



*Capacity Building for and Promotion of Human Rights and Democratic Institutions in the
Transnistria Region of Moldova*

RAPORT

**DREPTURILE OMULUI ÎN REGIUNEA TRANSNISTREANĂ A REPUBLICII
MOLDOVA / RETROSPECTIVA ANULUI 2012**

REPORT

**HUMAN RIGHTS IN THE TRANSNISTRIAN REGION OF MOLDOVA
/ 2012 RETROSPECTIVE**

ОТЧЕТ

**ПРАВА ЧЕЛОВЕКА В ПРИДНЕСТРОВСКОМ РЕГИОНЕ РЕСПУБЛИКИ
МОЛДОВА / РЕТРОСПЕКТИВА 2012 ГОДА**

Chişinău-2012

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This project is funded by the European Union
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This Report was developed with financial and technical assistance from The National Endowment for Democracy (NED).

The contents of the report reflects the views and opinions of the authors and in no way reflect the official opinion of the European Union. The contents of the report reflects the views and position of the authors and in no way reflect the official opinion of The National Endowment for Democracy

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INTRODUCTION

This Report is at its third edition, and is dedicated to the situation of human rights in the Transnistrian region of Moldova. The Report covers the first 10 months of the year 2012. Each chapter describes and analyzes the situation of a certain human right or fundamental freedom in the region.

The Report does not claim to carry absolute truth, but rather a neutral point of view on the situation in the region. The Report focuses on the major issues and progress attained in the respect of fundamental rights guaranteed by international conventions, national and, where appropriate, regional regulations.

The Report contains conclusions on the situation of human rights in the region, and proposes recommendations to relevant actors, whose efforts may affect the situation and reduce the extent of violations of fundamental human rights in the region.

In preparing the Report, the authors were guided largely by publicly available information from Transnistrian media sources as well as official information obtained from the legal authorities. The Report describes individual cases of human rights violations that have come to the attention of the authors in their activities of granting free legal assistance in the region.

The main purpose of this Report is to emphasize the need to respect human rights in a region of conflict where there are no legal mechanisms for human rights protection, where impunity persists and the presumption of innocence is ignored.

Thus, we find it necessary to draw the attention to the Tiraspol administration, and representatives of legal authorities of Moldova and Russia on their obligation to observe human rights in the region. We hope that the cases and situations described in the Report will be carefully considered by the actors involved to prevent future recurrence of similar situations and, where possible, to rehabilitate and compensate individuals whose rights have been violated.

"Promo-LEX" gives sincere thanks to everyone who contributed to this Report.

CHAPTER 1

THE RIGHT TO LIFE AND PROHIBITION OF ILL-TREATMENT

Numerous international instruments guarantee the right to life, freedom and personal inviolability, including a prohibition of death penalty. Consequently, States are obliged to ensure compliance with these essential rights, and the failure to observe them leads to the violation of human rights and fundamental freedoms.

In this chapter, we will look at some issues on how the right to life and the prohibition of ill-treatment are respected in the Transnistrian region of Moldova. One of the problems highlighted in previous Promo-LEX reports is the remaining presence of certain death penalty *provisions* in the region's *criminal legislation*. Although the death penalty was not *applied* in 2012¹, the risk of capital punishment *convictions* or *executions* remains. Moldovan and Russian authorities are responsible for observing human rights in the region, and they risk condemnations in international courts for such situations.

Poor detention conditions and suspicious deaths in detention facilities in the region constitute another problem. Conditions in prison cells do not meet minimum international requirements and standards of detention, especially in cases of long-term detention. In our opinion, detention in such conditions may be equaled to inhuman treatment. Moreover, there is no real and effective opportunity to report torture or ill-treatment, and the victims lack any effective remedy means in that sense. At the same time, the region lacks a mechanism of submitting complaints and monitoring the situation, and the operation of the National Mechanism for the Prevention of Torture does not extend over the region's detention facilities.

1.1. Provisions on capital punishment

The Transnistrian region is the only region in Europe, except Belarus, where the criminal legislation provides for capital punishment for serious crimes. In 1999, a moratorium on such punishments was *decreed*. In 2012, the region's *criminal and criminal process law* underwent certain amendments, but *provisions* on the death penalty and its execution were not excluded. A person sentenced to death is detained in isolation, in a single-person cell, and is provided additional guards. We believe that the restrictions imposed to persons sentenced to death are severe and lead to human rights violations. Solitary confinement and the isolation from the outside world, as well as the special guarding requirements, amount to additional punishment.

A final *sentence of a court of law*, a *decree* by the local *president* refusing pardon, or a *presidential decision* not to *pardon* a convict following the convict's refusal to address a request for *pardon* all serve as grounds for execution of the death penalty. The region's *execution legislation* still leaves room for interpretation on the terms and period of execution of a *capital punishment sentence*, due to the unclear legal basis, procedures or circumstances of *execution*. It may be a final court *sentence*, which states a date and place of executing the death penalty, or a *decree of the president*. In some circumstances, these two acts may come in collide, and the inmate has a limited opportunity to submit a request for *pardon* to the *region's president* or a statement admitting guilt. On the other hand, *pardon* is a natural right of every detainee, and constitutes an opportunity that can be used anytime during detention. It is not clear then what happens if a judicial sentence indicates a clear period of execution. Is the detainee deprived of the right to ask for

¹ There are no formal and transparent data on its application

pardon or should he ask pardon immediately after the sentence was pronounced?

Therefore, a clear mechanism of enforcement of capital punishment is absent, and the administration of the region may have established this exceptional punishment including as an act of revenge against those who have different views and opinions.

1.2 Suspicious deaths in prisons

According to the theory of law, criminal law protects the right to life as a social value and a human right. The state holds the instruments that can provide effective protection of the right to life, and its duty is not only to adopt legislation, but also to take measures necessary to protect life. Persons in custody of the law enforcement are in a particularly vulnerable position, and the authorities are obliged to ensure that such persons not be subject to ill-treatment and their lives not be endangered. The ECHR found that Articles 2 and 3 of the European Convention require the State to protect the life, health and physical integrity of persons deprived of liberty².

The detention facilities in in the Eastern part of the country are not part of the penitentiary system of the Republic of Moldova. Moldova's legal authorities do not have access to these institutions, only representatives of international structures are sometimes granted limited access. We believe that these *institutions* are private because they are illegal and are run by people who have arbitrarily taken on such tasks. Detention in such institutions is illegal and arbitrary.

According to the region's *service for execution of punishment*, in 2011 there were 18 cases of deaths in detention. Six persons died a violent death: five strangled themselves, and one prisoner was killed³. Twelve people died from disease: four from HIV/AIDS, seven detainees died from tuberculosis and one died from cancer. In 2011, detainees made 6123 calls for nursing care and medical assistance in the prisons of the region (5946 calls were registered in 2010), including 61 people infected with active TB and 173 persons with HIV/AIDS⁴. Official data for 2012 haven't been released yet.

The death rate in the three *detention facilities*, according to unofficial sources, is much higher given the inhuman detention conditions and inadequate medical care. Promo-LEX lawyers documented several cases:

On 6 January 2012, in prison no.1 in Hlinaia, one inmate died from myocardial infarction. The ambulance service never answered the call. Another inmate from prison no.2 died on February 4, 2012 of a heart attack, without any previous medical care.

A young man strangled himself in prison no.2 in Tiraspol after being persecuted by the guards. He had less than one month before release.

In April 2012, in prison no.2, an inmate died after 45 days of hunger strike. During his protest, he wasn't given any medical care.

On November 8, 2012 in prison no. 1 in Hlinaia, an inmate died after suffering from acute tuberculosis for many years. Here too no medical care was provided.

The true cause of death cannot be determined in any of the above cases. In a report, the local *ombudsman* expressed concern that hundreds of sick inmates are kept for long periods in medical wards, where they do not receive proper medical care and are subjected to suffering, misery and, ultimately, death⁵. According to some respondents, sometimes

² see Keenan Cases §111; Mouisel v. France no.67263/01 §40, McGlinchey and Others v. United Kingdom no. 50390/99 §46; Slimani v France no. 57671/00 §27

³ <http://www.tv-pmr.com/news.php?id=15218>

⁴ www.ombudsmanpmr.org

⁵ http://ombudsmanpmr.org/doclady_upolnomochennogo.htm

prison administrations indicate “released” instead of “died” in the personal files of the deceased in order to hide the exact number of deaths in prisons. In other cases, the cause of death is concealed. The *criminal punishment execution code* does not provide for a method of establishing the death of an inmate or an obligation to investigate the causes of deaths in prisons, as it is required by national and international standards. The *code* requires the prison chief to notify the prosecutor only if an inmate was killed during the application of special methods of physical force and firearms by *guards*. Inmates who die in prisons cannot be subjected to credible independent forensic examinations.

There are no other local *norms* that regulate the procedures and activities of the *law enforcement* in cases of death. The procedures for establishing a death in prison is virtually indistinguishable from those applied in cases of deaths at home, in the street or in a hospital. Usually, if a person dies in prison, an *operative investigation team*, composed of an *investigator* and a *criminologist* from local *police* department, is called in. The team establishes the cause of death. If the death was not violent, a criminal prosecution is not initiated. If it is established that death occurred due to doctor’s fault, a *criminal* investigation may be started. The likelihood that the *case* will go to *trial* is minimal. Most victims have complained that criminal investigations were ineffective, that *cases* of death were concealed or covered up, etc. It is virtually impossible to demonstrate the guilt of the prison *administration* or that of the doctors of the *facility*.

1.3 Conditions of detention

The UN Commissioner on Human Rights in Transnistria, Thomas Hammarberg, made several documentation visits to places of detention, and concluded that the conditions of detention were unsatisfactory and did not meet international requirements. A final report on his visits will be published in 2013⁶. The same concern is contained in the 2008 UN Special Report, which shows that in this period sufficient measures were not taken to improve the situation in places of detention in the region.

According to the *service for execution of punishment*, in 2012, in the 3 institutions for execution of punishment – a prison with special regime, a colony for minors and a prison for women – there were about 2057 prisoners (as compared to the rest of Moldova: 6521 inmates in 18 prisons). They include 131 women, 25 minors, 38 TB prisoners and 129 inmates with HIV/AIDS. 762 people are held in pre-trial detention facilities of the prosecution. The number of those temporarily detained in custody in the basements of the local police departments is unknown. Conditions for the temporary detention of suspects are very bad and amount to inhuman treatment. According to Promo-LEX beneficiaries:

I was detained in the basement of the Internal Affairs Division in Bender for 2 months, although the local rules provide for detention in isolation for a period up to 10 days. Other prisoners were in custody for 6 months. Cells are located in the basement of the institution, approximately 6 m underground. The walls are made of concrete and there is a wood floor. Approximately 2/3 of the cell surface (which ranges from 2 to 4m 2) is a makeshift bed of boards, where prisoners sleep and eat. Five to nine persons are permanently in the cell. People take shifts for sleeping. There are no windows. The only source of light is a lamp (200W). The ventilation system is not working. A plastic bucket serves as the cell’s toilet. They take us to the WC in the yard once a day, one detained at a time, from 17.00 until late. There is no shower. Food is prepared outside the facility (at the military unit in the village of Parcani). In winter time, it gets to us cold. We do not have any medical care; in emergency and critical cases, the prison administration can call an ambulance. Complaints about detention conditions are ignored.

