

“Courts” and other “authorities” of the Transnistrian region cannot decide on the arrest or custody of persons

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” Those who deny freedom to others deserve it not for themselves.”

Abraham Lincoln

The freedom and safety of the person, among other fundamental rights, represent some of the values most sacred to the human being. Article 25 of the Constitution of Moldova provides directly and unconditionally that the freedom and safety of the person are inalienable rights.

With the development of global relations, international acts earned increased importance, finding themselves included in the national legislations of most of the states that adhered to one or another international act. The European Convention of Human Rights represents today the main instrument that ensures the protection of human rights and fundamental freedoms.

Regrettably, in the Transnistrian region of the Republic of Moldova, this human value is not respected: on the contrary, certain unlawful groups use it as a token of exchange for some purposes.

According to *Article 5 of the ECHR and Article 9 of the International Covenant on Civil and Political Rights, 1966*, no person can be deprived of their freedom, except for the cases when arrested or detained to be brought before a *competent judicial authority*, when there is *probable cause to suspect the person of having committed an offense*, when *the grounds are thorough and necessary to prevent him from committing an offense or fleeing after having committed one*, or if a person is in lawful detention after being convicted *by a competent court*.

Related to the rulings and legislation of ECHR in the area, it is impossible to deem the “courts” in the separatist “moldovan transnistrian republic” (“tmr”) as “courts of law” or “competent judicial author-

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ities”, as these are pieces of a system that operates based on a “constitution and legislation” which does not reflect a judicial tradition compatible with the ECHR or allow individuals to benefit of its guarantees (*Cyprus v. Turkey*, paragraphs 231 and 236-237). Moreover, these “courts of law” are not competent to pronounce judgments with executive power in criminal cases, as confirmed by the practice of the Moldovan Supreme Court of Justice while examining appeals for annulment of the “legal acts” issued in the Transnistrian region as part of so-called criminal cases.

Subsequently, the most frequently violated right in the Transnistrian region appears to be the right of freedom, which is often violated jointly with infringing other rights, such as the rights provided by Article 3 of the ECHR (prohibition of torture) and, sometimes, Article 2 of the ECHR (the right to life). In the Transnistrian region, detention conditions endanger the life and health of every person that had the misfortune to end up in those premises.

According to Thomas Hammarberg, the UN expert for human rights, who has confirmed the critical situation and expressed his worries with regard to the situation in Transnistrian penitentiaries: “There are too many detainees. Many have unjustified long sentences; Conditions of imprisonment are not good. There are severe health issues and other problems. Tuberculosis is widespread. The measures to contain the spread of tuberculosis are not efficient.” We emphasize that the situation remained unchanged in 2013-2014, which is confirmed by the Tiraspol “administration.” In this regard, the high European Court has stated that deprivation of freedom shall be considered unacceptable if it creates a means of interference with other rights and freedoms guaranteed by the European Convention (*Kurt v. Turkey*, 28 May 1998).

Another grave issue frequently registered in the Transnistrian region is the use of preventive detention for excessively long periods, which has become already a repressive practice against businessmen in particular, in order to takeover their business. This vicious practice is mostly determined by the so-called applicable procedural legislation, as well as by political servility and soviet mentality of the “corps of judges” illegally established in the Transnistrian region.

Analyzing the information provided by Promo-LEX in the causes litigated at the ECHR, we have found an obvious inconsistency with international standards of the way custodial detention is applied in the Transnistrian region:

- In most criminal cases, persons are put in preliminary detention, and in cases of grave offences, custodial detention is applied to every suspect/charged.
- The decisions on application of custody have vaguely arguments, and the necessity of this measure is not explained; the arrest is decided without indication of the de-facto reasons or evidence, but by simply referencing the provisions of the “tmr” code of criminal procedure.
- Preliminary detention lasts sometimes as long as several years;
- “Courts” uphold the decision on preliminary detention, while examining appeals, using similar, repetitive, clichéd motivations in their judgments.
- In none of the encountered cases, a concrete justification for explaining the necessity of maintaining the preliminary detention was found.
- “Courts” often invoke the risk of fleeing from “criminal investigation,” but no factual data is presented on the attempts of the defendant to flee from the investigation or examination of the case in “court.”

