

Briefing for the second round of the EU-Moldova Human Rights Dialogue

Issue: Ill-treatment in Moldova

Date: 27 March 2011

Submitted by: Legal Resources Centre, Moldova¹

I. Issue

Ill-treatment (torture) persists and is a widespread phenomenon in Moldova. It is mainly used by the police officers in order to extract confessions from suspects. The investigation of allegations of ill-treatment is usually inefficient. In successful investigations, however, the sanctions imposed by judges are very mild. Conditions of detention in both prisons and pretrial detention facilities remain harsh, dangerously overcrowded, and, in some instances, life-threatening.

II. Background

1. Ill-treatment

The ill-treatment is often used by the police officers in order to extract confessions from suspects.² This behavior is prompted, *inter alia*, by the quantitative indicators used for many years for the measuring the performance of the police units.

The torture victims and witnesses are frequently intimidated and the requests for witness protection³ are often denied by investigative judges. On the other hand, the witness protection should be provided by the police, which make the mechanism useless for the cases of ill-treatment by the police.

In many cases of allegations of police abuse, forensic examination is carried out with delays and its quality is often questioned by victims.⁴ Forensic doctors tend to record only visible injuries, without describing the victim's version of facts and without additional investigations. The possible psychological trauma is not examined by doctors. This leads to under-documentation, since, in recent years, methods of ill-treatment have become more nuanced and less likely to leave physical marks. The forensic doctors remain in need of special training on medical documentation of torture, according to adopted standards and Istanbul Protocol.⁵

¹ The Legal Resources Centre is a registered public association that seeks to contribute to raising the awareness of the authorities about and to the eradication of human rights problems; strengthening an efficient, transparent, fair and credible judiciary; creating a culture of respect for human rights; developing public policies on observance of human rights. The LRC current main activities are focused on the implementation of human rights treaties and reforms in the justice sector. Further information will be available on www.crim.org (the website is under construction and will be launched in May 2011).

² See The Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, 12 February 2009, (A/HRC/10/44/Add.3) p. 11, para. 26 – 27, available at <http://bit.ly/fwhEU8>;

³ See "Entrenching Impunity. Moldova's response to police violence during the April 2009 post-election demonstrations", 2009, Soros Foundation - Moldova, p.p. 61 and 62, available at <http://bit.ly/f6S644>.

⁴ The interview with Veronica Mihailov and Olesia Doronceanu, Public defenders, Public Defender Office, Chisinau, held on 9 March 2011.

⁵ The *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, available at <http://bit.ly/9teRvM>.

Moreover, the Forensic institute should be properly equipped. At the same time, the law does not allow the forensic examination by private doctors. Although recommended several times, no amendments have been made to the law and system of forensic experts.

International experts⁶ and local civil society recommended on several occasions the creation of an independent authority, with no connection with the authorities dealing with the investigation against the alleged victim, to investigate promptly and thoroughly allegations of ill-treatment. In November 2010, the General Prosecutor issued an order establishing specialized prosecutors to investigate allegations of ill-treatment in all territorial and specialized prosecution offices. According to this order, the prosecutors dealing with investigation of ill-treatments should not be engaged in any other investigating activity, to ensure their independence. A specialized anti-torture unit was created within the GPO. It is still not clear what the responsibilities of this unit are.

2. Impunity

“Torture” is a criminal offence provided by Article 309/1 of the Criminal Code (CC) and is also included as an aggravated circumstance in Article 328 (2) c) of the CC that criminalizes “excess of power or authority”. In practice, the ill-treatment is rather qualified as “excess of power” than “torture”. The crime of torture (Article 309/1 CC) is classified as a less serious or serious crime (depending on aggravating circumstances).

According to the 2010 prosecution service annual report⁷, in 2010 prosecutors initiated 110 criminal investigations concerning ill-treatment. In 2010, the prosecution service submitted with the trial courts 45 cases concerning ill-treatment. Other 59 investigations have been discontinued. On 1 January 2011, 87 criminal investigations concerning ill-treatment were pending investigation.