While in the police detention in Grigoriopol, I slept on an uneven wood plank bed

without cover sheets or lingerie. A single bed sheet was available in the cell, and it was very dirty and full of bugs. In absence of a venting system, humidity was very high, the walls were covered in mold; clothes got wet and stuck to the skin. In addition to bedbugs, the cell was filled with mice - I caught 18 mice in a single day. Disinfection measures are absent. Because of the rodents, I was forced to hide my food under the pillow. A bucket in a corner of the cell (with or without a lid) served as a toilet, and the cell was filled with a strong and pungent odor. One could go to the toilet in the yard only with permission from the head of section. Packages of food and clothing were prohibited. I was kept in such conditions for 20 days.

In the preventive detention facility no. 1 in Hlinaia, Grigoriopol, the detention conditions are the same. Cells are overcrowded (10-11 people are held in 8-bed cells). We slept in shifts and waited standing. The cell was filled with bedbugs. Disinfecting powders and the like were prohibited. During winter, the cell is cold; inmates sleep with their clothes on and those who don't have warm clothes get sick. During the summer, it is very hot in the cell without a ventilation system. Electricity is provided by a schedule approved by the administration. An hour-long morning walk in the yard is permitted.

The barracks of prison no.1 in Hlinaia were not originally designed for detention, but for a clothing production workshop. Barracks consist of a long corridor, where people are housed on 80-100 beds. One barrack has a toilet and a latrine. The shower is down the hall and is allowed once a week. There is no water filtration system (the running water is rusted and has an unbearable smell). The pipe that supplies water to the prison also drains the waste from a nearby cattle farm. The windows are small, there isn't enough sunlight, and walls are covered in mold. Repairs in barracks and in the prison are carried out at the expense of the inmates, from cash donations or using construction materials sent by the inmates' relatives. Those who do not meet this "requirement" bear negative consequences or are discriminated.

In conclusion, Transnistrian detention conditions do not meet minimum standards of treatment of prisoners. Moreover, the harsh conditions and restrictions faced by prisoners, as well as their persecution and ill-treatment amount to torture and inhuman treatment.

1.4 Medical Services

UN Rules prescribe clear requirements for medical care in prisons. Every penitentiary must have at least one medical care unit, and doctors must have some knowledge of psychiatry. The health services should be organized in close relationship with the medical care *administration* of the community or the nation. They shall include a diagnostics psychiatric service, and, if necessary, they should be able to treat abnormal mental states. Inmates that are sick or require special treatment should be transferred to specialized institutions or to civil hospitals. If healthcare is provided within the prison, the medical wards should have proper equipment, furnishings and pharmaceutical supplies to be able to provide adequate care to their ill patients, and the medical staff should have a good professional training, etc.

Several victims have complained on the poor quality of the medical care administered in prison, their prolonged treatments, the use of expired drugs, and lack of necessary medical equipment. In present, it is impossible to take blood samples for tests in medical wards in prisons, and advanced tuberculosis and HIV/AIDS are not treated. Consequently, the ill inmates are in acute pain. Below are some victims' reports:

Prison no.2 doesn't have a dentist, so I was forced to take out my own two teeth, using a "clamp". I complained of acute pain in teeth to the administration, however, I was informed that the dentist office is vacant and that I will receive medical care only in cases of serious pathologies. However, I was told that I could use the services of a private dentist from outside the prison if I could afford the costs.

One of the doctors in prison no.2 does not have a license for medical activity. Most of the nurses in detention units of the police departments were trained as veterinarians.

At the Hlinaia prison, prisoners accused dental pain because of the bad water (often they don't have other options than to extract their sick teeth). The extraction is carried out in unsanitary conditions, using old or obsolete tools. For safety reasons, many prisoners choose not to seek medical help. A syringe may be used to administer injections to more than one person. The same clamp is used to extract teeth from different patients, including those with communicable diseases.

The treatment of inmates suffering from tuberculosis remains the most serious problem. A single specialized physician is assigned to treat tuberculosis in all of the *detention facilities* in the region. His schedule is pretty bus, and often he cannot help his patients in absence of specialized equipment. Various programs of prevention and deterrence of TB were launched in the region, but these measures seem insufficient, and the number of people suffering from acute tuberculosis is growing (over 600 inhabitants of the region are registered as having TB). The region's *Ombudsman* reported on the disastrous situation of treating acute TB and HIV/AIDS patients in prisons. In his report, he noted that the necessary equipment and medical drugs are absent due to the lack of funding (the estimated cost of a treatment course of a detainee with acute TB amounts to 1000-1500 euros).

1.5 Transfer of prisoners

Inmates are transferred in a metal wagon (also known as "the iron cup"), which has one small window, and is usually crowded. During the summer, the heat inside the wagon becomes unbearable after a few minutes, but the inmates have to wait inside for hours. Different categories of detainees are mixed during these transports (adults, ill people, including TB patients), which bears a risk of contamination. Sometimes the transport unit fails, and the detainees are forced to wait locked in metal wagon for hours, often suffocating inside.

International standards prohibit the transportation of detainees in vehicles with inadequate ventilation or light, or other conditions that can cause physical hardship. Despite this, the practice of transferring detainees in such circumstances continues. We believe that the current method of transferring inmates can be considered a form of torture or inhuman treatment, especially for the sick or those with special needs.

1.6 Non-criminalization of torture

Article 21 of the local *constitution* provides that no one shall be "subjected to torture, to cruel, inhuman or degrading treatment or to medical experiments", but that local *criminal code* does not criminalize acts of torture. It *criminalizes* exhaustion ("истязание") with punishment of up to three years in prison (Article 114) and states that, if combined with "torture", it is punishable by up to seven years imprisonment. The respective norm does not provide that the application of "exhaustion" by a *person in a responsible position* as an aggravating factor. Thus, victims of "exhaustion through torture" cannot challenge the actions of the local *law enforcement* representatives under this local provision.

In October 2012, the *criminal law* underwent some amendments. Thus, Article 114 of the *criminal code* was completed with a note defining torture as causing physical or mental suffering in order to obtain confessions or other acts contrary to the will of man, to apply punishments or in other purposes. There is no *criminal* penalty for torture. At the same time, there is no mechanism for submitting complaints and monitoring of torture, particularly an internal mechanism to prevent torture, as the *prosecutor office* is tasked

with the control⁷, and the regional *ombudsman* is in charge of monitoring places of detention. The majority of persons interviewed by Promo-LEX lawyers expressed mistrust in the activities of these institutions.

1.7 Legal safeguards

The local *criminal procedure regulations* provide several *legal guarantees* for persons accused or involved in criminal proceedings, which are more or less declarative and formal. The local *investigation authorities* can *detain* a person for 72 hours for any allegations of committing contraventions or offenses. *An investigator, a prosecutor or a judge* may apply one of the following preventive measures (house arrest, personal or organizational guarantees, bail or military supervision). The law does not provide for deadlines for preventive measures. The actions of the *investigative officer* may be contested with the *prosecutor*, those of the *prosecutor* – with a *superior prosecutor* or a *judge*. In absence of the institution of *investigative judges*, the same judge may examine both the arrest and the *criminal case*. Under the region's law, the judge cannot be challenged based on these grounds.

One may *challenge in court* the actions of the *investigator*, the *prosecutor's* orders of refusal or termination of *criminal proceedings*, or other acts infringing the *legal rights* of the parties involved in the process that may impede a person's access to justice. According to local regulations, appeals against acts/actions of law enforcement agencies shall be submitted with the payment of a fee.

Lawyers are admitted to trial at the announcement of the *accusation*, and, in case of *detention*, after having seen the arrest report. If the *defendant* asks for it, the *court* may allow lawyers from outside the region. An outside lawyer may be admitted to trial only in co-participation with a local lawyer, after paying an extra-tax and requesting permission from the local *bar association*. Complaints and other procedural acts may be lodged only in Russian, and must be signed by both lawyers.

A forensic examination is ruled only if deemed necessary by the *investigation officer*. Thus, a victim of torture has little chance of obtaining medical evidence of his/her ill-treatment. Examinations are carried out by forensic labs that are *subordinated to local interior ministry*. Forensic examinations conducted outside the region are not accepted.

1.8 Absence of a rehabilitation mechanism for torture victims

All States are required to ensure that torture victims receive justice in court, that they get fair and adequate compensation for damages and receive proper rehabilitation.

For the purposes of *local procedural law*, rehabilitation may be claimed only by people who were *illegally* subjected to *criminal prosecution*, *illegally sentenced* and subjected to preventive measures, forced medical treatment, removal from office or confiscation of property. This law does not provide for rehabilitation of victims of torture and ill-treatment. There are no *sentences* in cases of ill-treatment and no mechanism for rehabilitation of torture victims in the region. Furthermore, there is no effective legal mechanism to defend and protect people from the region. The operation of the National Mechanism for the Prevention of Torture does not extend to detention facilities in the region, which is outside any external control, including that of international bodies. The legal authorities continued to decline responsibility and did not undertake efforts to ensure

⁷ The competencies of prosecution were expressly limited due to the establishment of an Investigative Committee. Thus, the prosecution will only be responsible for overseeing observance of regional legislation. At the time of writing this report, it was unclear what would be the role of prosecutors in monitoring places of detention, and what institutions were delegated those functions.

the defence of fundamental rights. Moreover, Moldovan national legislation requires law enforcement to initiate proceedings for any allegations of torture. The arguments of the authorities that they do not have de facto control over the eastern region of the country are not admissible in the context of positive obligations. Accordingly, the Government may be accused of serious violations of the provisions of Articles 1, 2, 3, 5 and 13 of the European Convention of Human Rights.

Conclusions

The administration of the Transnistrian region bears evident responsibility for the situation and rights of persons in Transnistrian *detention facilities*, but this does not exclude the positive obligations incumbent to the Republic of Moldova and the Russian Federation. The detention of persons in the region's jails is arbitrary and contrary to article 5 of the European Convention. Moldova and Russia must take all measures to end the arbitrary detention of people and ensure their release. They are also responsible for the life and physical and mental integrity of victims of torture or inhuman treatment.

Recommendations

- The Moldovan Prosecutor General's Office must respect legal procedures and provisions and must conduct effective investigations of the causes of deaths of persons in detention, including any acts of torture, arbitrary detention, unfair sentencing and so on;
- The local *legislation* must exclude capital punishment and criminalize of torture, and adopt a mechanism for rehabilitation of torture victims;
- The National Mechanism for the Prevention of Torture must extend its activities in the eastern part of the country.

