

To the Department for Execution of Judgments of the  
European Court of Human Rights,  
Committee of Ministers of the Council of Europe  
Email: [DGI-Execution@coe.int](mailto:DGI-Execution@coe.int)

Chişinău, 25 April 2024

## 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) and [Promo-LEX Association](#) in the context of the consideration of execution by the Republic of Moldova of the [Ozdil and others case](#) at the 1501<sup>st</sup> CM/DH meeting (June 2024). This case was examined last time at [the 1451st DH meeting \(December 2022\)](#). The key recommendations made to the Moldovan authorities at that meeting were the following:

- invite the Moldovan authorities to continue their efforts to obtain information from the Turkish authorities on the current situation of the applicants in Türkiye and notably on the possible application of the Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 112) and as to the outcome of the appeal lodged by the applicant Özdil;
- invite the authorities to provide information on how the recent decisions by the SIS and BMA are considered by the domestic courts in the pending asylum proceedings; on the outcome of the appeals lodged by the wives of the applicants Müjdat Çelebi and Rıza Doğan and of the appeal on points of law lodged by the wife of the applicant Mehmet Feridun Tüfekçi;
- invite further the authorities to keep the Committee informed on the progress in the criminal investigation into the involvement in the events of any other higher-level actors;
- strongly reiterate its call to the authorities to start without further delay the reflection on the existing oversight and accountability mechanism over the actions and powers of the secret services and encouraged them to send a clear message from the highest political level as to the absolute unacceptability of, and zero tolerance towards, arbitrary detention and extra-legal transfers.

The Government sent their [updated action plan](#) for the execution of this judgment on 12 April 2024. In April 2022, LRCM and Promo-LEX made [their previous submission](#) on this case. This submission informs about evolutions in both individual and general measures.

### THE APPLICANTS' SITUATION IN TURKEY AND TRANSFER TO MOLDOVA

In the April 2024 updated Action Plan, the Government mentioned that neither the applicant, nor members of their families made requests for transfer of the applicants to the Republic of Moldova.

To our knowledge, neither the applicants nor the members of their families have been informed by the Moldovan authorities of their openness to initiate the transfer according to the Convention on the Transfer of Sentenced Persons. Neither have they been informed ever of any actions taken by the Moldovan Government to inquire about the applicants' situation in Turkey. On 3 May 2023, Mrs. Tüfekçi submitted a letter to the Ministry of Justice of the Republic of Moldova inquiring about the measures taken for the transfer of Mr. Tüfekçi to Moldova. In a written reply, Mrs. Tüfekçi was informed that, after her request, the Turkish authorities have been contacted on this issue. She was later informed verbally by a representative of the Moldovan Ministry of Justice that, as a rule, the Turkish authorities do not agree on such transfers.

On 22 June 2023, Mr. Tüfekçi was released from prison. It appears that the other 4 applicants have been also set free and are now in Turkey. Shortly after his release, Mr. Tüfekçi tried to return to Moldova, but the Turkish authorities refused to issue him the passport. For this reason, he cannot travel abroad. It looks like the other applicants are in a similar situation. In September 2023, Mrs Tüfekçi met the representatives of the Moldovan Ministry of Justice to seek assistance in returning her spouse to Moldova. She has been communicated that the Turkish authorities did not reply to the Ministry's previous request, and little could have been done at that time.

In this context, if requested the Moldovan authorities should facilitate, through diplomatic and legal channels, the return of the applicant to Moldova.

#### **THE APPLICANTS' JUDICIAL PROCEEDINGS TO SEEK ASYLUM PROTECTION**

According to April 2024 updated Action Plan, in October 2023, the Chisinau Court of Appeal annulled the decisions of the Bureau of Migration and Asylum concerning Mr. Çelebi, Mr. Tüfekçi and Mr. Dogan. These judgements were not appealed and became final. On 27 December 2023, Riza Dogan, Mehmet Tüfekçi and Mujdat Celebi were granted the refugee status by the Moldovan authorities.

It appears that the decisions in respect of the other 2 applicants have not been revoked and they may face challenges when entering Moldova. The authorities could have revoked the two decisions *ex officio* based on art. 145 of the Administrative Code, but they failed to do so.

