

2019 HDIM Session
Factsheet submitted by Promo-LEX Association

Since the last HDIM meeting, some progress has been achieved in the field of prevention of torture, due to joint efforts of civil society, international institutions, State authorities and their external partners. However, in spite of the efforts made, torture and impunity persist, while victims' access to justice is difficult and limited. In practice, many of these problems are related to ineffective investigations of torture allegations and the inability or unwillingness to identify perpetrators for prosecution. For many years, the culture of impunity and lack of accountability of perpetrators has been recognized by international and regional torture monitoring bodies, as key factors contributing to the prevalence of torture and ill-treatment in the Republic of Moldova

EMERGING ISSUES

THE NEED FOR EFFECTIVE INVESTIGATION OF CRIMES OF TORTURE

DESCRIPTION

RECOMMENDATION TO THE MEMBER STATE:

Torture is still in use in the Republic of Moldova, along with the Transnistrian region, despite increased government efforts to crack down on perpetrators. The number of reported torture acts has decreased recently. However, it is estimated that the number of acts remains higher than reported due to lack of trust in the judicial system.

The victims of torture are both national and foreign citizens, including children and female victims, and those from poor economic backgrounds and vulnerable communities. In the majority of cases, torture is committed against those over 18 years old, though some minors are also victims.

The perpetrators are law enforcement agents, in particular, police officers, who were reported in connection to the majority of torture cases during the 2009 civil unrest and more recent allegations. Typically, law enforcement agents fail to respect the conditions in the application of force and special means and do not report excessive use of force, in spite of the fact-specific regulations were adopted.

Methods of torture alleged by complainants, and those registered, monitored, and documented by Promo-LEX: beating (blunt trauma) and psychological torture.

There were **687 officially**¹ recorded complaints of torture in 2018, though unofficial estimates suggest that torture is more widespread. Out of the total number of the complaint, the criminal investigation started just in 93 cases. The numbers mentioned above make us believe the phenomena of torture and ill-treatment in some cases, are investigated superficially. For example, in the case of Trocin Evgheni, the prosecutor office refused to investigate his complaints of ill-treatment committed in prison. He submitted in the spring of 2019 a complaint to the ECtHR. The case is pending for examination².

The judicial practice of torture examination is also incoherent. In 2018, out of the total 24 Court Judgements, the judges issued acquittal sentences in 9 cases. In such circumstances, the acquittal rate in torture cases is more than 35 %. In the same time, the overall acquittal rate in the Republic of Moldova is less than 5%, according to the public data. For example, in the case of Andrei Brăguta, a victim of torture, the Chisinau District Court decided to issue an acquittal judgement in his case, in spite of the fact relevant proof was provided by the prosecutor office and the

- The Prosecutor General shall ensure that complaints regarding acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial, and effective investigation following the Istanbul Protocol;
- Ensure training of medical and legal professionals in the use of the Istanbul Protocol and that medico-legal reports produced by non-state actors are afforded equal evidentiary value to those provided by government officials;
- Ensure the Judges specialized on criminal cases are sufficiently trained to deal with the torture cases and to refer and comply with the relevant ECHR and UN standards then reasoning a judgement on a torture case;

¹ http://procuratura.md/file/2019-03-05_Raportul%20Public%20activitatea%20Procuraturii%20Generale%20anul%202018.pdf

² <http://hudoc.echr.coe.int/eng?i=001-194925>

parties, including video images of the torture.

DETENTION CONDITIONS AND WOMEN'S RIGHT TO MEDICO-SOCIAL ASSISTANCE

DESCRIPTION

From all 17 prisons in the Republic of Moldova, five institutions have the status of criminal investigation isolators. The situation in penitentiary facilities has not significantly improved in comparison to the situation mentioned in 2019.

The number of detainees as of July 1, 2019, were 6990. Of the total amount, there are 444 women and 60 minors. According to CPT reports of the Ombudsman office (CHRM) and of the National Preventive Mechanism (NPM) made after monitoring visits, the majority of persons are detained in poor conditions, below international standards, in addition to overcrowding. The exception is the Goian prison for minors, whose premises were renovated;

Access to medical service - detainees' access to medical services continues to be limited and deficient, despite improved legislation. Medical examinations are undertaken upon arrival but insufficient medical care to support potential or alleged victims under arrest in the aftermath of trauma, both physical and psychological.