CHAPTER 2

RIGHT TO LIBERTY AND SECURITY OF PERSON

Although Moldovan law guarantees the right to liberty and security of person throughout the country, this right is not respected and ensured in the Transnistrian region of Moldova. The lack of a clear and effective mechanism enforcing this right of the local residents results in numerous violations and creates appropriate conditions for arbitrary behavior of the local *authorities* in relation to persons who inhabit or visit the region.

For twenty years, people in the region are faced with the absence of a clear and effective remedy for the protection of the right to liberty and security of person, an informal cooperation between the national law enforcement bodies and illegal paramilitary *bodies* from the region, abduction of people by the local *law enforcement*, arbitrary *arrests* and *detentions*, *overcrowded* detention facilities and local rules that are inconsistent with international standards in the field of human rights.

In 2012, the Moldovan legal authorities made no persistent efforts to resolve the complex problems related to freedom and personal security in the Transnistrian region of Moldova. The problem remains ignored in political negotiations, and there seems to be no interest in developing public policies and addressing problems related to the general respect for human rights in the region, and in particular to the individual freedom and safety of persons.

The behavior of the region's administration has not changed although it is now ruled by a new leader. No actions were taken in 2012 to change the negative practices in this sense. Moreover, in some areas of law such as the number of people in custody, the situation has worsened in comparison with previous years.

2.1 *Illegal detentions and convictions in the region*

Tiraspol *administration* representatives, particularly the local militia (police), continue to practice *illegal detentions* and abductions. Arrests practiced in the region do not meet international standards, in particular those provide by Article 5 of the ECHR⁸.

Statements of Promo-LEX beneficiaries residing in the Transnistrian region of Moldova show that local militia representatives conduct intense patrols of the areas bordering the territory controlled by the legal Moldovan authorities. They easily *detain* people; perform *body searches* and other illegal acts. Moreover, many representatives of local institutions are citizens of several states (Ukraine, Russian Federation, etc.), including of Moldova. Regardless of the circumstances, free movement of persons is guaranteed and relatively respected by the central government, and these people can move effectively within the territory controlled by Chisinau to perform certain actions or obtain information.

Every year, numerous cases are documented of *detention* of persons in the region by representatives of local *bodies*, which violate and ignore their basic procedural rights. Victims and their relatives are subjected to various prohibited treatments, including psychological pressure⁹, and subsequent convictions are illegal. *Courts* in the region do not meet the definition of *competent judicial authority* provided for by Article 5 of the ECHR, as there shall be a judge or officer authorized by law to exercise judicial functions. Thus, the ECHR jurisprudence rules that a person suspected of a crime cannot be deprived of

⁸ The Convention allows imprisonment of a person only if he/she is "arrested or detained for hearing before a competent judicial authority or when there is plausible reason to suspect he/she committed or is prevented from committing an offense, or from fleeing after having done so"

⁹ <http://www.europalibera.org/content/article/24620655.html>

liberty if the measure was taken by a person who does not fulfill judicial functions

There is no national level mechanism of cancelling convictions ruled in the Transnistrian region, which are considered by experts to be illegal. However, in 2011, the Supreme Court admitted a *request for annulment of conviction sentences* issued by the *courts* in the region against the interests of P.M., D.M., G.I. and C.M., who were unlawfully deprived of their liberty by the illegal *authorities* of Transnistria¹⁰. In 2012, the Supreme Court ruled on the admission of the appeal and on the cassation of *rulings of the Bender city court* and of the regional *supreme court*, taken in the name of the unrecognized Transnistrian Moldovan republic, as rulings made by unconstitutional judicial bodies.

Moldova has ratified most international instruments on freedom and security of the person, and has assumed positive obligations to guarantee the right to liberty and security of person. The assumed obligations also include the people in the Transnistrian region, although the Moldovan government has no control over this territory¹¹. This was emphasized in previous reports of the Association¹².

The Constitution of the Republic of Moldova does not exclude guarantees of the respect of the right to freedom and security of person for residents of Transnistria¹³. In reality however, state institutions do not enforce national legislation in the region, without legal basis thereof, arguing that they have no control over it. This is contrary to the decision of European Court in cases *Ilaşcu and Others v. Moldova and Russia*, *Ivantoc and Others v. Moldova and Russia*¹⁴ and *Catan and Others v. Moldova and Russia*, which is reiterated the obligation of the state to protect human rights in the region¹⁵.

The European Court considered and issued definitive rulings only in three cases from this part of Moldova - *Ilaşcu and Others v. Moldova and Russia*, *Ivantoc and Others v. Moldova and Russia*, and *Catan and Others v. Moldova and Russia*¹⁶. However, lawyers and NGOs sent numerous cases to the Court, invoking violation of Article 5, which will ultimately determine the Moldovan government to change its attitude to the problems of the Transnistrian region¹⁷.

The separatist administration of the region largely kept the *norms* and *practices* applied in the Soviet legislation. Against this background, there are many issues that affect the rights and fundamental freedoms of persons despite the *approximation* of regional standards to the Russian legislation. For example, the local *legislation* does not provide judicial control over detentions of persons, especially during arrests.

2.2 *Illegal transfer of persons*

Moldovan law enforcement officials continued the illegal practice of informal collaboration with representatives of the regional militia, including the illegal transfers of persons. One of the basic tasks of law enforcement is to protect and guarantee to all persons who are legally in the country their human rights and fundamental freedoms. The detention of individuals (without due procedure) and their transfer to illegal bodies from the eastern region are qualified, according to the Constitution, as crimes against the person. The absence of procedural legal documents for arrest seriously violates the rights of the person who actually needs help from the constitutional bodies. They primarily

¹⁰ <http://promolex.md/index.php?module=news&item=817>

¹¹ See cases *Ilaşcu and Others v. Moldova and Russia* and *Ivantoc and Others v. Moldova and Russia*

¹² http://promolex.md/upload/publications/ro/doc_1340371540.pdf

¹³ Article 25 of the Constitution of Moldova

¹⁴ Idem

¹⁵ Idem

¹⁶ Idem

¹⁷ <http://promolex.md/index.php?module=news&item=790;>

<http://promolex.md/index.php?module=news&item=711>

ignore the presumption of innocence¹⁸. The transfer and disclosure of personal data of people to illegal regional institutions represents another problem in this regard

On an official level, the Moldovan Ministry of Interior avoids discussions or explanations of such obviously illegal situations, but sometimes it must admit to such cooperation with the regional *law enforcement*¹⁹. This illegal practice started in 1999, when the Moldovan Ministry of Interior and *representatives* of the region's *militsia* signed two *agreements* establishing the obligation of cooperation in criminal matters, particularly in connection with the transfer of people. The Interior Ministry denounced these agreements on 17 September 2004 by Order 329 (on grounds that they contravened the Constitution of Moldova and signed international documents). Despite termination of these agreements, Moldovan law enforcement authorities continue transfers of people and information to the illegal bodies from the region. At least two cases of illegal transfer of persons were registered in 2012.

I.M. was summoned by unknown persons to get into a car, and was taken to Camenca, a town controlled by the illegal regime in Tiraspol. I.M. had no identity papers, so he was locked in a building of the *militsia* in Camenca, where he learned he was accused of theft. I.M.'s abduction was requested by the regional *militsia*, and the legal police in Rezina agreed to help²⁰.

S.A. was handed by a duty police officer to an unknown person named Roman, who said he worked for the Transnistrian *law enforcement*. The police officer said he consented to Roman's arguments and that S.A. has been in search for *evading conscription to the regional paramilitary*. After a complaint on illegal activities was filed on this incident, the Ministry of Interior ordered the duty officer and the chief deputy commissioner from the district to be fired from police force.

In terms of international standards, police actions were contrary to provisions of Article 5 of the ECHR and to the International Convention on the Protection of All Persons from Enforced Disappearance (the latter has not been ratified by Moldova). Moldovan legislation prohibits transfers of persons if they face risks, especially if the transfers are conducted by breaching arrest procedures. Moreover, filling legal procedural documents would underline the unlawfulness of such actions by the police. Collaboration on matters of criminal procedure with illegal bodies located in the country is absolutely prohibited, and the actions of the representatives of the law enforcement constitute offenses and shall be qualified as such.

The transfers of persons, as part of this informal collaboration, are not usually properly documented following national legal procedures, and they are not recorded in the registers of the police stations. These actions are not publicized precisely because they are illegal – a fact acknowledged by the Ministry of Interior.

2.3 The large number of persons deprived of liberty in the region

According to information published on the website of the alleged *penalty execution service* of the region, 762 people are held in *prosecution custody*. There are three *penalty execution facilities* in the region: one *prison* with severe regime, one *penal colony* for minors and one *prison* for women, which had a total of 2057 *detainees* (as compared to the rest of Moldova, where there are 6521 inmates held in 18 prisons). They include 131 women, 25 minors, 38 persons infected with tuberculosis, and 129 persons with HIV/AIDS²¹. The analysis of statistical data shows that region has a 563 people per

18 http://promolex.md/upload/publications/ro/doc_1319534121.pdf

19 <http://www.zdg.md/investigatii/luat-cu-forta-de-politisti-si-transmis-militiei-transnistrene>

20 <http://investigatii.md/index.php?art=591>

21 <http://guinpmr.narod.ru/>

100,000 of population detention ratio. For comparison, in the rest of the country, controlled by the Moldovan constitutional authorities, this ratio is 180 persons per 100,000 of population, and the EU median is 129 persons, as of 2012²².

Detention and prison overcrowding are regulated by several international provisions, which are also applicable to Moldova. European Prison Rules, adopted by the Council of Europe in 2006, include extensive guidance on the operation of prisons and the treatment of prisoners. They are aimed to protect the fundamental rights of prisoners in a manner that is consistent with the legitimate purpose for which they are in detention, and provide that these conditions should facilitate reintegration after release from prison. Relevant rules in this area are set out in:

- Standard Minimum Rules for the Treatment of Prisoners and recommendations to it (UN, 1955);
- Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (UN, 1988);
- European Convention on Human Rights, Article 5 (CoE, 1950)
- Rec13 Recommendation of the Committee of Ministers to member states on remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (CoE, 2006);

Provisions of the local *legislation* formally *establish* certain safeguards for detainees, but in reality they are not respected. For example, based on some materials examined by lawyers of Promo-LEX, the average length of stay of the person in custody is approximately 2 years, which is excessively long and does not comply with the provisions of Article 5 of the European Convention on Human Rights. Moreover, based on information provided by the regional administration²³, the total percentage of acquittals is 0.01%²⁴.

Conclusions

The regional administration is primarily responsible for violating the right to freedom and personal security in the eastern region of Moldova. However, a great responsibility lies with the Moldovan constitutional authorities, which by definition have a positive obligation to take constant and effective endeavors in defending and guaranteeing these rights, including the Transnistrian region. In turn, given the presence in the region and generous support of the Transnistrian administration by the Russian Federation, and based on certain decisions of the European Court, Russia is also obliged to contribute to the respect and guarantee of rights in this part of Moldova. Detention of persons in prisons in the region is inconsistent with the provisions of Article 5 of the ECHR. The Republic of Moldova and the Russian Federation shall take all measures to end the arbitrary detention of prisoners and ensure their release, and ensure that suspected persons be part of a fair trial in compliance with all legal and constitutional principles and guarantees.