#### **JUDICIAL PROCEEDINGS AGAINST HIGH-LEVEL ACTORS**

On 15 July 2020, Mr. Vasile Botnari, the former secret service Director, was convicted in a simplified procedure for aggravated abuse of power after he admitted his guilt. The case was heard in a closed hearing and the judgement was not publicly delivered or published on the internet (as it is the general rule). Although the prosecutor called for a 3-year incarceration, Mr. Botnari was sanctioned to a fine of 1760 conventional units (the most lenient sanction was the fine of 1,350 conventional units and the maximum was 7 years of imprisonment). The fact that the prosecutor did not appeal is also striking, as virtually all the verdicts in which the applied sanction is very different of the one requested by the prosecutor are appealed.

Mr. Botnari was formally accused on 14 January 2020. The next day, on 16 January 2020, Mrs. Galina Tüfekçi, the wife of one of the applicants, was stripped of the victim's status by the prosecutor for the reason that she was not affected by the crime and the ECtHR already offered just satisfaction. This was done to deprive her of the right to appeal the decision against Mr Botnari (only the persons that have a procedural status can lodge an appeal). The file has been declared secret by another prosecutor. The prosecution service further discontinued the investigations against the deputy-Director of SIS and against the Director of the Department of Migration and Asylum, that were investigated in the same

case. All these decisions have not been communicated to Mrs. Tüfekçi or publicly announced. The case was sent to court on 4 February 2020. After the case was sent to court, Mrs. Tüfekçi found out from press of these decisions of the prosecutors.

Even if stripped of the victim's status (*parte vătămată*), Ms. Tüfekçi appealed the conviction and the decision of the prosecutor to strip her of the victim's status. She claimed that the judgement was too lenient, while the decision of the prosecutor was groundless. On [16 February 2023, the Chisinau Court of Appel annulled](#) the decision of the prosecutor to strip the applicant of the victim's status as illegal, since Mrs Tüfekçi had a legal interest to pretend the victim's status. By the same decision, the appeal against the judgement convicting Mr. Botnari was dismissed for the reason that, when submitting the appeal, Mrs Tüfekçi was not formally recognized by the prosecutor as victim (*parte vătămată*). The reasoning the dismissing the appeal against the conviction is unconvincing, as the same judges annulled the decision stripping her of the victim's status and found that Mrs Tüfekçi had a legal interest to be a victim. Mrs Tüfekçi appealed the appeal judgement to the Supreme Court. The appeal on points of law is still pending before the Supreme Court.

The above procedure was declared secret at the very moment of its initiation, in 2018. It was done because is contained information declared secret by the Secret Service, i.e. by the persons potentially criminally liable in the case. A part of the file was made available to the applicants' lawyers after the secret status was removed by the prosecutor. It happened long after the ECtHR judgment and the questions addressed to the Government by the Committee of Ministers. In between, the prosecutor also refused to give the lawyers access to the file for the reason that it was secret. Even after, the Secret Service refused to remove the state secret status applied a number of documents critically important for the case and the victims' lawyers did not have access to them. The reasons for refusal were not announced, although it was clear that the refusal was abusive, as the art. 8 para. (1) a) of the Law on state secret prohibits the secretization of the information that relates to human right violations. According to art. 17 of the Law on state secret, the desecretization shall be made by the body that granted the secret status. In theory, any person can request desecretization, but the law does not institute an efficient mechanism to challenge the refusal. The law provides that a person shall challenge the refusal in court, but the action cannot be convincingly drafted without access to the secret document. In fact, the law offers the people that violated human rights and can be criminally liable for that the right to severely hinder the victims' rights, which is illogical. This system shall be reviewed.

As concerns the criminal investigation of other high-level officials, it started more than 2 years ago, on 16 February 2022. It was originally based on 164 of the Criminal Code (kidnapping), which implicitly indicated that it was not directed against the high-level officials, but about the people involved in the apprehension. It is unclear whether the charges of abuse of power (art. 328 of the Criminal Code) have been added later, as suggested by the Government in their updated action plan submitted in April 2024. In any event, if this is so, the abuse of power committed by senior public officials is the exclusive competence of the Anticorruption Prosecution Office (see art. 270/1 of the Criminal Procedure Code). Surprisingly, this case is not investigated by the anticorruption prosecutors, suggesting once again that high-level officials are not targeted in the investigation.