- Another reason often used is the need to finalize the investigation, which cannot by itself serve as a pertinent and sufficient reason for maintaining a person in preliminary detention;
- “Courts” do not analyze alternative options to preliminary detention.

Detention of persons awaiting trial should not become a rule (Art. 9 p.3 of the International Covenant on Civil and Political Rights 1966). The rule is the freedom of the person. Custody should be an exceptional measure. Therefore, preventive detention can only be used in certain cases and only for reasons thoroughly and convincingly demonstrated in the decision of the issuing bodies, which is not the case in the “judicial system” of the “tmr”.

In light of the above, it would be fair to state that the common practice in the Transnistrian region is mandatory application of preliminary custody, regardless of the presence or lack of credible reasons. A comparison of the ECHR practice and the distorted practice of the “courts” of the Transnistrian region, while not taking into account the legality aspect of these “courts”, one concludes that preventive detention is often used in the Transnistrian region in absence of “thorough” and “credible” reasons and beyond reasonable limits set by the Art. 5, p.1, 1.c of the European Convention.

This is confirmed not only by the so-called “judicial practice” from that area, but also by the provisions of the “Code of criminal procedure” of the “tmr”, which unequivocally provides that “*the term of custody for persons suspected of crimes and severe crimes is not limited*”. This is also confirmed by UN Senior Expert Thomas Hammarberg, in his report regarding the Transnistrian region of 23 February 2013, and by the fact that “tmr” is ranked second in Europe by the number of convicts. According to the expert, in the Transnistrian region, the rule is that a judge can decide to extend the period of detention and the maximum time for preliminary detention to nine months for minor offences and 18 months for more serious offences. However, when the case goes to court, the period of detention can be extended by court decision without indicating its duration. The expert interviewed detainees that spent over 18 months in custody - some of them even more than 4 years. The expert was told that the period of preliminary detention and court proceedings could last up to seven years.

In this context, based on how they were founded and how they administer justice, “tmr courts of law” cannot be considered “courts” in the meaning established by international norms, especially Art. 5 of the Convention, thus such “courts” rulings to deprive persons of the freedom is *a priori* illicit, as they are based on a vicious practice and “legislation” which is incompatible with international standards.

Those who deprive others of their freedom contrary to international provisions should be held accountable. The Republic of Moldova, which ratified these international instruments, should find the necessary means to cease the impunity of those involved in this phenomenon.

Russia could be held accountable for inhuman detention conditions in the Transnistrian region

The European Court of Human Rights recently notified the respondent Governments on the case *Şcvarcenco v. Moldova and the Russian Federation* (application no. 45464).

Dumitru Şcvarcenco, a Ukrainian citizen, detained in a “prison” in Tiraspol, complained to the High Court citing violations of his rights under Article 3 of the European Convention, inhuman and degrading conditions of detention, Article 5, illegal arrest by Transnistrian “authorities”, and Article 13, lack of effective remedy regarding his complaint under Article 5. More information on this case can be found on the ECtHR website [here](#).

The Promo-LEX Association repeatedly drew attention to the poor detention conditions in the Transnistrian region. There are three institutions for [execution of sentence](#) under the control of the Tiraspol administration, and the number of persons held in preventive detention isolators remains unknown.

According to [Human Rights Report 2012-2013](#), the high rate of persons in detention per 100,000 population compared with the capacity of detention facilities raises many concerns, which was also noted in previous reports of Promo-LEX. Analyzed statistical data show that 563 out of every 100,000 people in the region are in detention. For comparison, the ratio of detainees held in in prisons under the jurisdiction of the constitutional authorities is of 188 for every 100,000 people, while the EU average, [as of 2013](#), is 129 people.

You can find more detailed descriptions of the conditions of detention in Transnistria in articles by Human Rights Without Frontiers International, written with the support of Promo-LEX, [here](#).

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Punishment brought humiliation

On January 3 I invited my old friend to visit my house. We sat at the table, tasted some delicacies prepared by my wife and then I accompanied Sergey till the bus station. My friend was 59 however I was always saying I knew him for about 60 years as I remembered his mother had been pregnant.

My lifetime I was proud of my friendship with Sergey, an outstandingly talented person who had done a lot for the city and for the republic. He is a very intelligent man, to the finest sense of this word - always punctual, nonsmoking and never drinking. One has never heard from him a swear-word nor even a loud voice.