The Moldovan legal authorities must counteract all illegal practices of cooperation between the law enforcement and representatives of illegal bodies from the eastern region which lead primarily to the violation of the right to liberty and security of person.

Recommendations

- Conduct effective investigations into cases of illegal transfer of persons by the representatives of Transnistrian *bodies*;

²² http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Crime_trends_in_detail

²³ <http://gssi-pmr.org/deals.html>

²⁴ <http://pmrinform.com/ru/news/20120722/07522.html>

- Conduct effective investigations into cases of abduction of persons by the representatives of Transnistrian *bodies*;
- Changing regional normative acts and their adaptation to national and international standards;
- Develop an effective instrument to protect the basic rights and freedoms of persons in the *custody* of the regional *bodies*.

CHAPTER 3

THE RIGHT TO PRIVATE PROPERTY

3.1 *Land and share value management*

The most serious problem in the area of property rights in Transnistria remains the management of farmland lots (земельный пай) that should be owned by rural residents.

Numerous rallies and protests were organized in 2012 by peasants in the region attempting to regain title to their farmland lots. Meetings were held in virtually every district in the region, and those present in the meetings were appalled by the way in which farmland was managed and distributed. The farmers established a regional public organization (Peasants Union) aimed at defending the rights of that large and important group of people.

Another unresolved problem is the exercise of the right of free possession of land by land owners from some localities in Dubasari district under the legal authorities of Moldova. Although thousands of land owners have legal land ownership documents, the separatist administration restricts their free movement to the land, thus violating their property right owners for 8 years already. Approximately 40% of the farmland owned by villagers from Dubasari is located east of road route Rabnita-Tiraspol, which is controlled by the separatist regime via numerous checkpoints installed contrary to documents signed by the legal authorities of Moldova with the Russian Federation and the separatist administration. Since 2006, farmers can use their land limitedly and only if they comply with several conditions imposed by the separatist administration (registration and approval of agricultural works and transport of goods, materials or agricultural equipment). No positive changes to the rights of landowners were registered in 2012, when *agreements* between the separatist administration and the legal authorities were extended.

Moreover, there have been problems of similar nature in other parts of the Security Zone, where attempts were recorded to install new checkpoints that limited landowners' access to their land (Chircaiesti village, Causeni district).

The Moldovan Constitution guarantees the right to private property. The adoption in the early 1990s of a Land Code and the implementation of land reform allowed citizens to become owners of farmland. The implementation of a privatization program allowed citizens to obtain ownership rights over shares of land formerly held by collective farms, including ownership of farmland lots. However these regulations were applied only to land and households in the area controlled by the legal authorities. Transnistrian residents and citizens did not participate in this program and received only a formal opportunity to claim land lots. Subsequently, the region's *president* unilaterally and illegally distributed the farmland in the region among certain companies and groups of persons, without taking into account the rights and interests of the residents of the villages.

The Moldovan legal authorities have not made any efforts to stop these serious abuses or to demand observance of property rights. The Land Relations and Cadastre Agency does not have clear data on the legal status, current situation and the management of land lots in the region, and makes no efforts to collect such information.

Unlike residents from other regions of Moldova who received titles certifying their right of agricultural land, Transnistrian residents can be considered discriminated against because their rights and constitutional guarantees have not been observed. Since 2003, many regional collective farms were declared bankrupt by *decree* of the Tiraspol *leader*. All movable and immovable assets of the failed farms, including thousands of hectares of land, were transmitted to certain businesses, thus establishing a farming monopoly in the region. Later tens of thousands of hectares of farmland were given to dubious companies in long-term lease.

A decree of the regional *president* dated March 16, 2012 mentions the need to manage farmland via land lots. There are 220 thousand hectares of arable land in the region, and it was decided that tenants of land will be charged a fee of approx. 147 *local rubles* (est. 10 euros) per lot. These fees will be transferred to a specially created fund estimated at 32 million *local rubles*. A simple calculation shows that there are 48,000 land lot holders, and the average land lot size is 3 hectares. The established fund will pay proportional amounts to each land holder.

The uncertainty about the management of farmland and related funds, and the lack of transparency about the process leaves room for fraudulent schemes implemented by influential companies in the region, which are considered to be “the funding systems” of the local regime. Evidently the management of the entire farmland patrimony lies in the hands of one person. The local administrations’ attempts to occupy land from adjacent villages that are not under de facto control of the breakaway government of Tiraspol are another concerning trend.

3.2 Participation in management of public assets

National law does not apply in the eastern region; therefore property is managed at the discretion of the separatist administration. These local authorities hold their own privatization programs and appropriate the ensuing funds. However these transactions are null and void, as they are concluded by bodies that have no legitimacy. Another aspect of the problem is the lack of public control over these processes. Information about property management is sporadic, often late and inconclusive, and is publicized depending on the activities of various regional institutions. For instance, during the first 10 months of 2012, the local municipality of Bender collected approx. 32 thousand euros from privatization, obviously a very small fraction of the real value of the privatized industrial facilities.

With regard to managing public funds, we cannot ignore the announcement of the regional administration released in 2012 about the disappearance of 90% of the gold reserves of the *regional bank* or the investigation against the son of the former *leader* of the region. Both officials were under investigation by the Russian Investigation Committee on embezzlement charges (creating fraudulent schemes for embezzling money from the Russian humanitarian assistance), which looked into the disappearance of 5.39 million dollars during the years 2008–2011.

An investigation was started, and no announcements were yet made about finding the money. The administration relies heavily on sales of property located in the region in an attempt to cover the deficit.

It should be noted that the current uncertainty is also due to the inability of the legal Moldovan authorities to outline a clear strategy regarding privatizations and property sales in the region.

In accordance with the Moldovan Constitution, any transactions made by the separatist administration are void and cannot be considered legal, and the local residents were left without the opportunity to participate in property management. At the same time, a much higher risk is posed by the fact that the Moldovan state may face an obligation to recover and guarantee investments of foreigners who have acquired assets in the region. An eloquent example of assumption of responsibility is the obligation to pay for gas consumed in the region.

Shortly after his *election*, local *president* Sevciuk said that he did not exclude a re-privatization of businesses previously sold to foreign investors. His words were followed by deeds: in the first 10 months of 2012, earlier privatizations of at least 6 companies such as the Bender baking factory and its patrimony, “Biotehnologia” JSC and its patrimony, the baking factory of Rabnita, the patrimony of the “Dnestr-Auto” joint stock, the canning

factory in Camenca, and the Bender river port JSC, were cancelled.

The separatist administration announced unilateral termination of contracts under which these companies were sold. It is unknown, however, whether such termination was followed by complaints from the new owners.

3.3 Indexation of savings and return of property to victims of political repressions

In 2012, other two categories of problematic areas regarding property rights were left without attention. These are the situation on the indexation of savings, and the situation of victims of political repressions whose property was confiscated, nationalized or otherwise taken.

If, in western Moldova, indexation reached a final stage, the residents of the eastern region who had deposits in Soviet savings banks were unable to recover their deposited money.

The situation of those who are entitled to seek compensation for illegally confiscated property during political repressions in the years 1917 to 1989 is also uncertain. Referring to the situation of victims of political repressions, note that uncertainty violates the rights of people regardless of their residence. Thus victims may not exert the right to reclaim confiscated or nationalized property in the absence of an effective of extra-judiciary examination of requests for recovery of property.

Moldovan Law no.1530 of 12.12.2002 on the indexation of people's savings at the Savings Bank ("Banca de Economii"), establishes the basic principles of indexation of savings deposited by Moldovans at the Savings Bank during the Soviet period as well as amounts and payment procedures. The law rules out indexation of savings deposited at the bank offices from the eastern region, stating that these amounts will be indexed only after the budgetary and financial relations between the two banks of Nistru River will be restored.

Postponing the issues concerning some aspects of property rights indefinitely runs contrary to the principle of equality and non-discrimination. Given that no positive results in terms of political settlement of the Transnistrian problem were registered in 2012, we believe that indexation of savings will remain a problem.

As to victims of political repressions from Transnistria, note that, following a significant number of petitions in this regard received from the region, the Moldovan Ministry of Justice promoted a bill amending Law 1225 of 08.12.1992 and proposed an extension of competencies of the special committees in towns adjacent to the eastern region to examine claims from Transnistrian residents on the return of property or compensation of its value.

On 28 September 2012, Article 12/1 of Law 1225 was amended by introducing a provision stating that Moldovan citizens residing in localities from the left bank (Transnistria) may apply to special commissions created in the vicinity of their respective localities, as follows: residents of Rabnita and Camenca districts will apply at the special committee in Rezina, those from Dubasari and Grigoriopol will go to the special committee in Dubasari, and residents of Tiraspol and Bender municipalities and district Slobozia will apply to the special committee in Anenii Noi. The impact of these changes cannot yet be assessed.

Conclusions

The issue of land lots is very serious and requires involvement of the legal authorities; farmers' protests show that delaying involvement in solving a problem only complicates the matter further.

Establishing a special fund to manage the money collected from land tenants and distribute them to farmers as direct beneficiaries is not perceived as a good idea among the

local residents. In absence of democratic and civilized mechanisms of control and transparency in the region and based on the experience of the last 20 years, the population does not accept such a solution and continues to demand to ownership rights over land lots and farmland.

Another intention of the regional administration is sale of regional property, including local *government bonds*. Consequently, there is a risk that property located in the Transnistrian region of Moldova will be transferred to other companies or individuals as a result of an alleged breach of obligations. Moreover, when a definitive solution of the Transnistrian problem is in place, the financial pressure could fall on the Moldovan legal authorities. Such an experience already exists - the separatist administration accumulated an enormous debt for natural gas consumption, which allows the supplier and sometimes the Russian state to invoke this as a condition of a settlement solution or even to openly blackmail the Moldovan central government and population.

At the same time, we welcome the amendments to the national legislation that allow people from the eastern region to have their applications for refund of the cost of assets examined out of court.

Recommendations

- Develop a strategy for controlling alienation of property in the eastern region. Informing potential investors about the risks incurred by purchasing assets in the Transnistrian region of Moldova;
- Determination of local administrations in the region public property in a fair and transparent way, in the public interest, and in accordance with international norms and standards;
- Exclusion of discriminatory provisions in the Moldovan national legislation following the example of amendments passed by Parliament on 28 September 2012 that established procedures for Transnistrian residents to claim repayment of property illegally confiscated or nationalized by the Soviet government

CHAPTER 4

The right of access to information

By exercising de facto control over a part of Moldova, the regional administration manages certain data and information about its inhabitants, events, resident legal entities and individuals. How this information is managed affects to various extents the behavior, life, safety and condition of each inhabitant of the region or tourist. On the other hand, the legal authorities or other international bodies do not have exact information about the paramilitary bases [in the region] and their respective contingents, and the quantities of weapons stored in the depots of the Russian Army. In effect, these issues represent a serious challenge to national security, the environment, food security, and other aspects.

