Republic of Moldova

Overview of the situation with the prohibition of torture in Moldova

1. Regulations

On 4 May 2010, under Decision No. 77 of the Republic of Moldova's Parliament, the Prosecutor General's Office was re-organized to include a Division for Combating Torture.

The result of this task-force's work was the content of Law No. 66, dated 5 April 2012, amending and supplementing the Criminal Procedure Code of the Republic of Moldova No. 122-XV, dated 14 March 2003, as well as Law No. 252 of 8 November 2012, amending and supplementing certain pieces of legislation. As a result, the Criminal Code was amended to include a new article 166-1 (Torture, Inhuman or Degrading Treatment), which has had a twofold impact on the criminal legislation of our country. First, it introduced criminal punishment for actions which constitute inhuman or degrading treatment. And second, it significantly increased penalties for acts of torture.

Art. 166 applies to all state agents and other officers endowed by law with the functions of the state agents (for example, representatives of private security companies).

Art. 309 of the Criminal Code was amended accordingly, while Art. 309 (1) and Art. 328(2) (a) and (c) of the Criminal Code were abolished. According to the current penal provisions, neither statutes of limitation nor amnesty are applicable to the crime of torture. In addition, in such cases no milder punishment can be applied other than that stipulated by law. In this regard, the necessary amendments were made to Art. 60, 107 and 79 of the Criminal Code of the Republic of Moldova.

As regards procedure, specifically, an express obligation has been introduced in Art. 167(1) of the Criminal Procedure Code to record in the detention report the physical condition of the person detained; complaints related to his or her health condition; what he or she is wearing (description of the clothing); explanations, objections, and requests of the detained person; request for access to medical examination, including that at his or her own expense; this provision now also includes an obligation to immediately hand over to the person a copy of his or her detention report.

Moreover, pursuant to Art. 167(6) of the Criminal Procedure Code, if injuries are detected on a detainee's body at the time of his or her detention, the detaining officer shall immediately notify a prosecutor thereof, who shall immediately order a medical examination, depending on the case, a forensic examination in order to establish the origin and character of the injuries.

According to Art. 274(1) of the Criminal Procedure Code, a criminal investigative body notified in the manner provided in Art. 262 and 273 shall issue an order to initiate criminal investigation provided that a reasonable suspicion that a crime has been committed arises from such information or from the established acts and no circumstances excluding the criminal investigation are found. The person or body who provided the notification shall be informed thereof.

Should a criminal investigative body initiate a criminal investigation on its own initiative, it shall prepare a record describing the established facts related to the crime detected and then order a criminal investigation.

The order to initiate a criminal investigation issued by a criminal investigative body shall sent to the prosecutor managing the criminal investigation for confirmation within 24 hours from the time the criminal investigation was initiated. The respective case file shall be also submitted. Along with his/her confirmation of the initiation of a criminal investigation, the prosecutor shall set a timeframe for the criminal investigation.

Should circumstances preventing the initiation of a criminal investigation transpire from the contents of the notification, the criminal investigative body shall send to the prosecutor prepared the documents prepared along with the proposal not to initiate a criminal investigation. Should the prosecutor establish that there are no circumstances preventing the initiation of the investigation, he/she shall return the documents with his/her order to the aforementioned body to initiate the criminal investigation.

Should the prosecutor refuse to initiate a criminal investigation, he/she shall confirm the refusal in a reasoned order and shall notify the person who filed the notification thereof.

Should the prosecutor find that there are no grounds for initiating a criminal investigation, he/she shall not confirm the order to initiate an investigation and shall quash it in his/her order provided no procedural actions were undertaken, or shall decide to terminate the criminal investigation if such actions were undertaken.

The order to refuse to initiate a criminal investigation may be appealed in court. Should it be subsequently established that the circumstance substantiating the proposal to refuse to initiate a criminal investigation did not exist or are no longer present, a higher-level prosecutor shall quash the order and order the initiation of a criminal investigation.

2. Statistics

With regard to torture investigations in general, an analysis of the 2019 data issued by Prosecutor General Office (PGO) in their press release shows that criminal investigations were initiated in relation to torture and ill-treatment only in 86 cases of 876 registered complaints. This fact raises questions. No criminal investigations have been initiated with regard to over 90 % of the complaints; what is more, there was no qualitative analysis of the complaints and circumstances which had caused citizens to file such complaints.