But in happened that several years ago he fall

ill and we, his relatives, insisted on his retire on a disability pension.

That fateful evening of January 3, 2014, about 7 p.m. Sergey while approaching his house and heading for his block was stopped by 2 militia officers.

- “Have you been drinking” – “A little, - answered Sergey, - I was at my friend’s”. – “Follow us to the militia department”. Since my friend didn’t feel guilty he didn’t argue. But soon he found himself in the cell #2 of the militia headquarters which is known to be combined with the detention facility of the Tiraspol Central Internal Affairs Directorate.

In a stuffy small cell several dozen of people were placed (the militia gala evening turned to be rarely fruitful).

After a while three militia officers entered the room. One of them – a muscular stubby had fetched three blows at Sergey. I repeat, my friend was very ill. With his height of about 180 centimeters he hardly weighed 50 kilograms. Sergey immediately fell down. And the stubby either jumped on Nicolay's chest or stroke his chest with his leg. He had broken the third rib of Nicolay's left chest. None of Nicolay's actions had provoked the attack. Obviously, those who had entered wanted just to frighten the prisoners once more. The power of the kick was very convincing and Nicolay lost his consciousness.

And then our famous heroes – militia officers got scared of killing the man. They removed the other public from the cell, called up for doctors who stayed with Sergey for about half an hour and even put him on drip. When Sergey recovered his consciousness and still was feeling very bad he was placed in the cell #4 with terrible conditions. His life remained still endangered due to the guilt of those militia officers.

In the morning Sergey was forced to write a declaration that he had been beaten by his cellmates. But, dear audience, our militia officers were, after all, humane. They didn't fine nor fingerprint Sergey. Still, from 400 rubles he had had in his pocket there remained just 20 and this also emphasizes the existing genuine humanism. At least not all the money had been taken. "Here you are, poor man, for the bus ticket and for your daily bread". I don't know who was so "generous". I doubt these were his cellmates. As rule they compassionate their fellows in misery and can't be arsed to frisk them. Sergey is still at his sick leaf.

Several years ago our leader, A.G. Radchenko had been describing a similar case of a slightly drunk man, who didn't stagger nor was even mess with someone and who was taken right near his entrance hall. Despite loud protests

and requests of neighbors the police didn't want to let the luck slip through their fingers. At that time the man was their trophy.

In 2007 our newspaper had published a large material named "What's medical is in medical sobering station?" describing misfortunes of a respectable man happened on November 20, 2007. He had happened round the street being a bit inebriated and he was also subjected to torture and humiliation, which were shown in treatment of the sobering station officers and in conditions of his detention. His obstruction of law-enforcement officers consisted of he dared to implore to make a call to his old mother before being placed in the cell. His request was denied and he was tied to a chair in a dark separate room in order to end his strong protests and his right arm was so strapped that he couldn't work at the computer for two months. And it was his bread and butter. Now, after 6 years his arm has not recovered completely. However the biggest injury still was the moral damage. He himself, his friends and relatives were insulted and humiliated.

Later I discussed with many law-enforcers and with the deputy to the Supreme Council, Mr. A.V. Syptchenko, the issue of similar cases at medical sobering stations. All of them agreed that such a detoxification can cause huge and irreparable damage to the community and to the state, in the name of which justice is rendered.

If a person in a state of severe alcohol intoxication really needs isolation it would be sufficient to place such a person in an ordinary room of a separately standing building and to offer the person the possibility to call relatives for they won't go out of their mind worrying for the whole night and calling all hospitals and morgues. The person shall get enough sleep in human conditions and it would be much better if such a person is taken by his relatives. And in the morning such a person shall be charged for the rendered services at a cost price including profits tax and social costs. Let such prices be higher than the current fees. The person shall be punished for the committed negligence

financially and not by humiliation of his human and civil dignity.

An activist of the non-government organization "On protection of rights of convicted, accused and suspects", Mr. D. Ch., had addressed to our editorial office considering that on October 2013 he was illegally arrested and sent for 15 days custody.