4.1 Access to information on the functioning of local authorities

The region's population has access mainly to local information sources controlled by local administration, to foreign media and to the Internet. However, these media do not provide information of general interest, but only reports about activities of the local administration. In 2012, some local television channels were accused of censorship, despite statements by Transnistrian leader Evgheni Sevciuc before his "election" that the media market would be liberalized and opposition will be given airtime²⁵. Also in 2012, an informational website opposed to Sevciuc was subjected to a DDOS attack²⁶.

International and national standards

Article 34 of the Moldovan Constitution provides that a person's right of access to any information may not be restricted. Public authorities are obliged to provide correct information to citizens on public affairs and matters of personal interest. The right to information shall not prejudice the protection of citizens and national security. Public and private mass media organizations are required to provide correct information to the public. The mass media may not be subject to censorship.

The Moldovan legal framework contains a fundamental law - the Law on Access to Information. The law establishes and sets the basis of key norms on access to information in Moldova. According to several assessments, the law allows free access to information to any person who has this right. Local and central authorities, and any legal entities and individuals carrying out activities that are subjected by law to public control are considered providers of information. The general climate regarding access to information in the country is positive, and the legal framework is consistent with the main international principles of free access to information.

Local standards

Transnistria has a law that regulates provision of information²⁷ and relations that may arise in connection with information providers, information technologies and their protection.

Under this act, both individuals and legal persons may request information. However, the act provides that information may be offered only if it affects the interests and rights of the solicitor; it does not specify clear terms for providing information. The possibility of receiving information in the form of copies of acts and decisions is not clearly *regulated*. Information must be provided in one of the region's *official* languages, but in absolutely all

²⁵ <http://www.tiras.ru/jeksperty/34848-andrey-safonov-v-pridnestrove-svirepstvuet-televizionnaya-cenzura.html>

²⁶ <http://dniester.ru/node/7108>

²⁷ <http://justice.idknet.com/web.nsf/767eb8a58ad76a2bc22574d5002acf15/b6c6aa208368b83ac2257728002444c6!OpenDocument>

cases, the replies are offered only in Russian.

No monitoring reports on access to information were produced in 2012. The region's administration and the local NGOs do not perceive access to information as a matter of general interest. For example, the reports of the regional ombudsman contain no data on the issue of public information²⁸.

According to the territorial administrative division of the region²⁹ there are 87 municipalities, including 10 city administrations, and over 20 public authorities of a regional level, that manage information of *official* interest.

Largely all of the authorities have websites, of which the most relevant are those of the regional ministry of industry: <http://minprom-pmr.org/>; ministry of education: <http://minpros.org/> (the only website updated on a daily basis and available in all three official languages of the region: Russian, Ukrainian and Moldovan (in Cyrillic script)); ministry of environment: <http://ecology-pmr.org/>; a local ministry of interior: <http://www.mvdpmr.org/>; ministry of economy: <http://www.mepmr.org/>; alleged ministry of foreign affairs: <http://www.mfa-pmr.org/>; ministry of justice: <http://www.minjust-pmr.org/>; ministry of health and social protection: <http://www.minzdravpmr.org/>; ministry of finance: <http://www.minfin-pmr.org/>; a regional customs committee: <http://www.customs.tiraspol.net/>; transport and road management division: <http://dortrans-pmr.org/>; a local Constitutional court: <http://www.kspmr.idknet.com/>; alleged arbitration court: <http://arbitr-pmr.org/>; a chamber of commerce: <http://tiraspol.ru/>; pension fund: <http://www.gpfpmr.idknet.com/>; the region's president: <http://president.gospmr.ru/ru/>; the regional legislature: <http://www.vspmr.org/>; a regional executive branch: <http://gov-pmr.org/>; alleged prosecutor's office: <http://www.prokuror-pmr.org/>; and website of territorial administrations: Tiraspol municipality: <http://tirasadmin.org/>; Slobozia: <http://www.slobodzeya.ru/>; Grigoropol: <http://grig-admin.ucoz.org/>; Dubăsari: <http://www.dubossary.ru/>; and Râbnîța: <http://rybnsovet.idknet.com/>.

In reality, these websites do not contain information of major public interest such as details on operation and the transparency of property management. They are no more than venues for placing unimportant ads and serve as advertisement platforms for these respective structures.

Possible consequences

Lack of access to information is an issue considered to be a less important in the Transnistrian region of Moldova, and we think that it may have negative consequences. The informational vacuum present in the region, and the lack of transparency of the local authorities turn the region's population into a community that may become easily manipulated and dependent on certain groups of people. The Moldovan legal authorities continue to ignore the possibility of developing certain regional programs that would inform people about their rights.

4.2 Secrecy and limited access to information

Recent statements by representatives of the regional *administration* regarding the possibility of stopping the rebroadcasting of Moldova 1 TV channel³⁰ and blocking Publika TV³¹ shows that the Tiraspol administration seeks to maintain informational isolation and preserve censorship in the region. In these circumstances, the region's population remains without those few alternative sources of information, and will have no access to

²⁸ <http://www.ombudsmanpmr.org/informatia.htm>

²⁹ <http://www.minjust.org/web.nsf/767eb8a58ad76a2bc22574d5002acf15/9337cde2f7970907c2257520002d5855!OpenDocument>

³⁰ <http://pan.md/news/Shtanski-grozit-prekratiti-veshianiya-M-1-v-Pridnestrovie/28600>

³¹ <http://novostipmr.com/ru/news/12-11-05/sdelaet-li-kishinyov-shag-navstrechu-tiraspolyu-vremeni-ostallos-do>

information from the area controlled by the Moldovan legal authorities.

In the last 22 years, the local press served mainly as a tool of propaganda and manipulation. According to some sources, some media institutions in the region have employed persons who are tasked with coordinating their propaganda reporting. In the most part, these media are not balanced and provide limited information to the public about realities in the country³². There are only a few media sources that may be considered more or less independent in the region. Despite the political change in the regional administration, so far we cannot note significant improvements in terms of access to information.

Another aspect of the right of access to information is the fact that the separatist administration holds control of the Soviet archives, that is, of Soviet intelligence materials from before Moldova's independence.

In 2012, the alleged *security minister* from Tiraspol announced that a criminal case was started against the former head of the *institution* Vladimir Antiufeev for the destruction of secret documents from the archives of the KGB, a fact that was revealed in January 2012³³. Later, the *head* of the alleged body said that he did not intend to return the archives to Moldova³⁴.

National and international standards

The national legislation provides certain safeguards for the exercise of press freedom in Moldova. Moreover, in its ruling, the ECtHR reiterated the importance of rejecting censorship and limitations to the freedom of expression of journalists who try to disseminate information of public interest.

In 2012, the Moldovan Parliament paid special attention to the contents of archived as a source of public information. We refer in particular to the former KGB archives that contain a large number of papers and documents on crimes during the Soviet occupation. A commission was created to examine the situation KGB files of the MSSR³⁵. However, in light of the statements of the separatist administration, the activities and results of this committee will be incomplete.

Possible consequences

The lack of access to reliable information and the absence of independent media sources that reflect information in an unbiased way and from every angle deprive the population of the right to basic information. It is the obligation of the Moldovan legal authorities not only to communicate official information to those concerned upon request, but also to help actively inform them through various sources. The decision of the regional administration to limit access to some alternative media sources caused a return of an informational vacuum in the region.

With regard to the issue of access to information from the Soviet security archives, we believe that this is a source of information that may affect the rights and interests of many people.

4.3 Participation in decision making

Civic participation is rarely encouraged in the Transnistrian region of Moldova, and mostly when projects funded by foreign donors are implemented. Thus, the residents of the region virtually never participate in decision-making processes and in the development of their communities. After a new administration took office in the region, the situation did

³² <http://novostipmr.com/ru/razdel/moldova>

³³ <http://www.nr2.ru/pmr/389945.html>

³⁴ <http://tsn.md/news/politica/item/291-tiraspol-ne-nameren-otdavati-kishinevu-arhivy-kgb>

³⁵ http://www.publika.md/parlamentul-a-votat-o-comisie-speciala-va-examina-dosarele-din-arhiva-kgb_1094471.html

not change in any significant way.

We continue to register a lack of actions and initiatives aimed at raising public awareness, civic education, participation and involvement. People are inactive and do not get involved at a local or regional level because they are unaware of their rights to do so and because of general fear, which was cultivated here over many decades.

National and international standards

The situation in this regard is not perfect at a national level, in the area controlled by the legal authorities of Moldova, either. Even if a law governing the transparency of decision-making was passed in 2008, very few authorities hold public consultations and apply their results. The lack of transparency reduces public confidence in the importance of adopted decisions, and the absence of consultations often leads to unqualified or inappropriate decisions.

In Transnistria, the separatist administration passed a law in 2003 that is supposed to *guarantee* the possibility of submitting requests and complaints. Where appropriate, it provides the possibility of challenging refusals *in court*. At the same time, another law, called the *law on information and information security*, functions in the region. A bill was initiated in 2012 on *ensuring access to information on the functioning of state authorities and bodies of local public administration*. This was promoted with the intent to *approximate* the alleged regional *legislation* to that of the Russian Federation and is in fact similar to the Moldovan Law on transparency in decision making and to certain provisions of the Law on Access to Information. We believe that this is a largely declarative *act* that is aimed at copying Russian law and practice. In the *informational note* to the *act*, that fact is described as paramount, and there are no references to implementation or to the expediency of this *act* for the Transnistrian people.

The lack of civic participation and involvement in decision-making serve as perfect conditions for maintaining an authoritarian and incompetent regime that does not always represent the interest of the people. In effect, these conditions do not favor the development of communities and of the region as a whole.

Conclusions

A true democracy is inconceivable without free access to information or transparency in decision making. The absence of these criteria creates a perfect environment for corruption, bureaucracy, dictatorship, and economic and social stagnation.

Although Moldova has a generally good legislation on access to information and transparency in decision making, this legislation is not applied in the eastern region. The region passes other acts, mostly borrowed from the Russian legislation.

The right to information and transparency in decision making cannot function without access to unbiased media.

Recommendations

- Liberalization of the media in the region;
- Informing the people of the region about all existing or available procedures, instruments and mechanisms for protecting or defending their legal rights;
- Building on the capacities of the local governments of the communities adjacent to the eastern region to get involved in solving the problems of the region's residents;
- Improving the cooperation between the legal authorities and initiative groups and associations from the region for programs of public awareness and civic education;
- Creating an informational portal that would provide people from the region with basic information (E-government project).

CHAPTER 5

FREEDOM OF EXPRESSION

Freedom of expression is a core value of a democratic society, and is so enshrined both internationally and nationally. The subject of this chapter is the analysis of press freedom by exposing problems faced by the media and journalists in the eastern region of Moldova.