Although the CC provides that ill-treatment should be sanctioned with imprisonment exclusively; in practice the judges suspend the execution of imprisonment. They believe that, in these cases, the re-education of the perpetrator is possible without imprisonment. In the first 4 months of 2009 only one out of 16 persons convicted for ill-treatment has been sanctioned to imprisonment.⁸ Such a mild sentencing practice runs contrary to the ECtHR standards.⁹ The ECtHR already found a violation of Article 3 of the ECHR in *Valeriu and Nicolae Rosca v. Moldova* (judgment of 20 October 2009) for the reason that the suspended imprisonment for ill-treatment did not insure sufficient deterrent effect.

On the other hand, statute limitations of 5 or 15 years are applicable to ill-treatment. This runs contrary to international standards.¹⁰

3. Investigation of mass human rights violations occurred in April 2009

⁶ See for example The Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to the Republic of Moldova, 12 February 2009. See also *Criminal Justice Performance from a Human Rights Perspective. Assessing the Transformation of the Criminal Justice System in Moldova*, Soros Foundation – Moldova, November 2009.

⁷ General Prosecutor’s annual report for 2010 - <http://bit.ly/fuOghV>.

⁸ Erik Svanidze, *Combating impunity and police impunity in Moldova*, Chişinău 2009, p. 64.

⁹ In *Gafgen v. Germany* (judgment of 1 June 2010), the ECtHR noted (in para. 124) that the most appropriate sanction for arbitrary and serious acts of brutality by State agents would be the enforceable prison sentence

¹⁰ Where a State agent has been charged with crimes involving torture or ill-treatment, it is of the utmost importance for the purposes of an “effective remedy” that criminal proceedings and sentencing are not time-barred and that the granting of an amnesty or pardon should not be permissible. It has been also underlined the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see Conclusions and Recommendations of the United Nations Committee against Torture: Turkey, 27 May 2003, CAT/C/CR/30/5)

The Commission of inquiry of the April 2009 events was created in October 2009. However, from the very beginning, the Commission was severely under funded and did not have sufficient and adequate human resources. As a result, the Commission started its work in January 2010. The Commission produced a report with specific recommendations, which has been approved by the Parliament on 8 July 2010. The recommendations from the report were largely ignored by the authorities afterwards. Thus, contrary to the Commission Report, no report has yet been made public by the Prosecutor General's Office and the Ministry of Interior about investigations concerning April events. Moreover, the 2010 prosecution office annual report makes no reference to the Decision of the Parliament of 8 July 2010.

Very few police officers have been suspended during investigations¹¹ and several have been reinstated after appealing the suspension decision to the investigative judges.¹² Investigations were slow and lawyers complained of several drawbacks of the investigations carried out by prosecutors.¹³ In December 2010 two police officers were convicted for "excess of power" (Article 328 (2) (c) CC) in respect of April events and sentenced to, 4 and 2 years of imprisonment respectively, with a suspension of imprisonment. This judgment is not final. Only one judge was dismissed as a result of errors committed when examining April-related cases. However, he challenged the dismissal in the courts and his case is still pending. Complaints against other 9 judges have been submitted by two NGOs¹⁴ to the Superior Council of Magistracy. The latter found that three judges committed disciplinary offence, but did not apply any sanctions due to time limit. It also found that complaints against other 6 judges were ill-founded.¹⁵

There were credible reports that the ill-treatment by the police took place and after April 2009.¹⁶ An NGO specialized in assistance of torture victims registered 7 persons who complained of torture in police custody after April 2009. According to a recent survey, 4 out of 10 men experience physical abuse or mistreatment while in police detention.¹⁷

4. Conditions of detention

Conditions of detention remain harsh, dangerously overcrowded, and in some instances life-threatening. Both prisons and pretrial detention facilities fell far short of meeting international standards. The existence of such conditions of detention is substantiated by the lack of resources.