Women in detention - timely access to medical services outside prison facilities are rarely available for women in detention. Based on assisted and documented cases, medical history of many detained women includes severe consequences of sexual and physical abuse, domestic violence, mental illness, and drug or alcohol abuse. Many of them experience chronic diseases and affected health conditions that result from living in poverty, premature pregnancy, malnutrition, and poor health care before detention.

The national penitentiary system **does not take into account the specific needs of women**. This includes the need for adequate nutrition, healthy life, fresh air and exercise for pregnant women, and higher hygiene requirements such as regular showers and sanitary items. The alarming situation of women in detention is also confirmed by ECHR decisions issued on Moldovan cases³.

RECOMMENDATION TO THE MEMBER STATE:

- Improve the conditions of detention in police stations and prisons that bring them to conformity with article 16 of UN CAT, and establish an independent and methodical system that monitors the treatment in practice of persons arrested, detained, or imprisoned;
- Ensure that the Government implements the principles and recommendations of the Kyiv Declaration on Women's Health in Prison;
- The Government should ensure that adequate somatic and mental health care is provided for all persons deprived of their liberty;
- The Government should ensure that all incidents of death in custody are promptly, effectively and impartially investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence;
- The Government should ensure the recruitment of qualified medical personnel;
- The Government should increase the budget allocated for health care in penitentiary institutions, including by developing the capacities and the infrastructure of the Pruncul Prison Hospital.

REFORM OF THE CRIMINAL LEGISLATION AND THE PREVENTIVE MEASURES IN MOLDOVA

DESCRIPTION

In spite of the fact, the overall imprisonment rate in Europe fell by 6.6% between 2016 and 2018 - from 109.7 to 102.5 inmates per 100,000 inhabitants- according to the Council of Europe Annual Penal Statistics for 2018 (SPACE), some of the countries of the Eastern and Central Europe continue to maintain a high incarceration rate. Countries with particularly high incarceration rates continued to be **Russia (418.3 inmates per 100,000 inhabitants), Georgia (252.2), Azerbaijan (235), Republic of Moldova (215.2), Czech Republic (208.8), Latvia (194.6), Poland (194.4)**.

It seems, the action plans implemented by some of the countries, as mentioned earlier at the national level do not work and are not efficient.

RECOMMENDATION TO THE MEMBER STATE:

- To undertake a comprehensive reform of the criminal policy in the Republic of Moldova, to reduce the high incarceration rates;
- To call the Republic of Moldova to ensure that the investigative judges enjoy full independence in practice and not only in law and to end any pressure on them concerning the application of the preventive measures;
- To ask the Republic of Moldova to improve conditions of detention in

³ <http://hudoc.echr.coe.int/eng?i=001-144118>, <http://hudoc.echr.coe.int/eng?i=001-152559>; <http://hudoc.echr.coe.int/eng?i=001-158460>;

For example, in the case of the Republic of Moldova, by its 2013 action plan, the Government undertook to reduce the number of remanded persons and, implicitly, the prison population. The official statistics prove the contrary. The prison population in Moldova increased from 6,735 in December 2013 to 7115(+ 11.4%) in April 2019. More than 15% of the prison population are the persons arrested pending trial. The trends are similar to Russia, Georgia, Azerbaijan.

In the majority of the countries which face the problem of high incarceration rates, the arrest as a preventive measure is overused, among other causes.

In the Republic of Moldova, the rate of allowed arrest requests in 2017 was of 86,9%. Moreover, since 2011, this rate is increasing. The statistics for 2018 shows that 88,4% of the submitted requests were allowed by the investigative judges. This is the highest rate since 2006. The high rates of arrest are specific for other eastern countries. Between 1997 and 2008, the European Court of Human Rights (ECtHR) has delivered 387 judgments condemning Moldova, finding 549 violations of the ECHR in total. In at least 15% of them (80 violations) concerned Article 5 of the ECHR, out of which 24 concerned insufficient reasoning of the arrest.

In all the countries as mentioned earlier, the high rate of arrest and the superficial examination of remand requests by the judges cannot be explained by the insufficient knowledge of the judges dealing with arrest proceedings or inadequate legislation. They are well trained, and even in the case of the Republic of Moldova, the Moldovan legislation always imposed the obligation of fair remand proceedings. Other factors determine this reality, including the fragile independence of the judges. As a result, the effect on the fight against torture is considerably reduced.