The report contains three subchapters, and deals with the problem of monopolization and control of Transnistrian media institutions, the phenomenon of censorship and the restricted access to the region for foreign journalists or those coming from the other parts of the country. Most local media outlets are controlled by the region's *administration* or by commercial companies such as “Sheriff”, which are in contact and interdependence with the regional *authorities*. Censorship persists among journalists, both in public and private media institutions. Access to the region for journalists from the right bank of the Nistru River is limited and is subject to *accreditation*. Sometimes journalists get a somewhat facilitated access to Transnistria during high-ranking visits, but, once in the region, they are monitored by representatives of the local regime and thus limited in action.

5.1 Monopolization of media sources in the eastern region

Transnistrian residents are largely deprived of freedom of expression, which is guaranteed only on paper and is respected and promoted in a discriminatory manner. Media outlets in the region are controlled via press funding, mainly from local budget resources.

For over 20 years, the Transnistrian mass media, which had been monopolized and remains limited in action and politicized, has known an artificial growth. Media limitations refer to the fact that most local media outlets are controlled by the de facto *authorities* of the region or by companies such as “Sheriff”, which have some links with the local regime. The limited access of representatives of local political parties to media pushed them to create their own sources of information, one for almost every party, thus leading to a politicization of the press. Some of these outlets function only during election campaigns, others are monthly or weekly periodicals.

According to the data of the regional *service for communications, information and media*³⁶, there are currently 60 registered media outlets in the region, of which 40 are newspapers, 11 magazines, five radio stations and four television channels. The share of private media is only 10-15% of the region's media market. Also, there are numerous registered media sources that are not actually functional³⁷.

The “Sheriff” company continues to hold a monopoly on the market for cable media providers. Closed JSC “Interdnestrkom” (TM IDC) is the largest telecommunications operator in Transnistria, and is also part of the “Sheriff” holding³⁸. In 2012, regional cable and IP TV networks included two Moldovan TV channels in their packages (Moldova 1 and Publika TV). On November 1, 2012, without explanation or prior notice, Publika TV was excluded from cable and IP TV networks in Transnistria. According to representatives of the respective TV channels, the decision was motivated by the refusal of authorities in Chisinau to allow Transnistrian TV channels to be broadcast nationally in Moldova. Representatives of the regional administration say they admitted two Moldovan television

³⁶ full name in Russian: Государственная служба связи, информации и СМИ Приднестровской Молдавской Республики, <http://www.mininfocompmr.idknet.com/>

³⁷ Information provided by the head of communications, information and media in the region, Evgheni Zubov, at a roundtable organized by the OSCE Mission to Moldova, April 26, 2012.

³⁸ <http://idknet.com/about/>

stations in the region in exchange for a promise of the Moldovan Prime Minister to allow Transnistrian TV channels to broadcast on the territory of Moldova³⁹.

At the regional level, there is no *special law* on freedom of expression; however there is a *law on media activities*, which includes a reference to freedom of expression⁴⁰. According to the respective *law*, the monopolization and limitation of media outlets as well as any *government* intervention to limit the freedom of expression of journalists is prohibited. These *provisions* remain largely formal and declarative.

At the national level, Moldova has a special law on freedom of expression⁴¹. In addition, a number of other laws regulate the media, and their provisions guarantee the right to free expression of ideas and opinions, to free communication of information through media outlets, and the right to full and truthful information.

5.2 Censorship

By censorship we understand an imposed distortion of journalistic material, limiting the dissemination of information of public interest or other unlawful actions aimed at filtering information. National and local laws provide that the State guarantees a pluralism of opinions and copyright, and that media institutions shall not be subject to censorship. Censorship and interference with the activities of public mass media outlets by the management of the institution or other officials are punishable by law⁴². For example, at the local level, censorship is prohibited in Article 28 of the region's *constitution*, and Article 3 of the *law on the media*.

However, due to its held monopoly of the media, the region's administration controls information, thus reports that are critical of the regime are suppressed, and journalists may be harassed. There are no statistical data that would confirm these findings and no such cases were made public. Also, there are no complaints in this regard, either due to pressure on media outlets and journalists or for fear of possible persecution. After the detention of journalist Ernest Vardanean (*sentenced* to 15 years in prison but later released), journalists are particularly careful and refuse to speak publicly about such matters.

The region's administration violates free speech by imposing censorship both on information and resources in the region and those from the rest of the country. We have identified two problems: on the one hand, the reports by Transnistrian journalists about Moldova continue to be mainly selective, one-sided and biased, and on the other hand, Moldovan media reports are not available in Transnistria. In reality, Transnistrian residents can subscribe to at least 75 publications, newspapers and magazines from the right bank of Nistru. Moreover, according to representatives of the Moldovan Post Office, subscriptions in Transnistria could be arranged for any publication from Moldova. Despite the wide offer of the Moldovan press, lists of available publications circulated in Transnistrian post offices are selective and incomplete, and in some rural post offices, that information is less known. In conclusion, although all the residents of Transnistria have access to many newspapers and magazines from Moldova via postal subscriptions, this opportunity is difficult to access for them due to additional fees imposed by the region's *administration*.

5.3 Access of journalists from the right bank of the Nistru River

According to local journalists, in 2012 the Moldovan media had easier access to the

³⁹ Information available at http://www.publika.md/publika-tv--regretam-excluderea-postului-nostru-de-televiziune-din-retelele-de-cablu-din-transnistria_1106071.html

⁴⁰ "law" no. 263-3-III of 11.04.2003 on media activities, available on the website: <http://zakon-pmr.com/DetailDoc.aspx?document=60931>

⁴¹ Law no. 64 of 23.04.2010 on Freedom of Expression, published in the Official Gazette no.117-118/355 of 09.07.2010

⁴² Idem 7, 8, 9

region compared to previous years, and it required only obtaining an *accreditation* from the *communications, information and media service* of the region. The *accreditation* of foreign journalists is described in Article 47 of the regional *media law*. Moreover, journalists noted that the process can be facilitated if they are assisted by their local colleagues in obtaining their credentials. On the other hand, only one in four requests were approved for Moldovan journalists looking to film reports in the region. Moreover, as required by the *local regulations*, to request accreditation, Moldovan journalists must present clearly and accurately the reason and duration of their visit, the area where filming will take place, and must send in photographs for all the accompanying crew members⁴³. *De facto*, the accreditation process is quite difficult, as it takes no less than 12 working days from the filing date⁴⁴, and in the end, the application may be rejected.

According to Article 19 of the Universal Declaration of Human Rights⁴⁵ "Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions, receive and impart information and ideas through any media and regardless of frontiers."

Sometime, journalists from the right bank of the Nistru River are granted facilitated access to Transnistria during high-ranking visits to the region, but, once there, they are monitored and limited in their actions by *representatives of security forces*.

Conclusions

With respect to the topic of this chapter, the Moldovan legal authorities were unable to protect and respect freedom of expression of citizens in Transnistria. The regional administration brutally violates both national and international legislation, and the local rules that govern the self-proclaimed *state*.

Citizens residing in Transnistria were not free to express their opinions about political, social and economic issues. Local journalists and media institutions were subject to censorship, and were prevented from reflecting information in accordance with the standards of the profession. Media consumers were limited in access to reliable, pluralistic and objective information. Free direct debates between people with different views and opinions were practically absent. For 20 years, literature published in Moldova, especially written in Latin alphabet, is not available for purchase in the region.

Recommendations

- Support various projects that encourage diversification of information for residents of the Transnistrian region to ensure pluralism of ideas and opinions;
- Ensure protection of the right to freedom of expression by sanctioning the *authorities* that limit the free expression of citizens or journalists;
- Encourage the organization of an open platform for discussions and debates in the region to promote pluralism of opinions and views and free thinking;

⁴³ The information regarding the documents needed to obtain accreditation can be found on the website: <http://mfa-pmr.org/index.php?newsid=41>

⁴⁴ Idem

⁴⁵ Ratified by the Republic of Moldova on 27.07.1990

CHAPTER 6

FREEDOM OF THOUGHT AND CONSCIENCE

The operation of religious cults in the eastern region is one of the many problems left without attention by the legal authorities and the international community for the past 20 years.

6.1 Recognition and registration of religious cults by government region

The exercise of freedom of conscience cannot be considered as the most stringent problem in the eastern region. In 2012, the region was visited by several committees and envoys of international organizations who documented the human rights situation in the region, including freedom of religion.

The operation of religious cults in the eastern region is one of the many problems left without attention by the legal authorities and the international community for the past 20 years. This is due to the regional administration's refusal to address issues of fundamental rights and freedoms that usually are treated as political influence in the region. The legal Moldovan authorities have taken any efforts to monitor the situation and the activities of religious cults in the region during the period of this report.

According to Article 18 of the Universal Declaration of Human Rights every person has the right to freedom of thought, conscience and religion. This right includes the freedom to change his religion or belief and the freedom to express his religion or belief, either alone or in community with others, in public or private, in teaching, practice, worship and observance of rituals.

Most religious cults registered by the central legal authorities also operate in the eastern region. Many of them reported that in 2012 they faced the same problems reported in previous years.

On 27 February 2012, several amendments were published to the Law no.125-XVI of 11 May 2007, which regulates the implementation of freedom of thought, conscience and religion throughout Moldova. Although they did not introduce significant changes, we believe that the law has become more accessible; however, the national legislation is not applied in the eastern region, where there are local provisions on activities of religious cults and their component parts.

The acts adopted by the separatist regime are more restrictive compared to the Moldovan Law. For these reasons, some religious cults registered with the central legal authorities did not register with the regional administration, and preferred to operate undeclared in this region. These religious cults risk persecution, because such undeclared activities are punishable under the alleged regional code of administrative offenses.

According to local normative acts, religion cults may function on the condition of getting registration. However, in order to be registered, a cult must prove that it has at least 10 members, three territorial organizations, and has been functioning in the region for at least 10 years. The local public authorities issue the certificate confirming this circumstance. A component part of a religious cult cannot be registered without such a certificate. After registration, religious organizations are required to report annually to the local authorities and must request annual extensions of their activities. Therefore the registration of religious cults and opening of new local organizations depend on the regional public administration. On one hand, religious cults cannot operate without registration; on the other hand, in order to get registered, they must operate in the region for at least 10 years.

Another act that contains dubious provisions is decree no.2 of 21 March 2003 of the local president, which states the obligation of leaders of religious organizations to be

accredited. Therefore only a person accredited as a cult leader may represent the cult in relations with the regional authorities.

According to data provided by the Jehovah's Witnesses religious cult, there are at least 2,500 followers of this cult in the eastern region. Throughout the region there are 32 communities, which are not recognized by the local administrations.

Only two local organizations were registered in 1994 and 1997 (in Tiraspol and Rabnita). In 2009, the regional legislation was amended to include a provision on reregistration of religious cults, but the process was not finalized and remains unclear. In 2012, the examination of a case brought by Jehovah's Witnesses religious cult against the alleged ministry of justice of the region was delayed. Previously, the local justice ministry refused to reregister the cult, arguing that the statute of the organization was contrary to the pseudo-statehood of the region.