Criminal Procedure Code (CrPC) provides that a criminal investigation is initiated based on an order issued by the criminal investigation body. In more than 90 % of cases ill-treatment complaints have been dismissed without a criminal investigation being officially opened, based on a summary verification conducted under Art. 274 of the CrPC. According to a well-established practice, prosecutors are required to first examine the circumstances of a case in detail and then, if convinced that the case is well-founded, open the criminal investigation. It is understandable that some complaints may be manifestly ill-founded. However, it is highly unlikely that this represents more than 80% of all ill-treatment complaints.

In 2019, 7 cases of torture have been submitted to courts for trial.

The official statistics are complemented and specified by data from the Memoria Rehabilitation Center for Torture Victims, a non-governmental organization offering hands-on rehabilitation programs for torture survivors.

For 419 victims (189 female and 230 male), assisted by the Memoria Center in 2019, the following main after-effects of torture have been registered:

PHYSICAL HEALTH	#Cranio-cerebral traumas: 73 cases or 17.71%; #Cardio-vascular: 121 cases or 29.36%, #Genitourinary diseases: 235 cases or 57.03%; #Chronic digestive diseases: 191 cases or 46.35%; #Locomotor system: 91 cases or 22% (including 3 cases of bone fractures); #Chronic respiratory: 59 or 14.32% # Endocrine: 39 cases or 9.46%; #ENT diseases, including post-traumatic deafness: 24 cases or 5.82%; #Eye pathology: 54 cases or 13.1%; #Cancer: 5 cases or 1.21%;#Metabolic: 26 cases or 6.31%.
PSYCHOLOGICAL	95.1% of all patients (or 392 cases) are suffering from psychological troubles or mental disorders: 1) Organic disorders: 257 cases, or 65.5%. These include: mental disorders caused by brain damage and dysfunction, 112 cases or 28.5%; Personality and behavioral disorders caused by brain diseases, damage, or dysfunction: 145 cases or 37%; 2) Neurotic, stress-related and somatoform disorders: 317 cases or 80.9%. Of these, 289 cases (or 70.1%) are patients with Post Traumatic Stress Disorder (PTSD) among recent victims of torture, refugees; 3)

	Patients experiencing personality changes after traumatizing experience: 42 cases or 10.5%; 4) Other diseases: 11 cases or 2.8%.
SOCIAL	1) decreased functionality with limited capacities to start or continue their studies, to find and keep a job; 2) communication and interpersonal problems; 3) social isolation and withdrawal; 4) increased reticence and lack of trust in others; 5) affected marital status; 6) behavioral problems, etc.
LEGAL STATUS	Many victims faced significant pressure from perpetrators or representatives of state institutions, so many of them were forced to: 1) change their testimonies during the investigation; 2) withdraw their complaints; 3) leave the country because of fear and lack of trust in the justice system. More than 60 survivors of the tragic events on April 7, 2009, and other recent victims of torture who were assisted by RCTV Memoria are now living abroad.

3. New torture cases. Incidents and criminal investigations in 2019-2020

Failure to investigate effectively and impartially in order to prosecute the perpetrators. Case of Mr. Braguta's death

Andrei Braguta, who suffered from a mental condition, was detained by the police on 15 August 2017 on a highway in the Criuleni region of Moldova. According to the official version of the events, the patrolling officers stopped him for speeding, while Braguta resisted the police and behaved inappropriately, even aggressively. Then he was detained for insulting the police while being pulled over for a traffic violation. A published video of the incident shows that Braguta was indeed behaving aggressively, but instead of restraining him the police officers brutally beat him up. Braguta was brought to a police station and kept in an isolation cell. Following a prosecutor's application for his detention and a court decision, he was placed under preliminary arrest for 30 days in prison No. 16. Braguta died two weeks into his detention. The prosecutor who requested the court to order Braguta's preliminary arrest had seen the detainee in the police isolation cell the day before the trial. But neither the man's mental state nor his physical injuries prompted the prosecutor to order a comprehensive medical examination. Following the court's decision, Braguta was taken to Prison no. 16, where neither his injuries, nor his overall condition caused the prison administration to call an ambulance.