Common problems at all pre- and post-trial prisons are the overcrowding, the poor hygienic conditions, restricted access to health care and lack of medication as well as risk of contamination with tuberculosis and other diseases. The conditions in the pretrial facilities (*izolatoare de detenție preventivă*, abbreviated "IDP") are often worse than in facilities for convicted prisoners (detainees are held in overcrowded cells 23 hours per day).

According to the UN Special Rapporteur on torture, who conducted research in the country in July 2008, conditions were particularly harsh in IDPs, where suspects were sometimes held for

¹¹ In *Valeriu and Nicolae Roșca v. Moldova*, judgment of 20 October 2009, the European Court has restated the recommendation of the Istanbul Protocol regarding the suspension of police officers from their position during the investigation, paras 43 and 73.

¹² The dismissal order is subject to court review.

¹³ The note submitted by Natalia Molosag, Veronica Mihailov and Olesia Doronceanu, Public defenders, Public Defender Office, Chisinau, to the Prosecutor General, 25 October 2010.

¹⁴ Moldovan Institute of Human Rights (IDOM) and Promolex.

¹⁵ Information provided by Ion Guzun, coordinator of the project Advocacy for human rights in the context of parliamentary elections of 2009, implemented by IDOM with financial support of Soros Foundation - Moldova.

¹⁶ The interview with Ludmila Popovici, Executive Director, Center of Rehabilitation of Torture Victims "Memoria", held on 10 March 2011.

¹⁷ See "Victimization and Public Confidence Survey. Benchmarks for the development of criminal justice policy in Moldova", 2010, Soros Foundation – Moldova, p. 35. available at <http://bit.ly/eK2JUJ>.

months or years awaiting trial. Pretrial detention facilities remained dark and overcrowded. Inmates' access to healthcare was also inadequate. Juveniles were routinely held together with adults, and prisoners suffered from insufficient ventilation and low quality food. Prisons did not provide for recreational activities. Cell sizes did not conform to local law or international standards. Incidence of malnutrition and disease, particularly tuberculosis, was high in all prisons. According to the Special Rapporteur, the practice of placing some prisoners serving life sentences in year-long solitary confinement amounted to inhuman treatment. Such prisoners were placed in solitary confinement if prison officials believed they presented a threat to other inmates or as punishment for violating prison regulations. The Special Rapporteur received numerous complaints about the restricted access to medical care and the poor quality of food.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reached the same conclusions after visiting Moldova in 1998, 2001, 2004, 2007 and 2009. The CPT described conditions in places of detention run by the Ministry of the Interior as "disastrous" and stated that in many cases the conditions amounted to inhuman or degrading treatment. The CPT stated that conditions of detention in the IDPs visited remained, in general, very poor. The cells had either no windows or their windows were covered by shutters which substantially limited access to natural light. Further, the cells were often stuffy, despite the presence of a ventilation system (which was rarely turned on because of the noise it made). Detainees slept on wooden platforms, which took up most of the floor space; no steps had been taken in respect of providing mattresses and blankets (the presence of an occasional blanket was attributable to detainees' families). Detained persons were apparently allowed out of their cells to use the toilet only once to twice a day; the rest of the time they had to relieve themselves in a bucket inside the cell. The delegation received numerous complaints about the insufficient quantity and poor quality of the food. It was clear that most detainees relied primarily on food parcels delivered by their families.

In 2007 and 2009, the CPT recommended that the Moldovan authorities take steps to transfer the responsibility for IDPs to the Ministry of Justice. The same recommendation was stated by the UN Special Rapporteur in 2008. However, at the end of the 2009 CPT visit, the Minister of Justice indicated that the responsibility for the IDPs could not be taken over by his Ministry because conditions of detention in these facilities were substandard.

