

To the Department for Execution of Judgments of the
European Court of Human Rights,
Committee of Ministers of the Council of Europe
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Chişinău, 12 October 2021

COMMUNICATION

in accordance with Rule 9.2 of the Rules for the supervision of the execution of judgments **OZDIL AND OTHERS v. MOLDOVA**

This submission is presented by the Legal Resources Centre from Moldova (LRCM)¹ and the Promo-LEX Association² in the context of the consideration of execution by the Republic of Moldova of the [Ozdil and others case](#) at 1419th CM/DH meeting (30 November - 2 December 2021). Lastly, this case was discussed at the 1398th CM/DH meeting (9-11 March 2021). The key recommendations made to the Moldovan authorities at that meeting are resumed as follow:

- to inform about evolutions of appeal proceedings) against the former director of the Security and Intelligence Service (SIS), and about the adequacy of the fine applied as a sanction;
- to inform about applicants' situation in Turkey, including on the outcome of the appeal proceedings in their criminal cases, the family visits to the applicants and the possible application of the Council of Europe Convention on the Transfer of Sentenced Persons;
- to inform about evolution of legislative amendments which should follow the judgment of the Constitutional Court of 13 November 2020;
- to provide information on the outcome of the investigation initiated by the Parliamentary Committee on National Security, Defense and Public Order (hereinafter „Parliamentary Committee”) into the events of the case, and about adequacy of the existing oversight and accountability mechanism over the actions and powers of the SIS;

On 5 October 2021, the Government of the Republic of Moldova submitted [an Updated action plan](#) for the execution of this judgment. It mentions about unclear progress with national proceedings on granting refugees status to applicants and criminal proceedings against former director of SIS. Concerning the general measures, they noted on existence of the bill which should follow the judgment of the Constitutional Court, but the bill neither made public /not subject of public consultations.

On 5 February 2021, LRCM and Promo-LEX made the [second submission on this case](#). Current submission covers both the individual and the general measures, and informs about evolutions of

¹ The [Legal Resources Centre from Moldova](#) (LRCM) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated. We published two comprehensive reports on the execution of ECtHR judgments by the Republic of Moldova, for [1997 - 2012](#) and [2013 - 2014](#).

² [Promo-LEX Association](#) is a non-governmental, not-for-profit and politically independent human rights and advocacy organization established in 2002. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society

judicial proceedings against the former SIS director and need to improve national legislation on the status of foreigners after Constitutional Court judgment.

On 6 September 2021, the LRCM and Promo-LEX issued [a public appeal](#) reiterating all requests of the Committee of Ministers of the Council of Europe addressed to the Government to execute the general and individual measures. After 3 years since the actions of the arbitrary detention and extra-legal transfer of the applicants, the authorities have yet to make clarifications on this case.

THE APPLICANTS' SITUATION IN TURKEY

The Government informed that they requested from the Turkish authorities detailed information concerning applicants' current situation and the outcome of the criminal proceedings against them. Nevertheless, it doesn't mention if the Moldovan authorities claimed for the possibility of a transfer of the applicants to the Republic of Moldova under the Convention on the Transfer of Sentenced Persons, ratified by the two States, and if such an option is considered by the Moldovan authorities.

JUDICIAL PROCEEDINGS AGAINST FORMER SIS DIRECTOR

On 15 July 2020, Mr. Botnari was convicted for abuse of office (Art. 327 para. 2 b) of the Criminal code) and fined to MDL 88,000 (approx. EUR 4,200), as well as deprived of the right to hold public positions for a period of 5 years. It was not publicly known of the court judgement until 16 September 2020. On that date, as a result of rumours the appeared in press about the lenient sanctions imposed to Mr. Botnari, the first instance court (Chisinau district court) has published [the extract from the judgement](#). It is not clear why the sentence was published 2 months later, and why the relatives of the victims were not being involved in the trial. The victims were also not informed of the court judgement. Also, [according to the press-release issued by the prosecutor's office](#), on 13 July 2020 (two days before the conviction), Mr. Botnari, voluntarily, has paid to the State budget the equivalent EUR 125,000 - as damage ordered by the ECtHR against the state. The also repaid the state MDL 348,432 (approx. EUR 16,500) as cost of the charter flight that brought the applicants to Turkey. It is not known how Mr. Botnari gathered these financial means, because in the period 2008-2019 he worked in the public sector and his official income obtained by him in this period was lower than the amounts repaid to the state.

