

## 2022. Notebooks

### Update on Events in the Prohibition of Torture Index Countries

January - September 2022

#### **Moldova**

(prepared by Promo Lex, Moldova)

The Republic of Moldova has made some progress in preventing torture and ill-treatment. In addition to the 14 properly designed police interrogation rooms opened in 2021 as part of the 14 renovated IVS (temporary detention facilities) to replace the former, unsuitable facilities, three new interrogation rooms were installed in 2022 at police inspectorates. At the policy level, model guides and internal regulations have been developed/finalized and adopted – in particular, to regulate the police mode of operation, such as:

- rules for providing medical assistance to persons under arrest and in pre-trial detention;
- rules to ensure the right to an interpreter for persons who are arrested, transported, escorted or held in temporary detention facilities;
- rules pertaining to arrest, escorting, detainee transportation and placement in police detention facilities.

Compared to 2020-2021, fewer incidents of torture by officials were reported, but there has been an increase in "delegated" violence, perpetrated by third parties who were not acting in an official capacity. Most often, such perpetrators of violence and ill-treatment were the victim's cellmates. As a rule, delegated abuse is perpetrated with the knowledge or acquiescence or upon a direct order from the administration of the penitentiary institution.

Systemic problems continue to hamper progress in the prevention and eradication of torture and ill-treatment. Here are the key remaining issues:

I. ***Inadequate guarantees of medical assistance***

- Healthcare workers in places of deprivation of liberty are not independent from the administration of the facility;
- Substandard healthcare services in places of deprivation of liberty.

II. ***Physical and verbal abuse***

- Tacit consent in the form of failure to report to prosecutors the incidents of violence among detainees and related injuries;

- Inevitable worsening of detention conditions for prisoners cooperating with the law enforcement agencies.
- Use of excessive force during arrest;
- Verbal abuse of persons deprived of their liberty.

## II. *Ineffective investigation of known cases of ill-treatment*

- failure to institute procedural actions promptly;
- failure to appoint – or to perform in a timely manner – expert examinations in cases of alleged ill-treatment, in particular, psychiatric / psychological assessments of victims to document moral suffering;

**Medical safeguards against ill-treatment** are essential for detecting and documenting situations in which persons deprived of their liberty may be subjected to inhuman treatment. An interdepartmental order (Order of the General Prosecutor's Office of the Republic of Moldova No. 77/2013<sup>1</sup>) provides the formal guarantees and sets out a mechanism for detecting and properly reporting incidents of ill-treatment and related injuries. However, these regulations are ineffective in practice.

Healthcare services remain a structural component of the penitentiary and police facilities, making healthcare workers subordinate to the administrations of penitentiary institutions and MIA agencies. This affiliation often takes precedence over the healthcare workers' professional integrity, leading to a conflict of interests, in which medics tend to protect their employer – in particular, by failing to properly document evidence of torture and filtering or hiding relevant information. As a result, evidence gets skewed, undermining proper investigation of such incidents.

The types of healthcare services provided in the penitentiary are extremely limited and fall short of the inmates' needs, in contravention of the international standard that they should strive to provide care equivalent to that provided in the community. The issue of healthcare in prison was raised in three out of the eight ECtHR judgments against Moldova in 2022 in cases alleging ill-treatment. In the case of *Cosovan v. The Republic of Moldova*, inadequate medical treatment seriously endangered the life of a prisoner who subsequently died. The authorities failed to take appropriate measures despite being repeatedly informed of the applicant's serious health condition.<sup>2</sup>

As a necessary step towards providing better healthcare in prisons and raising the role of medics in documenting torture and ill-treatment, it is essential to ensure healthcare workers'

<sup>1</sup> General Prosecutor's Office, Order No. 77 of 31 December 2013, effective as of 6 June 2014.  
[https://www.legis.md/cautare/getResults?doc\\_id=44302&lang=ru](https://www.legis.md/cautare/getResults?doc_id=44302&lang=ru)

<sup>2</sup> Case of *Cosovan v. The Republic of Moldova* <https://hudoc.echr.coe.int/eng?i=001-216352> ; news article about the case <https://newsmaker.md/rus/novosti/igry-pravosudiya-so-smertyu-istoriya-sergeva-kosovana/>

independence by making them subordinate to the Ministry of Health or private sector providers. This will make healthcare workers less dependent on the administration at places of detention and facilitate the creation of an adequate healthcare infrastructure to support better care that meets the needs of persons deprived of their liberty. At present, the State is not taking any steps to ensure such independence of healthcare services in prisons.

**Physical and verbal violence** in places of deprivation of liberty is widespread. While injuries sustained by prisoners, mostly at the hands of cellmates, have been consistently documented by prison personnel, as reported by numerous monitoring mechanisms such as the CPT, the Office of the People's Advocate, the Council for the Prevention of Torture, Promo-LEX, and other NGOs, such incidents are brought to the knowledge of prosecutors rarely and selectively. (By current regulations, prison officials must notify the prosecutor's office of each such case). According to the country's criminal legislation, the prosecutor's office has exclusive competence to investigate such incidents.