The complaints filed by the cult against local administrations were rejected in 2011. Local courts registered complaints against the local authorities of Parcani, Grigoriopol, Bender, Dnestrovsc and Dubasari, who refused to recognize that such religious groups operated on their territories. IN 2012, no such complaints were registered.

Failing to reregister, the said religious cult risks being erased from the register, which may also affect the property rights on worship facilities, in which meetings are held, and which are registered directly on the Tiraspol and Rabnita communities.

An application for registration of a Muslim religious group was also rejected. The request that came from a group of Muslims was rejected in 2011, and we are unaware in the cult filed other requests for registration in 2012.

The Lutheran religious cult has not completed alleged reregistration either. A single community of Lutherans currently operates in Transnistria.

6.2 Historical right of ownership of cults

The restitution of properties of religious cults confiscated by the Soviet regime remains a sensitive issue for the legal authorities. Although for other reasons, the issue is equally sensitive for the Tiraspol separatist administration. In 2012, there were no public discussions on the need for restitution of property confiscated or nationalized by the Soviet regime from religious cults.

Both Moldovan and regional law recognize, albeit declaratively, the need to respect property rights, including those of legal entities. In this respect, the Moldovan Constitution guarantees the right to property, and international laws and resolutions of the Committee of Ministers of the Council of Europe urge that ownership be respected, even with passage of time.

Since July 2003, the so-called ministry of justice of the region registered 114 religious organizations of different faiths. The largest group is the Orthodox, represented by the Diocese of Tiraspol of the Moldovan Metropolitan Church under the Russian Patriarchate. The Orthodox in the region have 77 facilities, including churches, chapels, and cathedrals. Catholics have 5 parishes in the region. Judaic faith is represented in the region by two organizations in Tiraspol and Bender that share a synagogue, and two unregistered groups in Dubasari and Rabnita. Other religious cults in the region include the Jehovah's Witnesses, Protestants, and Baptists, Baha'i, the Krishna and others.

Of all denominations registered in the region, only the Tiraspol Diocese of the Orthodox Church regained possession of the churches confiscated or nationalized by the Soviet regime.

Of the cults that have been active in the region, only the Lutheran Church openly claims restitution of property confiscated by the Soviet regime, namely churches in Camenca, v.Hlinaia and v.Colosovo (the latter transformed into a club), and a place of worship in v.Carmanovo, which was transferred to the Orthodox Church.

Another cult entitled to demand return of seized property is the Catholic Church, which has not made public demands regarding its confiscated goods in this part of Moldova.

6.3 Equality of cults in terms of access to places of worship; discriminatory support of certain cults

As in other regions of Moldova, the Orthodox religious cult enjoys the most support of the population. In the Transnistrian region too, the Orthodox Church gets preferential treatment. Therefore this is the only religion that has not experienced problems or obstacles from the regional administration. On the opposite, the head of the Orthodox Diocese attends a vast majority of public or official activities.

Other communities have reported a biased attitude on behalf of the local administration. In August 2012, local customs officials detained two members of the religious community of Jehovah's Witnesses who were carrying religious materials in the form of pamphlets and newspapers. The publications were confiscated. The followers and members of this cult are also persecuted for their refusal to join the paramilitary structures.

Conclusions

Freedom of religion is not fully observed in the region, and some local provisions create obstacles to religious activity. Failing registration, religious organizations cannot properly operate and risk losing their property.

Persecution of religious followers who, for reasons of conscience, refuse enrolment in the Transnistrian paramilitary structures represents a serious violation of their rights. The functioning of religious cults should not pose risks or require additional procedures for registration.

Recommendations

- Ensuring the functioning of religious cults and their component parts throughout Moldova, including the Transnistrian region;
- Combating and deterring manifestations of hatred and intolerance, including those based on faith;
- Sanctioning seizures of cult property.

CHAPTER 7

THE RIGHT TO A FAIR TRIAL AND THE PRESUMPTION OF INNOCENCE

The Transnistrian regional administration established its own system of judiciary, which operates here since the 1990s. Achievement of justice in the eastern occurs through institutions established based on those that functioned in the region before Moldova's independence. Thus, the region continues to operate several pseudo-courts such as a constitutional court, an economic court, and six territorial courts in Rabnita, Camenca, Dubasari, Slobozia and Grigoriopol, and in the cities of Tiraspol and Bender, which operate as courts of first instance. The region's supreme court serves as the instance of appeal and is based in Tiraspol. The procedure of appointing and promoting judges raises questions concerning the principle of separation of powers. Appointments are made by the alleged president of the region.

7.1 Achieving justice in the eastern part of the Republic of Moldova

A fair justice provides the right of a person to have access to a legally constituted court that considers the case in ways that ensure all the guarantees of a fair trial. After examination of their case, a person should be able to challenge or enforce the resulting ruling.

This goal is achieved through courts, prosecution and defense lawyers. Article 6 of the ECHR provides that every person has the right to a fair trial of his/her case, held publicly and within a reasonable time, by an independent and impartial court of justice established by law, which shall rule on the infringement of their civil rights and obligations or on the grounds of criminal charges brought against them.

Therefore, to ensure the right to a fair trial, a court must meet several basic criteria: it must be of legal origin, have permanence, be a body of mandatory jurisdiction which applies the principle of contradictoriness and legal norms of law, and where judicial debates take place in accordance with procedural principles enshrined in the Constitution, the Law on Judicial Organization and other legal acts. As part of the principle of equality of arms in the process, the parties should have the possibility to present their case in a way that does not harm their position, therefore the rights of the prosecution and defense in a case should be equal. The right to choose a defense lawyer as also part of a person's right to a fair trial.

The Constitution of Moldova and Law 514 of 06.07.1995 on Judicial Organization provide that justice may be done exclusively in courts established by law. Constitutional provisions rule out the existence of other judicial bodies established on the sovereign territory of the state.

Given the specific situation of the eastern region, the Moldovan Parliament ordered to create territorial courts of justice pertaining to the region in courthouses in other regions of Moldova. Thus, judges appointed to districts Camenca and Rabnita are based in Rezina district court; those appointed to Grigoriopol hear cases in the central district court in Chisinau, and those appointed to Slobozia hold trials at the district court in Stefan Voda. Thus judges appointed specifically to districts in the eastern region conduct their work in other territorial courthouses. The legal authorities have not appointed any judges for Tiraspol, which is also the largest city in the Transnistria region, although there should be 17 judges there⁴⁶.

Although these courts were created specifically for examining cases coming from the region, we did not register an increase in cases taken to these courts in 2012. The only

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www.promolex.md/upload/publications/ro/doc_1257436825.pdf page 26

exceptions are family disputes, which account for an ever increasing share of cases examined by judges appointed to the eastern region. A particularly large number of such cases, which actually originate in cases consumed in the region, can be found at the court of Bender Court, located in Varnita village. The main challenge faced by this court regards disputes related to enforcement of parental rights. Another category of cases often reviewed by designated judges are complaints following the refusal of the regional prosecutors to start criminal investigations of alleged crimes in the eastern region. Other types of disputes, such as property disputes, are not brought to these Moldovan courts; the rulings issued by these legal courts could not be applied to residents of the eastern district, therefore their execution would become illusory.

With regard to the operation of the Moldovan prosecution in the region, note that despite the inconsistencies and their ignoring of constitutional provisions, the number of people from the region seeking Moldovan prosecutors' help is growing. This however does not mean that the operation of the General Prosecutor has become more efficient, which results in a growing number of serious cases of human rights violations in the eastern region, which is outside the control of the legal authorities. In increasing number of complaints from the residents of the left bank makes prosecutors change their behavior, although this process is still very slow. Thus, if a few years ago prosecutors refused to examine complaints from the region under the pretext of the political situation, now such circumstances are no longer invoked, and some cases are already considered exclusively in terms of national legislation. However it should be noted that the prosecution does not have full access to the eastern districts, therefore the examination and resolution of cases requires a different specific approach, which nonetheless should be based on Moldovan and international law.

The institution of defense in Moldova comprises 2417 licensed lawyers who provide qualified legal services to clients. They are licensed by the Ministry of Justice, and, by law, they can provide legal counsel throughout the country. Granting such counsel in the eastern region is effectively impeded by the regional *administration*. Lawyers from outside the Transnistrian region are treated as foreign lawyers, and are forced to accept working with local attorneys. For these reasons, some victims bear undue costs and sometimes completely lose confidence and give up their right to defense, including due to excessive costs.

The Transnistrian regional administration established its own system of judiciary, which operates here since the 1990s. Achievement of justice in the eastern occurs through institutions established based on those that functioned in the region before Moldova's independence. Thus, the region continues to operate several pseudo-courts such as a *constitutional court*, an *economic court*, and six *territorial courts* in Rabnita, Camenca, Dubasari, Slobozia and Grigoriopol, and in the cities of Tiraspol and Bender, which operate as courts of first instance. The region's *supreme court* serves as the *instance of appeal* and is based in Tiraspol. The procedure of appointing and promoting judges raises questions concerning the principle of separation of powers. Appointments are made by the alleged *president* of the region.

Just like the judiciary, the office of prosecution in the region functions by a system established in Soviet times. On 21 September 2012, region's *president* Evgheni Șevciuc approved the creation of an *investigative committee*. *Investigation competencies* from the *prosecutor's office*, the *department of internal affairs*, the *intelligence service* and the *region's customs committee* were transferred to the new *institution*. It was to represent *prosecution in court*. The changes were made following the model of the Russian Federation and were *justified* by the need to implement the *concept of approximation of local norms* to those of the Russian law.

Already in October 2012, Șevciuc said he was satisfied with the operation of

the *investigative committee*, although the institution did not publicize any activity reports. According to some voices in the region, the *reform of prosecution* was driven by the desire of the separatist leader to take control of the *institution* and to change its staff, which is said to have remained faithful to former separatist leader Igor Smirnov.

The region's lawyers are organized through association. Since 2012, former *law enforcement* officers are prohibited to start legal counsel practice for 2 years after resignation from the *law enforcement*. According to the regional bar association, 132 lawyers were registered in the region in 2012. The per capita number of lawyers the right bank is 2.5 times higher than that in the east. The relatively small number of lawyers in the region shows that they are not perceived as important actors in a *court trial*, and one cannot speak about lawyers' independence as they may be subjected to persecutions. Few lawyers in the region fight openly for the rights and freedoms of victims on fear of losing the right to practice. Consequently, we note a growing demand for qualified legal counsel at a national and regional level provided by lawyers licensed by legal authorities.

Two parallel jurisdictions function in the country. Although one is legitimate and constitutional, and the other is illegal, the situation creates confusion for people throughout the country. Foreigner nationals visiting or transiting the region are also unaware of these aspects. The double jurisdiction and the lack of legal safeguards prevent residents of the eastern region from establishing legitimate durable relationships and enforcing their rights.