The Moldovan Government in their action plan mentioned that „an appeal was lodged against the first instance sentence”. It must be clear that the prosecutor in the case did not challenge the first instance court judgement. It was Mrs Galina Tüfekçi, the wife of one of the applicants, who lodged the appeal. It shows that public authorities lack proactive approach, they are reluctant to ask for adequate and effective sanctions of the main persons involved in the violation of the applicants' rights. This fault is also confirmed by the lenient sanction applied by the first instance court, which imposed the minimal ban on holding public office and not the biggest fine. In the light of the seriousness of the violations found by the Court, such sanctions cannot have sufficient deterrent effect. The first hearing of the appeal court took place 27 November 2020. On the same day, Mrs. Galina Tüfekçi and her lawyer asked the court to grant access to the case file's materials. The court refused invoking state secret and instructed Mrs Tüfekçi to seek for approval of the agency on charge of state secret, which is SIS. The next hearing is scheduled for 19 February 2021. The Mrs. Galina Tüfekçi followed the instruction of the court. Her request to obtain the approval of the SIS for accessing state secret is pending, yet it very unlikely that she will obtain it.

LACK OF LEGAL GUARANTEES AGAINST EXPULSION FOUND BY THE CONSTITUTIONAL COURT

On 13 November 2020, the Constitutional Court of the Republic of Moldova declared unconstitutional several provisions of Law no. 200 of 16 July 2010 on the status of foreigners, which refer to the impossibility of the foreigner declared as an undesirable person on grounds of national security to know the reasons of that decision, and the provisions which allow the removal of the foreigner on grounds of

national security or public order to a destination where he/she can be subjected to torture, inhuman or degrading treatment. The Constitutional Court called the Parliament to amend the law accordingly and decided that, until the relevant amendments are made, the decision on declaring the foreigner as an undesirable person on grounds of national security will contain a summary of the reasons for it, in order to offer an effective right to a court.

The Moldovan Government mentioned in their Action plan that a law draft was elaborated. We are not aware if the draft will comply with the judgement of the Constitutional Court, because at this stage it was neither made public /not subject of public consultations.

OUTCOME OF THE PARLIAMENTARY OVERSIGHT MECHANISM OVER THE SIS' ACTIONS

The Regulation of the Parliament (*Regulamentul Parlamentului*) provides for the existence of a subcommittee exercising the parliamentary control on the Intelligence Service's activity, within the works of the Parliamentary standing Committee on National Security, Defence and Public Order. The outcome of the investigation by Parliamentary Committee into the events of the present case is not clear so far. It seems that SIS further refuses to de-classify the case materials regarding extra-legal transfer of the applicants, even to this specialized Parliamentary body.

RECOMMENDATIONS

We call the Committee of Ministers to recommend the Moldovan authorities to take all measures to ensure that:

- a. Moldovan judges and other public employees respect in practice Articles 5 and 8 of the Convention when deciding on the desirability of the foreigners in Moldova. The judges, prosecutors and other civil servants shall be trained how to respect the right of foreigners when dealing with the decisions concerning their removal from Moldova;
- b. The Moldovan legislation should be quickly amended in the spirit of the Constitutional Court judgment of 13 November 2020;
- c. Adequate and effective sanctions to prevent similar incidents are promptly applied, in a public trial and with involvement of the relatives of the applicants that request it, to the key persons accountable for the transfer of the seven teachers to Turkey;
- d. The General Prosecutor Office and the Security and Intelligence Service of the Republic of Moldova shall grant access to the materials of the criminal file (Botnari case) for Mrs Galina Tüfekçi, the wife of one of the applicants.

In light of the deficiencies highlighted above, we call the Committee of Ministers to keep the supervision of the execution of the *Ozdil and others* case under the **enhanced procedure**.