The Office of the General Prosecutor initiated three criminal cases related to Mr. Braguta's death:

- Art. 166-1(4) (torture causing death) and art. 152 (inflicting bodily injuries of medium severity) against three police officers and four detainees. The case was sent for trial. Because the case is complicated, at the request of the victim's lawyers, additional forensic examination was ordered. The results of the additional examination were presented on May 3 2019. *Due to the omission to provide clear answers to all the questions formulated by the parties, an additional request for clarification was sent to the medical experts*. Court decision is pending.
- Art. 166-1(4) and art. 166-2 against 13 General Police Detention Center officers. The case was sent for trial. Due to the behavior of the accused police officers and their lawyer, the trial is moving very slowly (more than 40 court hearings have been held on the case). Court decision is pending.
- Art. 213 (Violation of Medical Assistance Rules and Methods by Negligence) against 15 medical workers. The case was sent for trial. Court decision is pending. Two cases are still pending in courts of first instance and one in an appellate court (in this case, two judges (out of 3) of the court of first instance said there had not been torture in Mr. Braguta's case). One judge submitted a dissenting opinion.

Two disciplinary procedures were initiated, against the prosecutor who requested the arrest and the judge who ordered it. The prosecutor and the judge were fired. They contested these decisions in domestic courts and before the Constitutional Court. The domestic courts and the Constitutional Court dismissed their appeals.

Two disciplinary procedures were initiated in respect of the lawyer who provided legal aid and the lawyer hired by the family, based on the quality of the legal services offered by them. One lawyer was disbarred.

He contested the decision of the Disciplinary Commission of the bar association in a domestic court. In April, a court of appeal quashed the Disciplinary Commission's decision, and he was re-instated in the bar.

Ill-treatment in prisons

While visiting the Chișinău Prison, CPT received several allegations of recent physical ill-treatment (e.g. punches and kicks) by prison guards. Further, in all three prisons for adults visited, several allegations were received of excessive use of force by staff when dealing with agitated inmates and, at Chișinău and Taraclia prisons, of excessively tight handcuffing, including, in the latter establishment, of handcuffing to a fixed object with hands behind the back in a squatting position.

Four years ago, Alexandru Bogdan, a victim represented by Promo-LEX, was subjected to torture by three Department of Penitentiary Institutions guards. He was beaten with a rubber baton, kicked and punched. This took place in Penitentiary Number 13. This is one of the few cases in which a former high-ranking official from the Department of Penitentiary Institutions has been found guilty for acts of torture and sentenced to imprisonment. Those responsible for the use of torture in Alexandru Bogdan's case were sentenced to imprisonment after the Supreme Court dismissed both defendants' appeals.

Excessive and arbitrary use of solitary confinement

In February 2020, at Chișinău and Taraclia prisons, CPT encountered a number of prisoners who appeared to have mental health problems or thoughts of self-harm, including suicide, after having been held in conditions akin to solitary confinement for months or even years on end.

CPT is still concerned with the fact that acts of deliberate self-harm are considered to constitute a disciplinary offence. As regards solitary confinement as a disciplinary measure more generally, it may be imposed on certain categories of prisoner for up to 20 days and for up to three days on juveniles.

Inter-prisoner violence

Intimidation among adult male inmates has remained as acute as ever and, as in the past, largely linked to the well-established informal hierarchies in the country's prison system. Although inmates were regularly found with injuries indicative of inter-prisoner violence, these cases remained unreported, due to the climate of fear and intimidation by inmates at the top of the informal prison hierarchy, as well as a general lack of trust in the staff's ability to guarantee prisoner safety.

In CPT's view, the continuing failure of Moldovan authorities to ensure a safe and secure environment for prisoners is directly linked to a number of factors, notably the chronic shortage of custodial staff, reliance on informal prisoner leaders to keep control over the inmate population, and the existence of large-capacity dormitories. At the same time, there is no proper risk and needs assessment of prisoners upon admission, nor a classification of inmates to identify in which prison, block or cell prisoners should be placed. As regards more particularly prisoners considered to be "untouchable" by the informal hierarchy, they continued to live in a state of constant fear and humiliation.

