NED).



International Campaign on 26 June 2013:

**"TORTURE VICTIMS HAVE THE RIGHT TO REHABILITATION -
LET'S MAKE THIS RIGHT A REALITY!"**

CALL FOR SUPPORT OF VICTIMS OF TORTURE

**To the attention of the Moldovan authorities,
international institutions,
and embassies accredited in Moldova**

June 26 is UN International Day in Support of Victims of Torture, a day that gives us the opportunity to remind the world that torture is a serious human rights violation. Torture destroys the sense of dignity and human worth. In some cases, it is part of a state policy aimed at intimidating the people and instilling fear among them.

Torture had serious consequences both for women, men and children. For these reasons, it is regrettable to note that, 26 years after the entry into force of the UN Convention Against Torture (on 26 June 1987, in accordance with Article 27 (1)), this cruel and inhumane practice persists in some parts of the world. Even after regime changes, societies face a culture of impunity, and torture often persists as a barrier to the progress of these communities.

Victims of torture have the right to rehabilitation, in accordance with Article 14 of the Convention. Rehabilitation allows victims to go on with their lives after the incurred trauma with as much integrity, dignity and decency as possible. However, the return to normal life of a person whose dignity was harmed or destroyed by inhuman treatment and torture takes time and can only be achieved with multilateral support - medical, psychological, legal and social - provided on a long-term basis by an interdisciplinary team.

On the International Day in Support of Victims of Torture, we:

1. **express our solidarity** with the many victims of torture in Moldova, including in the Transnistrian region, who have been subjected to or continue to endure torture and its consequences, and with their families;
2. **remind of the obligation of the Moldovan state** not only to prevent torture and combat impunity, but to provide all torture victims from the entire territory of the country, including in the Transnistrian region, timely and efficient means of defense, appropriate means of compensation, social, psychological, medical and legal rehabilitation services or other assistance, as needed;

3. **insist on urgent and unconditional measures** for monitoring the observance of all rights and freedoms of people in places of detention in the Transnistrian region, especially people who sought help stating that they were subjected to torture and inhuman treatment;
4. **urge the government to contribute to the UN Voluntary Fund for victims of torture (UNVFVT)** along with other States Parties to the UN Convention Against Torture.

This fund is very important for many survivors of torture around the world, as it is one of the major specific sources that finance rehabilitation activities internationally. Most rehabilitation centers in the world, including RCTV "Memoria", are financially dependent on the Fund to enforce one of the basic rights of victims of torture - ***the right to free medical and social rehabilitation***, guaranteed by all relevant international instruments, including by Article 14 of the Convention Against Torture, ratified by Moldova.

We remind that the Rehabilitation Center for Torture Victims "Memoria" is the only one of this kind in Moldova, operating since 2000, and it makes enormous efforts to meet the rehabilitation needs of past and present torture survivors, including those from the Transnistrian region. This institution deserves adequate support from the state.

The Promo-LEX Association thanks "Memoria" Rehabilitation Center for the continuous assistance it provided over several years to Promo-LEX beneficiaries, victims of torture and inhuman and degrading treatment from the Transnistrian region of Moldova.

We are looking forward to real actions and a positive response to this call, both on behalf of the Moldovan authorities and international organizations accredited in the Republic of Moldova, for which democratic values and human rights are a priority.

Only through the direct support to victims of torture can we prove unequivocal determination and a clear commitment to fighting torture and impunity!

26 June 2013
Chisinau, Moldova

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Promo - LEX

Advancing democracy and human rights



**National Endowment
for Democracy**

Supporting freedom around the world

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The **Promo-LEX Association** is a Non-Governmental Organisation focused on promoting democratic values, whose purpose is to advance democracy in the Republic of Moldova, including the Transnistrian region through promoting and defending human rights, monitoring democratic processes and strengthening the civil society.

**Promo-LEX Association provides free legal aid assistance on issues of human rights violations for the inhabitants from the Transnistrian region of Moldova.
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The opinions, findings and conclusions or recommendations expressed herein are those of the authors and do not necessarily express the views of the National Endowment for Democracy (NED).