The authorities recognized on different occasions that prison no. 13 in Chisinau is severely overcrowded and that the Government planned to close down this institution. In 2008, the Parliament adopted a Law on ensuring the building of a criminal proceeding isolator instead prison no. 3. Ministry of Justice should have organized a public contest to select the investor to ensure the construction, in accordance with Council of Europe standards, of the criminal proceeding isolator, in exchange for acquirement of the ownership of the land on which the prison no. 3 is situated. However, no successful actions have been taken yet.

The European Court of Human Rights (ECtHR) issued several judgments in the cases against Moldova stating that conditions of detention amounted to inhuman and degrading treatment, contrary the provisions of Article 3 of the European Convention on Human Rights.¹⁸

¹⁸ *Ostrovar v. Moldova*, no. 35207/03, 13 September 2005, *Sarban v. Moldova*, no. 3456/05, 4 October 2005, *Becciev v. Moldova*, no. 9190/03, 4 October 2005, *Boicenco v. Moldova*, no. 41088/05, 11 July 2006, *Holomiov v. Moldova* no. 30649/05, 7 November 2006, *Istratii and Others v. Moldova*, nos. 8721/05, 8705/05 and 8742/05, 27 March 2007, *Modarca v. Moldova* no. 14437/05, 10 May 2007, *Ciorap v. Moldova*, no. 12066/02, 19 June 2007, *Stepuleac v. Moldova*, no. 8207/06, 6 November 2007, *Jurcan v. Moldova*, no. 10809/06, 27 November 2007, *Malai v. Moldova*, no. 7101/06, §§ 45-46, 13 November 2008, *Paladi v. Moldova* [GC], no. 39806/05, 10 March 2009, *Straisteanu and Others v. Moldova*, no. 4834/06, 7 April 2009, and *Valeriu and Nicolae Roșca v. Moldova*, no. 41704/02, 20 October 2009

ECtHR communicated to the Moldovan Government a number of cases¹⁹ in which applicants complained of conditions of detention. The Court asked the Government if the facts of these applications disclose the existence of a “systemic problem”. The Government agreed and the ECtHR started a “pilot-judgment” procedure²⁰ on some of these cases.

The National Preventive Mechanism on Torture (NPM) was established in 2007, but to date it remains highly dysfunctional: *de facto* there are only six NPM members, although they should be eleven; there are few published NPM reports after monitoring visits.

III. Recommendations:

- to exclude the overlap between Articles 309/1 and 328 (2) c) of the Criminal Code and to abolish the statute of limitations for crimes of torture;
- to review the police performance indicators;
- to ensure effective investigation of all ill-treatment complaints, conviction of the perpetrators and rehabilitation of the victims, monitoring and assessment of the extent of the phenomenon;
- to improve the system of forensic examination;
- to create an effective mechanism for victim and witnesses protection regarding torture and other ill-treatment allegations, under the authority of a different body than the police,
- to adequately equip the specialized prosecutors assigned on torture issues;
- to change the sentencing practices with the view of insuring the full deterrent effect of the sanctions for ill-treatment;
- to transfer police detention facilities from the Ministry of Internal Affairs jurisdiction to that of the Ministry of Justice;
- to extend the practice of alternatives to pre-trial arrest and imprisonment for non-violent crimes;
- to take reasonable steps for improving the material conditions of detention.

For further information on the topic and follow-up please contact:

Legal Resources Centre:

- Sorina Macrinici, email: macrinici_sorina@yahoo.com, mob: +373 696 20 263
- Ion Guzun, email: guzunion@yahoo.com, mob: +373 682 72 666

¹⁹ *Segheti v. Moldova*, no. 39584/07, *Iudin v. Moldova*, no. 7347/04, *Savca v. Moldova*, no. 17963/08, and *Strășteanu v. Moldova*, no. 18928/08 and no. 40699/08

²⁰ In its pilot judgment, the ECtHR identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting State concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.