Failure to investigate effectively torture in psycho-neurological institutions

I.I. is a patient of the Balti psycho-neurological institution. He is a person with mental disabilities living in a residential care home ("internat"). In February 2016, he was maltreated by a security officer solely because he was a person with mental disabilities. Immediately after the incident, the victim was further attacked in the institution corridor. A security officer applied hit the victim on his head three times. I.I. informed the institution staff and asked them to call the police and ambulance. In addition, he complained immediately to the institution director. Staff and the director refused to call the police and ambulance. He then asked other private persons to do that. Two hours later, police officers and ambulance dispatch

arrived at the institution. The police officers did not collect any evidence regarding the situation and treated the victim discriminatorily by ridiculing him and saying that it was not a good idea for a sickly person to call the police. After the incident, the police officers and the institution director failed to inform the prosecutor's office about the applicant's maltreatment. I.I. complained to the prosecutor's office himself. He asked the prosecutor to start a criminal investigation taking into consideration his ill-treatment by the security officer. In April 2016, the Balti prosecutor's office refused to start a criminal investigation. The prosecutor stated that the security officers could not be prosecuted for the crime of ill-treatment, according to the definition in Art. 166-1 of the Criminal Code. In March 2017, the Balti Appellate Court quashed the decision of the prosecutor. The case is currently under investigation.

4. Protection and safety of torture victims. Rehabilitation

The Moldovan anti-torture policy focuses on preventing torture and combating impunity, mainly through the strengthening of state institutions. However, it ignores victims' need for rehabilitation, reintegration, and access to justice.

Article 14 of the UN Convention against Torture (UNCAT) provides victims of torture and ill-treatment with an explicit right to rehabilitation. This is further clarified in the Committee against Torture's General Comment No 3 (2012), which explains the content and scope of the obligations under Article 14.

Despite the changes and measures taken to adjust the Moldovan legislation in line with international and European standards, torture and ill-treatment in state custody remain an alarming issue, because, in particular, of the lack of clear mechanisms to respond to the needs and problems of victims and their families.

The state response to the needs of victims and their rights to a comprehensive rehabilitation, as it is stated by General Comment No. 3 of CAT (2012) to Art. 14 UNCAT, has so far been ineffective. Rehabilitation and social reintegration of victims of torture, as a vulnerable group with special needs, has not been the object of activity or priority for the Ministry of Health or the Ministry of Labor, Social Protection and Family (merged in 2017), or other state institutions despite previous recommendations suggested in various country reports.

The Ministry of Justice drafted the Law on Rehabilitation of Victims of Crimes (including torture), which was approved by Government on March 4, 2016, and by Parliament as Law No. 137 on July 29, 2016). Unfortunately, the law is not consistent with the requirements for right to rehabilitation for torture victims as outlined in Article 14 of the UNCAT and General Comment No. 3 of the Committee against Torture (2012). Specifically, Art. 2 of the Law states that the victims will receive support only in the form of information about existing services, psychological and legal counseling and compensation, thus disregarding the need for medical and social assistance. Further, Art. 9 of the Law restricts the length of psychological counseling to three months or, as a maximum, six months. With regard to torture victims, this raises a number of concerns, including the fact that the law fails to take a holistic and long-term approach to rehabilitation. Survivors of torture need comprehensive mental health services, not only the psychological counseling, as Law No. 137 stipulates. RCTV Memoria contributed with comments and recommendations to the working group of the Ministry of Justice but, unfortunately, those recommendations did not make it into the final text of the law.

More importantly, there are no existing state services that are capable of effectively addressing the complex needs of torture victims in a way where victims can trust that the services they are receiving are independent. No State institution has been assigned responsibility for developing rehabilitation programs and no financial resources have been allocated to non-State services to do the work. Furthermore, the existing state institutions do not have staff with the necessary professional skills to be able to deal with traumatic after-effects of torture.

Even if an important inter-ministerial and inter-departmental document, the "*Rules as to the procedure for the identification, registration and reporting of alleged cases of torture, inhuman and/or degrading treatment"* has been created and approved on 31.12.2013 by the most relevant institutions — the General Prosecutor's Office, the Ministry of Health, the Ministry of Internal Affairs, the Customs Service, the National Anti-Corruption Center, and the Ministry of Justice (by Order no. 969 of 20 March 2014), the referral system for rehabilitation of torture victims has not been created and in practice no referrals are taking place to RCTV Memoria, which is the only existing specialized rehabilitation center in Moldova.