He shared his impressions on being sent for custody in the famous cell #20 in Tiraspol CIAF underground. Neither criminals, nor suspected in committing a crime are held in custody there, but persons awarded administrative penalty. At that place an arrested persons is called in prisoner's language and by militia officers as "Sutochnik" (short-term prisoner). One can find himself in such a cell for different reasons: for inappropriate behavior while intoxicated, for disorderly conduct, quite often being incorrectly placed in militia headquarters, or due to unfriendly attitude of the MIA officers in application of preventive or punishment measure. Many people can be placed in the cell #20 and even those completely innocent. And, normally the conditions there should be decent. However those, let us say, sanitary safe persons are forced to stay on those 20 square meters sleeping on planks together with those who are drunk, not being washed, shaved or hair-cut for a long time, having tuberculosis, pediculosis (lice infestation) and other infectious diseases. A resistant mixed sewerage smell and the smell of dirty socks infests the cell number 20. There's no possibility for having a wash or to wash the things.

Ventilation functions very bad and is not always switched; air is changing only when the door is opened. A rusty sheet metal box with drilled holes and streaks is used instead of the window. Daylight is below any healthy standards.

The floor is covered with uneven concrete with clumps of trampled mud. No books, newspapers or journals, there is nothing to read and moreover impossible due to poor lighting. Ta-

ble games and gambling are not allowed. Moreover there is no table at all. Prisoners are eating while sitting at their haunches near the first level of planks. One can also sit on a plank putting a bowl of gruel on his knees. The food quality can be described in a long poem of swear words. Practically there are no dishes available, just three spoons, 5 bowls and no cups at all. No tea or coffee is given. The thing that is rarely served can hardly be named as tea. A brew of monthly freshness causes terrible heartburn. There are no sockets and no tea urns.

No parcels are allowed for administrative law breakers. But tell me where the logic is? Cell, where persons convicted, accused and suspected in murder, robbery and violence are placed, are more comfortable and parcels are permitted. And those put in custody for a single day because of a venial offence cannot even drink normally a cup of tea. You can't have a towel or a tooth brush not even speaking about changing underwear. One has to sleep on a plank without mattresses and bed linen. A plank represents uneven greasy wood board; moreover there are not enough sleeping places. WC (if you can call it like this, rather representing an unhygienic hole) is in terrible state. This corner postament seems to have been made by a drunker and over the years has acquired dirt, salts from urine, sewage and vomit masses. Sanitary does not function regularly. One can hardly support such a stink and can't fell asleep on his side facing the toilet. And can you imagine how one can relieve himself at such a place? Isn't it a humiliation of human dignity?

The drainage pipe of the wash basin, the so-called bowl of Genoa (which also is in an unsanitary critical state) is replaced with a construction made of dirty chopped bottles, cellophane plastic bags and rags. This stuff exudes stench and is leaking. All this drain structure can certainly be removed and discarded. Then where to get another one? It is unrealistic to scrounge even an empty bottle from supervisors. No, they are certainly big-hearted and allow prisoners (especially those regularly visit-

ing this cell #20) to earn a couple of cigarettes after cleaning the corridor. They even announce that when opening the cell door - "Who wants to have a smoke? You should clean the corridor". And men accept that as they deadly want to smoke. Smoking is possible only when hiding. Cigarettes are not allowed and smokers suffer terribly. And again the question arises: why? How this "educational" measure can exist together with medical standards? May be it represents another form of torture? Smoker suffers from lack of cigarettes more than from hunger.

The case with my friend Sergey and many other cases described in our newspaper speak about that law-enforcement authorities of the Transnistrian Moldavian Republic, without declaring a war, are fighting with people and are defeating at the moment.

I'd like to address to Mr. Gennady Kuzmichiov, the new minister of Internal Affairs. Please use your fresh empowerments and look critically at the role of the law-enforcement authorities until you became a part of this vicious system fighting not for Transnistrians but against them. Please review the cursed reporting system "from the achieved" that already maimed more than hundreds of Transnistrians' lives. Please reform authorities' work on prevention of crimes and offenses.

Please pay attention to the article of the TMR Constitution which says "No one shall be subjected to torture, cruel, inhuman and degrading treatment or punishment". For many times our newspaper was writing that Transnistrian investigative bodies were practicing tortures with medieval brutality. These include gas mask by placing it over the victims head and blocking the air supply; a swallow position called "lastochka" when the victim's hands may be cuffed behind his back and attached to the bar and while he hangs without his legs touching the ground the militia officer beats him with plastic bottles filled with water; or the method of attaching electric wires to the victim's genitals. The majority of victims cannot resist such suffer and sign protocols without reading them.