It should be mentioned that the phenomena of impunity may be related to the application of preventive measures (arrest) and the decision of the judge to place a person in a penitentiary which is known for its poor and degradant conditions of detention. For example, in Chisinau, the capital of the Republic of Moldova, 95 % of persons placed under arrest (more than 7000/annually) are placed in Penitentiary nr. 13. It happens, in spite of the fact ECtHR issued more than 80 Court Decisions as to the condition of detention in that prisons, and CPT and other national monitoring bodies recommended to close the prison as to its poor infrastructure, overcrowding and deplorable condition of detention. Such an algorithm as I described it is used by the state machinery to intimidate the arrested persons, and in some cases to make them more "cooperating". Nobody is responsible for such actions. Is it not impunity?

the Penitentiary System;

TORTURE PREVENTION AND INVESTIGATION IN THE TRANSNISTRIAN REGION

DESCRIPTION

Conditions of detention and Healthcare

Conditions in most prisons and detention centres in Transnistria remained harsh and did not improve significantly after the reported period.

In 2013 and 2018, the UN Senior Expert on Human Rights Thomas Hammarberg⁴ made several documentation visits to places of

- RECOMMENDATION TO THE MEMBER STATE:

- We recommend the Russian Government to provide civil remedies and rehabilitation for victims of torture and ill-treatment in the Transnistrian region and to ensure that victims obtain redress in

⁴ 2 Senior Expert Hammarberg Report TN Human Rights / www.un.md/publicdocget/41

detention in Transnistria, and concluded that the conditions of detention were unsatisfactory and did not meet international requirements.

The local Ombudsperson confirms that the situation did not change after 2013: inmates are kept in inhumane conditions both in police stations, and in the three prisons of the region (small spaces, cold concrete rooms, lack of ventilation and aeration, lack of toilets, insufficient lighting, overcrowding, poor nutrition, lack of medicines and inadequate medical care, lack of drinking water). Particularly precarious are the sanitary facilities; in almost all preventive detention facilities in Transnistria, detainees have to use buckets or bottles, instead of toilets, for their physiological needs, which is a violation of their human dignity.

Promo-LEX beneficiaries (people benefitting from Promo-LEX's legal assistance) declared that the infrastructure of detention institutions in the Transnistrian region is characterized by small spaces, cold concrete rooms, lack of ventilation and fresh air, lack of toilets, insufficient light, overcrowding, poor nutrition, rusty water, moisture and mold, lack of medicines, inadequate medical care, suspicious deaths, etc.

In 2018, 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 the local policy level in the field of torture prevention, complaints about the use of torture, the indifference of the Transnistrian Ombudsperson.

The facts, as mentioned above, were underlined in the judgements of the European Court of Human Rights issued against the Russian Federation.

The Lack of Complaint and Preventive Mechanisms

Temporary detention centres and prisons run by local authorities are not accessible to NGOs and official representatives in the Transnistrian region. Access to the prisons and visiting rights can only be authorized by a decision of the administration in Tiraspol. Unfortunately, nobody investigates acts of torture and ill-treatment. In the Transnistrian region, torture is not duly criminalized according to the Convention Against Torture. Article 21 of the de facto Transnistrian constitution establishes that no one shall be "subjected to torture, to cruel, inhuman or degrading treatment or medical experiments". However, the de facto Criminal Code of Transnistria does not criminalize acts of torture. Thus, there is no mechanism to investigate the acts of torture as such.

The use of torture by the police representatives or other force structures is widely tolerated when they want to obtain testimonies. Therefore, people from the Transnistrian region very rarely notify or complain about torture.

its legal system.

- We recommend the Russian Government to use their influence over the de facto administration and to call upon them to collect disaggregated, statistical data regarding the observance of the right not to be subjected to torture, and statistical data regarding the health in the penitentiary systems.
- We recommend the Russian Government to call upon international actors and the participants of the 5+2 talks for the settlement of the Transnistrian conflict and to insist on including the issue of the rights of persons deprived of liberty in the context of psychiatric care on the Agenda, in particular in the Vhvatintsi hospital.