To our knowledge, there is no suspect in this case, although all the persons involved in the transfer are known to prosecutors or can be easily identified based on documentary evidence. Mrs Tüfekçi was offered the victim's status (*parte vătămată*) in that case and questioned on early 2022. Since then, she was not contacted by prosecutors or informed by them of the progress of the investigation. It is surprising that the prosecutors are waiting for rogatory commissions sent to Turkey, when the investigation under art. 164 or 328 of the Criminal Code do not require the complaint of the victims and all the relevant facts are well known. In this context, the statements of the Turkish nationals are of little relevance, if any, for the investigation of the case. However, the prosecutors have chosen to

effectively put on hold the investigation pending the reply of the Turkish authorities, although the Ministry of Justice (involved in the rogatory procedure) is aware that the Turkish authorities are not very cooperant, as confirmed by the reply to the request to transfer Mr. Tüfekçi to Moldova. Furthermore, the 2020 decisions to discontinue criminal investigations against the deputy-Director of SIS and against the Director of the Migration and Asylum Department (taken in the case in which Mr. Botnari was convicted) have not been annulled. This could have been done *ex officio* by prosecutors according to art. 287 of the Criminal Procedure Code. These facts confirm that this investigation is manifestly inefficient, and no serious steps have been taken over a long period of time to investigate this extra-legal transfer.

The above facts speak louder than any political statement that the abuse of public office, arbitrary detention and extra-legal transfers are not tolerated in Moldova anymore. It is urgently needed for the prosecutors to prove a strong record of quick and full investigation. The judges shall also apply adequate sanctions in those cases. The law shall also introduce an effective mechanism of desecretization of information, which cannot be influenced in any way by the people involved in human right violations.

### THE SECRET SERVICE OVERSIGHT

The Government referred to new legislation concerning the activity of secret services adopted in 2023. According to them, it is improving the Secret Service oversight mechanisms. They also stressed that these laws have been improved and adopted [after being assessed by the Venice Commission](#).

All the four mechanisms of control of the secret service (internal, prosecutorial, judicial, and parliamentary) mentioned in the updated action plan existed in Moldova under the old legislation and were defined in the same fashion. No serious legislative changes in this respect have been made. The key recommendation of the Venice Commission to introduce an independent body of oversight was not followed, as highlighted by the Commission in p. 27 of its [follow-up opinion](#). The judicial control was also not improved as recommended by the Venice Commission.

The more than 20-years of parliamentary oversight of the Secret Service confirms that it is limited to the examination by the MPs of an annual report presented by SIS. It is examined by a group of MPs in a closed hearing. The Parliament does not have an extensive practice of creating enquiry commissions to examine thoroughly and proactively the individual cases that may reveal systemic disfunctions. The civil society is rarely involved in this process.

We recommend that the legislative mechanism of oversight of Secret Service be further strengthened, as recommended by the Venice Commission. The capacity of the Parliament to effectively oversee the secret service should be also strengthened.

### RECOMMENDATIONS

We call the Committee of Ministers to make the following recommendations:

- a. if requested, the Moldovan authorities should facilitate, through diplomatic and legal channels, the return of the applicant to Moldova and to grant asylum to the remaining two applicants.
- b. adequately investigate, keep the victims informed of the progress of investigation and sanction all the high-level actors involved in the extra-legal transfer, with the involvement of the applicants or their relatives that request it.

- c. the legislative mechanism of oversight of Secret Service should be further strengthened, as recommended by the Venice Commission and the capacity of the Parliament to effectively oversee the Secret Service should be strengthened.
- d. the law shall be amended to introduce an effective mechanism of desecretization of information essential for trials, which cannot be influenced in any way by the people involved in human right violations.

We also call the Committee of Ministers to keep the supervision of the execution of the *Ozdil and others* case under the **enhanced procedure**.