This fact is described in the report of Mr. Thomas Hammarberg, Nobel Prize winner for human rights protection, the UN High Commissioner. I quote:

"The UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment visited Transnistria in July 2008 as a part of a visit to the Republic of Moldova. On treatment of persons in police custody he reported later that he had received "consistent and credible allegations of ill-treatment and torture, mainly during interrogation. Torture methods include severe beatings, with fists and rubber truncheons, including on soles and kidneys, electro-shocks, needles inserted under their fingernails". Following such "investigations" innocent citizens are received into prison for extremely long period while real criminals stay out of prison and are committing new crimes. In the Comments on the page 18 Mr. Hammamberg tells in his own words: "Indeed it became clear to the Expert that such methods had in fact been practiced in recent times".

That is what is written. I want to add that I was meeting with Mr. Hammamberg for four times and we were discussing this problem in private. The Nobel Prize winner was shocked of what he had seen in Transnistria. However he was satisfied that TMR authorities have taken seriously his recommendations and promised to undertake effective corrective measures. And really, after 10 months from the last visit of Mr. Hammamberg, a plan on implementation of UN Higher Commissioner recommendations was drafted. However this plan was not seen even by the TMR Ombudsman, Mr. V.A. Kalico.

I think that the new minister of Internal Affairs, Mr. G.I. Kuzmichev shall have the possibility to familiarize with the entire text of the planned measures.

The paragraph on the page 17 of Mr. Thomas Hammarberg's Report is also interesting: "The Expert received some credible statements and was informed by the Transnistrian Prosecutor at

the time that procedures had been initiated against ten police officers for having used force during interrogation. However there were also officers who had committed such crimes in the past who were still on duty". Well, it appears to be that officer who committed a crime and whose guilt was established (criminals, upon definition) can still render justice in the name of Transnistrian Republic.

I discussed this problem with the TMR Ombudsman, Mr. V.A. Kalico. He considers that the problem is arisen due to the fact that the norm prohibiting torture is written in the Constitution, however there is no liability established for violation of such norm.

I'm asking you, dear Mr. Kuzmichiov, to take measures that the Ministry of Internal Affairs which you head shall put in place a legislative initiative on defining of liability for torture.

On the same page of his Report, Thomas Hammamberg describes his impressions during his visit to police headquarters of Bender city: "There were no daylight in the cell and little ventilation. Even if individuals are supposed to stay in such cells for a maximum of time of 72 hours – and exceptionally for up to ten days, if so decided by the court – the conditions must be humane. What constitutes humane treatment is specified through international standards such as Standard Minimum Rules for the Treatment of prisoners and the Body Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Moreover, any treatment of persons awaiting trial should be based on the principles that they are regarded as innocent until guilt is proven by the court.

Further, on the page 18 of Hammamberg's Report: "The key political actors appeared to recognize that the matters raised by the UN Special Reporter on Torture were important".

"One of reasons mentioned to the Expert for the establishment of a separate Investigation Committee was to professionalize police work (Hammamberg names the transnistrian militia as police – N.B.). One aspect of this must be to put a definitive end to any torture and ill-treatment of persons arrested.

This will require recruitment procedures which exclude immature applicants; a code of ethic conduct which is given highest priority in professional training for police officers; continued on-the-job training on how to handle tense situations; and a management with sensitivity to the needs of the society at large.

The political and police authorities must promote an approach of zero tolerance with regard to torture and other violent methods. The very term "torture" should be defined in law, as should the related international term "degrading treatment.

When a case of torture has been exposed, it is particularly crucial that the culprits are dully punished, including through prompt removal from any police services."

I'm sure, dear Mr. Kuzmichiov, you'll have enough energy and will to do so. It's up to your desire. If you order to initiate investigation I'll help you to examine the case of Sergey. I can tell you for sure that my friend was staggering not because of being drunk but because he was heavily ill.

The article was developed by "The man and his rights" / Человек и его права newspaper's team, with the support of Promo-LEX Association, within the Matra Programme (Embassy of Kingdom of the Netherlands).

Promo - LEX

Advancing democracy and human rights



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