**The fact that penitentiary officials withhold such information means, in practice, that they unduly take on the prosecutorial function of assessing the circumstances of such cases.**

It would be fair to say that prison staff engage in some sort of collaboration with members of the criminal subculture to maintain control in prisons. One of the reasons for doing so is the shortage of prison personnel for maintaining security and inmate safety. For example, some prisons can only afford to keep four guards on duty at night to watch over 600 inmates in 10 sectors of the facility. Struggling to keep so many inmates under control, the guards delegate this task to the upper castes<sup>3</sup> of prisoners. This implies the guards' tacit consent to, or turning a blind eye on, any intimidation or abuse – essentially, torture – affecting the lower casts in the hierarchy.

The existing penitentiary system's infrastructure makes it impossible for prisons to counteract this criminal subculture. Those inmates who could potentially cooperate with the authorities in this context end up in worse detention conditions than the rest, because the only way to ensure their safety from retaliation by inmates is to place them in a different location, which is usually a prison-type cell with stricter isolation.

This limits their access to any services at the facility compared to the general prison population. For instance, outdoor recreation and exercise can be a problem due to limited time and space available, because the cooperating inmates need to be separated for safety reasons from the rest to avoid conflicts. The same applies to classrooms, social programs and job opportunities

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<sup>3</sup> Prison castes are categories of prisoners occupying different positions in the informal hierarchy formed in places of deprivation of liberty. A prisoner can have various informal rights and obligations and enjoy certain privileges depending on their caste in the system.

which the cooperating prisoners who must be kept safe from others either cannot access or face unreasonable risks if they do.

Another factor making inmate violence possible is the prison authorities' reluctance to use force where they should – for example, to stop violence between cellmates. The authorities often justify their inaction by saying that they fear being prosecuted for torture. This, however, reveals their lack of awareness that torture can also occur through inaction, when an official is authorized and obligated to enforce security but fails to take appropriate action. Contributing to such negligence is the fact that prosecutors are often reluctant to investigate criminal inaction, thus perpetuating the practice.

Many detainees complain about excessive use of force and verbal insults during arrest. The General Inspectorate of Police (GIP) has adopted a guidebook on professional intervention (Order No. 4/2018) with detailed rules on the use of force and riot control devices.<sup>4</sup>

The guidebook permits using physical force under certain circumstances and regulates the level of resulting impact. It spells out the required steps, such as a warning that physical force will be used, and prohibits targeting a person's neck and head, while allowing moderate impact on the torso. Apparently, the field workers are not sufficiently aware of these rules. Members of the Council for the Prevention of Torture and non-governmental organizations identified several detainees in police temporary detention facilities who had injuries sustained during arrest. Due to their vulnerable position, all refused to file formal complaints.

***Ineffective investigation*** of alleged cases of ill-treatment was found by the ECtHR in 2022 in seven out of the eight cases involving Article 3 violations. In most such cases, ineffective investigation is associated with lagging criminal proceedings, failure to conduct psychiatric / psychological examinations, delayed prosecutorial response such as a visit to the crime site to document evidence, etc. The main reason for ineffective investigation is believed to be the professional loyalty of prosecutors to the potentially implicated agencies, such as the MIA and the penitentiary system.

Under Moldovan law, the investigation of alleged torture falls within the exclusive competence of the prosecutor's office, where a territorial prosecutor must be appointed to investigate cases of ill-treatment. There is a dedicated torture prevention section set up as part of the Prosecutor General's Office to oversee the quality of prosecution. The actual investigations of alleged torture and ill-treatment are carried out by specially authorized territorial prosecutors upon an order from the Prosecutor General's Office.

This means that a territorial prosecutor's office appoints a prosecutor to accept complaints and conduct investigations into this type of cases, on top of this prosecutor's main responsibility of

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<sup>4</sup> [http://www.legis.md/UserFiles/Image/RU/MAI/ghid\\_4.docx](http://www.legis.md/UserFiles/Image/RU/MAI/ghid_4.docx)

investigating various criminal offenses. Since most criminal suspects in torture cases are law enforcement officers with whom the prosecutor's office cooperates in investigating other types of crimes, prosecutors appointed to investigate alleged torture face a conflict of interest, as they are expected to prosecute their own colleagues in the law enforcement who normally help prosecutors with investigating other crimes.

In addition to this, many prosecutors already face a huge workload of criminal cases. The conflict of interest coupled with excessive workloads limit the effectiveness of investigations into torture and ill-treatment and compromise the reporting mechanisms established by Order No. 77/2013 (*establishing the procedure for detection, registration and reporting alleged cases of torture, inhuman or degrading treatment*).