

Promo - LEX

Advancing democracy and human rights

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DECLARATION ON TORTURE

Dear Delegates,

Over the past years, the Republic of Moldova implemented important reforms that ensure the right not to be subjected to torture (the criminalization of the torture crime – art. 166/1, other policy changes). The reforms were implemented as a result of a more than 100 recommendations provided by the international community and more than 80 judgements issued against Republic of Moldova by European Court of Human Rights regarding violation of art. 3 of the European Court of Human Rights.

Despite important legislative amendments in certain fields, the right not to be subjected to torture and other inhuman or degrading treatment is not fully guaranteed and ensured in practice, **especially in the Transnistrian region.**

In order to increase the observance level of the right not to be subjected to torture and ill treatment, Republic of Moldova should intervene urgently in the following areas: a) effective investigation of torture, b) detention conditions and treatment of prisoners in the prison facilities controlled by constitutional authorities, c) the existence of a non-controlled system of the criminal justice in the transnistrian region (created and controlled by the *de facto* authorities), d) the refusal of access to the de facto detention facilities situated in the transnistrian region for the international monitoring bodies;

Although over 600 complaints related to the facts of torture and ill-treatment are annually lodged with the Prosecutor's Office, the criminal prosecution is initiated only in about 20% of cases. During 2013-2016 more than 80% of the cases regarding ill-treatment were closed with an order of termination of the criminal prosecution, meaning that the prosecutor office refused to start an investigation in about 500 complaints for 2016, for example. Also, It seems that judges and prosecutors do not make a priority of cases of ill-treatment. The duration of the criminal prosecution and of examination of this category of cases in the court is still a problem. At the beginning of 2015, 131 criminal cases on ill-treatment were pending in the Prosecutor's Office, by the end of the same year the number of criminal cases was 118, but only 31 were transmitted to court. It is to be noted that the cases related to ill-treatment that were reopened after ECtHR proceedings, are still under criminal prosecution after more than four years since reopening the procedures.

As to investigation of abused on psychiatric institutions, at national level, there are not any special provisions related to the investigation of cases of torture and inhuman or degrading treatment in the health care or residential institutions of any type, including in the psychiatric institutions. A lot of ill treatment cases reported to police by the residents of the psychiatric institutions remain uninvestigated.

The conditions of detention in penitentiaries are still bad, and the rehabilitation of victims of torture is still a problem despite certain legislative interventions. According to the situation as of 1 April 2017, the detention ceiling was of 8,654 places. As of this date, the penitentiary institutions held 7,868 persons,

compared to 8,121 persons during the same period of the last year. Despite all the efforts to humanise the criminal legislation regarding the decrease in sentences, the rate of population imprisoned in the Republic of Moldova in 2016 constituted between 260 and 270 prisoners to 100,000 inhabitants, which largely exceeds the European average, by about 140 prisoners. In January 2016 this rate exceeded the level of 2008, with 8,054 prisoners, of which 1,720 remand. Starting with 2011, the national penitentiary system has growth trends by about 300-500 persons annually since 2011 until now. It seems that the systemic problem of overcrowding does not represent a priority for the national Government.

In 2017, the right not to be subjected to torture in the Transnistrian region did not register positive trends. Such a conclusion results from the lack of clear progress at local policy level in the field of torture prevention, complaints about the use of torture, the indifference of the local ombudsperson, etc. Last but not least, **ECtHR continued to communicate to the Governments of the Russian Federation** and the Republic of Moldova complains about the violation of Article 3 of the Convention in the Transnistrian region of the Republic of Moldova, to pay attention mainly to the torture investigation and detention conditions.

Also, in 2017 ECtHR issued the judgement in the case of Eriomenco v. Republic of Moldova and Russian Federation (Ap. No. 42224/11, 9 May 2017). The Court found that the right to not be subjected to torture or inhumane and degrading treatment (art. 3). The case reiterates the problems of the existence of a non-controlled system of the criminal justice in the transnistrian region and lack of monitoring of the detentions facilities in the transnistrian region by the international monitoring bodies.

In this context, Penitentiary system of the Transnistrian region consists of three prisons, a colony for minors and one for women. According to the information published by the Human Rights Commissioner in the Transnistrian region, in 2016, the regional detention institutions detained about 2000 people. Number of prisoners from pre-trial detention centres is unknown. Although in 2015 more than 1000 people were granted amnesty, taking into account that in the Transnistrian region, according to the last estimation, live about 400,000 citizens, the imprisonment rate is of 500 persons per 100,000 citizens. Current imprisonment rate in the Transnistrian region is higher than in Europe and at least the 6th highest in the entire world, if making abstraction of the fact that de facto administration is actually not recognized at international level. The high imprisonment rate can be explained by the fact that the de facto administration implements a penalty policy and legislation similar to the one of Russian Federation, where the imprisonment rate is about 450 persons to 100,000 inhabitants.

Taking into consideration the above mentioned, we ask:

The Government:

- to develop a national policy on human rights observance in the Transnistrian region, with focus on observance of the right not to be subjected to torture and ill-treatment;
- to take concrete steps to improve conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Article 16 of UNCAT and Article 3 of the ECHR. In that regard, the State Party should consider not only the construction of new prison facilities, but also the wider application of alternative noncustodial sentences, such as electronic monitoring, parole and community service. The Department of Penitentiary Institutions should implement the recommendations given by European Committee for the Prevention of Torture after its visit in September 2015 like reducing the levels of violence and reducing the overcrowding in cells.
- To invite UN Special Rapporteurs for the observance of the right not to be subjected to torture, observance of the rights of persons with disabilities and the observance of the rights of human rights defenders to make a monitoring visit to the Transnistrian region.
- to develop specific policies to prevent torture in the Transnistrian region, including in the area of kidnapping by dealing with the observance of the human rights in 5+2 negotiations format;

- to make effort to ensure a safe environment for human rights defenders that support the victims of torture, including in the Transnistrian region and to provide the organisations that activate in rehabilitation of victims of torture with enough support;
- to ensure the review of standards that allow to detain people in mental health institutions due to their mental health and to subject them to coercive interventions or treatment in a mental health institution, without the free and informed consent of the treated person;

The Parliament:

- to amend Articles 30-33 of the Law on Ombudsperson to provide the National Preventive Mechanism against Torture with the possibility to monitor the right no to be subjected to torture and ill-treatment in the Transnistrian region, on the basis of available information without the need to conduct monitoring visits.

The Prosecutor Office:

- to ensure that complaints regarding acts of torture and ill treatment that are not prima facie unfounded receive a prompt, impartial, and effective investigation in accordance with the Istanbul Protocol;
- to establish a special preparation program for prosecutors and investigators on how to investigate the acts of torture in psychiatric institutions;
- to develop a clear instruction on how to investigate crime of torture committed in psychiatric institutions;

International Institutions:

- International institutions should insist on the observance of human rights in the Transnistrian region, especially of the right not to be subjected to torture by conditioning the provision of financial support to the de facto administration.

Author/Signatories

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Promo-LEX Association is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society. Find more about Promo-LEX at www.promolex.md