Non-state rehabilitation services (provided by RCTV "Memoria") are insufficiently resourced and thus unable to cover the existing needs of all victims. The Center's treatment is comprehensive as it provides social, medical, legal, psychological, and mental health support. However, many victims in the country do not have access to these services, which is partly due to lack of references from the state institutions in charge of identifying and registering cases (including the Prosecution service).

5. Key factors hindering the implementation of prohibition of torture

The effectiveness of the state's mechanism of responding to torture cases remains low.

Persons deprived of their liberty do not enjoy all fundamental legal safeguards they are entitled to from the outset of their detention: in particular, such persons are in practice deprived of access to their lawyers during all proceedings.

Detainees do not always receive medical examinations promptly upon their arrest, with such examinations often not conducted until the second day after arrival in so-called police isolators, and in some cases the examinations are carried out by paramedics and may be limited to interviews about a detainee's state of health.

Detention registers are not kept up-to-date, and information concerning the application and duration of "special measures" against persons deprived of their liberty, including during their transport, is not consistently recorded.

Persons suspected of having committed an offence may be sometimes detained in so-called police isolators for a period of 72 hours after being arrested and before being brought before a judge, and some have been detained for up to two months.

Preventive arrest and apprehension, when a detainee is particularly vulnerable to torture and ill-treatment, is applied excessively, even in cases when the crime committed does not qualify for such measured; the number of persons placed in pre-trial detention has increased by more than 20 percent since 2013. Alternatives to detention are rarely used.

The excessive use of pretrial detention causes overcrowding in all temporary detention facilities. Inadequate material conditions prevail in such facilities, including dirty and badly ventilated cells, lack of heating in winter, and toilets that are not separated from the cells.

There are no protocols or provisions for hiring staff who are qualified to deal with detainees having mental or intellectual disoredrs.

There is a lack of clarity regarding the de jure and de facto closure of police isolators for temporary detention that have been deemed unfit for use.

Duly documented torture cases suggest the following serious issues with the police custody and justice system, which have not yet been addressed adequately:

- Extremely high risks of unreported torture and ill-treatment incidents at police custody facilities;

- Total incapability and lack of protocols in dealing with people who have mental health issues / mental disabilities police custody facilities;
- Inciting violence among inmates by police officers to achieve desired outcomes of "punishing" targeted detainees or obtaining "cooperation" from the them; this approach seems to come as a more sophisticated way of inducing violence/torture towards targeted detainees without direct involvement by the police;
- Inadequate mental health services;
- Negligence in referral to specialist medical treatment;
- Lack of training of police staff, prosecutors, judges, and prison staff regarding the methods of interacting with individuals who have mental disorders;
- The existence of parallel healthcare systems (Prison Hospital No. 16 is not accredited by the Ministry of Health as a medical institution);
- Failure of healthcare staff from police custody institutions to report torture/ill-treatment cases and provide necessary healthcare to detainees;
- Failure of other staff in prisons and preventive detention facilities to report torture/ill-treatment cases and provide essential healthcare to detainees;
- Failure of the torture reporting mechanism established by the Joint Order in 2013 to serve its purpose. For example, no one (neither police officers, nor healthcare staff who had witnessed Mr. Braguta's condition and injuries, nor anybody else who had seen Mr. Braguta in almost ten days) reported this clear case of alleged ill-treatment to the Anti-Torture Section at the General Prosecutor's Office.

There are other concerning trends: for example, victims who speak out about their torture experience may face very repressive attitudes from the investigators in of their cases. One survivor subjected to torture in April 2009, who was prepared to give interviews to journalists, has been recently punished more harshly than expected: he was sentenced to 3 years imprisonment for a small offense, namely for stealing a mobile phone. Furthermore, there are examples of victim testimonies obtained through torture used against them, in contradiction with Art. 15 of UNCAT. The most relevant case is that of the Repesco brothers, assisted by Memoria and Promo-LEX.