In 2012, according to a note of the Superior Council of Magistracy (SCM) and practice the Supreme Court (SCJ) any cooperation or exchange of documents with the pseudo-courts in the eastern region of the country is inadmissible. Moreover, the Supreme Court found that the rulings of the alleged *instances* are contrary to Moldovan constitutional law. The Supreme Court decision established that the decisions taken by the alleged courts directly contravene to Articles 114 and 115 of the Constitution and cannot be executed in Moldova. In addition, it found that, according to Article 114 of the Constitution, only legally established courts can establish justice in the name of the law.

7.2 Ensuring the right to a fair trial

Although the institutions and bodies established the Transnistrian region of Moldova are illegal, their decisions and actions nonetheless take effect. In light of this, in our opinion, the issues concerning human rights and fundamental freedoms must become a number one priority in the current format of settlement negotiations. We state with regret that the negotiations held in 2012 did not touch upon the topics of functioning of justice and the realization of human rights in the eastern region of Moldova. New instances of serious breaches of fundamental rights of persons in detention or prosecution were registered in 2012, and, with joint efforts, some of these persons were released (Alexandru Ursu, Ostap Popovschi and others). In other cases, victims were not released (Vitali Eriomenco, Eduard Elțov, Alexandru Baluta), although they requested the involvement and support of all actors involved in the format of political negotiations. Moreover, new cases and dramatic situations were registered in the regional prisons⁴⁷.

A fair trial, as defined by international standards, is a system of safeguards ensuring that a person may represent their case without being disadvantaged compared to their opponent. The authority, for its part, albeit a *de facto* one, must ensure publicity to the trial and lack of interference from third parties.

It must be underlined that the regional *legislation* contains acceptable, albeit declarative, standards of due process. However, the multitude of cases examined in 2012, and numerous complaints in the region reveal that these standards are by far not observed.

The right to a fair trial is a complex right, which is why we want to draw attention to

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<http://forum-pridnestroviya.ru/archives/1150>

the most important general issues applicable in the region, with reference to concrete cases that occurred in 2012.

The first difference generating contradiction arises from the court tier system of the region's judiciary. It provides only 2 stages: *district courts* and the *supreme court*. In most cases, trials are held in the absence of parties and are limited to a simple verification of *procedural* reasons.

The publicity of court trials is a separate issue. Sometimes, without any explanation, trials are not held publicly, even prohibiting participation of relatives. The share of cases documented by the local intelligence service (KGB) is impressive. A proof of this is their fight against suspected terrorists or spies. This practice became known in 2010 and 2011 due to the cases of Ilie Cazac and Ernest Vardeanean; in 2012, a school student from the "Lucian Blaga" Lyceum in Tiraspol was accused of committing a terrorist offense. Later, lawyers demonstrated that the alleged trial was carried out by the region's secret service and did not respect the principles or basic requirements of a fair trial.

The right to choose a lawyer is violated in the region. Formally, local procedures guarantee free defense counsel even in civil cases. However, lawyers are often limited in their actions and do not ask victims to confess. For these reasons, people often seek help from lawyers licensed by the Moldovan legal authorities. They in turn often cannot perform certain actions without the judicial consent, which usually cannot be obtained if the case contains alleged official secrets.

According to some sources, sometimes, the regional supreme court asks to review cases that are before courts of first instance for examination in the second – and last – instance. We believe that this is a clear indication of a serious breach of fundamental rights and guarantees – it refers to the participation of prosecutors in managing disputes, as they may apply for review of an adopted decision or ruling, which does not provide a guarantee of "res judicata".

7.3 Presumption of innocence

Presumption of innocence in the region is not guaranteed and may be considered a very serious problem along with the impunity of persons who violate rights and freedoms in this area. This conclusion is drawn from the analysis of *prosecution* communiqués and *court decisions* that ordered the use of coercive measures.

Cases are often documented only based on the statements of the alleged suspect. It is important to note a case from 2012, when a young man aged 18 was brought to *justice* and accused of terrorism only on the basis of his self-incriminating statements. Later it was determined that the young man was subjected to psychological pressure by the *investigators*, while *evidence* was falsified.

Another case concerns the situation of a person who invoked the use of inhuman and degrading treatment during *military service* in the region's paramilitary units. The young man submitted a complaint of maltreatment, but soon the *prosecution* blackmailed him with filing criminal charges for *assault* in order to determine him to withdraw his complaint.

The principle of presumption of innocence is violated mainly in the hearings for the extension of preventive detention. We note in this regard that in the absolute majority of cases, decisions are taken to extend the preventive detention of suspected or accused persons. Preventive detention is extended based on the severity of the offense; in almost all cases, the holding the citizenship of another state serves as reason for suspicion that the person could leave the region.

Examination of appeals in the *supreme court* is formal, the tried persons are not brought to the appeal court, thus the motivation for maintaining the arrest is not justified.

Conclusions

The uncertainty of the situation and the lack of legal clear instruments and mechanisms to protect human rights and fundamental freedoms of in the Transnistrian region of Moldova keep the population in a confused state as hostages.

Lack of real guarantees to uphold the principles of a fair trial transforms this exercise into one of repression against the people of this region.

Recommendations

- Developing and enforcing legal and peaceful tools that would provide basic guarantees to the rights and freedoms of persons, including those who are *accused* or *suspected* of offences by the administration of the region;
- Informing the local population about their constitutional rights and liberties, and the existing instruments to protect the rights and interests;
- Building the capacity of the legal territorial courts, prosecution offices and other bodies and encouraging the people to report violations of rights in the region.

CHAPTER 8

RIGHT TO EDUCATION

Transnistrian region operates its own education system that is pro-Russian and different from the national curriculum. This system imposed on the residents of the region is aimed at the removal of Ukrainian and Romanian languages from common language. However Latin script schools were most affected. The Tiraspol regime proclaimed itself a successor of traditions and culture promoted by the Soviet regime, imposing its citizens to study Moldovan in “Cyrillic script”⁴⁸. In this respect, the regional administration passed laws prohibiting and punishing the use of the Latin alphabet, which remain in force. Only 8 educational institutions resisted this “process”, which leads to an obvious violation of the right to education. On 19 October 2012, the Grand Chamber of the European Court for Human Rights stated that the Russian Federation violated the right to education of 170 students, parents and teachers from three schools teaching in Latin script⁴⁹. In an attempt to “russify” the region, the separatist administration discriminated against ethnic Moldovans and Ukrainians and continues to marginalize them. With the support of the Russian government, it adopted measures to bring the region closer politically, socially and culturally to the Russian Federation. The process of Russification of the population continues, Moldovan and Ukrainian schools are continually reduced, the number of children in Russian language kindergartens is growing, and the use of the Russian language in all public and private institutions is privileged. In the following subchapters, we will describe the situation of Latin script schools as well as how ethnic groups from the region have access to education.

8.1 The problem of the Latin script schools

The situation of the eight education institutions from the region teaching in Latin script has not changed after the establishment of a new “power” in the separatist region. On the opposite, the new administration in Tiraspol takes further efforts to prevent, one way or the other, the normal functioning of the Latin script schools⁵⁰.

The most obvious and serious example is the case of the “Stefan cel Mare” High School in Grigoripol. For 11 years, students, teachers and the administration of the school are forced to travel daily to a different locality (Dorotcaia village, Dubasari raion), to have access to quality education and to study according to their own beliefs. Children continue to be intimidated and humiliated at the illegal control posts. In April 2012, the school administration and the parents’ committee submitted another petition to the local administration of Grigoropol requesting to be provided a building to be able to conduct teaching and education in their hometown, however the request was dismissed.

The “Evrika” Theoretical Lyceum in Rabnita, the “Mihai Eminescu” Theoretical Lyceum in Dubasari, the “Lucian Blaga” Theoretical Lyceum in Tiraspol, a building of the “Alexandru cel Bun” Lyceum in Bender and the Corjova gymnasium all function in facilities rented from local contractors and/or separatist authorities. These contracts are renegotiated annually, thus these institutions remain hostage to politics and the dialogue between the legal authorities and the regional separatist administration, because the risk of termination of lease contracts persists and they may be evacuated. Furthermore, the rented premises (typically kindergartens or social centers) do not meet the adequate conditions for carrying out a quality educational process (in absence of space for sports activities,

⁴⁸ Until 1992, the Moldovan schools in the region studied in Latin script

⁴⁹ <http://promolex.md/index.php?module=news&item=1013>

⁵⁰ <http://mfa-pmr.org/index.php?newsid=1581>, <http://olvia.idknet.com/ol156-07-12.htm>

workshops, laboratories or canteens). The institutions are not exempt from any local taxes; by contrast, they are required to pay exaggerated prices for utilities or rent compared to other local institutions. Businesses in the region do not operate bank accounts in Moldovan national currency (MDL), which is why they cannot provide catering services, office supplies, etc. Every year, during the solemn gatherings for the start and end of the school year on 1st of September and 31st of May, these schools are besieged by representatives of local *law enforcement*⁵¹. These latter signs prohibit flying the Moldovan state and the state anthem of the country.

On 19 October 2012, the Grand Chamber stated a violation of the right to education of 170 applicants by the Russian Federation in the case *Catan and others v. Moldova and Russia* (requests no. 43370/04, 8252/05 and 18454/06)⁵². The case was filed against Moldova, within which the region lies, and Russia, which played a critical role in the formation and maintenance of the separatist administration in the region. The Court ruled payment of EUR 1,020,000 in compensation for the infringement of the right to education to ethnic Moldovans – students, parents and teachers.

The victims filed a case to the European Court after the regional government passed a law in 1994 prohibiting, under penal charges, the use of the Latin alphabet in schools. Thus, Moldovan parents faced a dilemma: to educate their children in a manner that was declared unlawful or to entrust them to an educational system which would not provide them with functional education skills. Many fought bravely to preserve their cultural and linguistic identity by sending their children to schools that were opened contrary to the policies of the local administrations and continued to teach in Latin script. Following these aspirations, the applicants in this case have all suffered serious violations of their rights. The separatist administration subjected plaintiffs to intimidation, ordering the closure of schools that defied the regional educational interdictions. Parents of children attending these schools were threatened with termination of parental rights and the loss of jobs. Students were forced to study in buildings that lacked proper conditions, and where electricity and water were cut off intentionally. They also were forced to travel long distances to and from school, and were subjected to excessive and intimidating security measures, such as bag searching and identity checks.

8.2 Access to education

According to statistics, on 9 September 2012, the resident population in the eastern part of the country people constituted 510,000 people⁵³. According to a 2004 census, the population structure of the region can be described as follows: 32% Moldovans, 30.4% Russians, 28.8% Ukrainians, and other ethnicities. Regional *educational policies* formally proclaim the right to education, freedom to choose the language of education, knowledge and use of multiple languages and education in the mother tongue⁵⁴. In reality however, in most kindergartens, schools and universities, there is no viable alternative to instruction in Russian.

In 2011-2012, 47,603 students studied in the 177 public institutions of general education in the region. 85.7% of students studied in Russian-language schools, 11% in

⁵¹ <http://promolex.md/index.php?module=news&item=987>

⁵² The applicants were represented by lawyers from Moldovan NGO Promo-LEX with the support of the International Centre for the Legal Protection of Human Rights INTERIGHTS in London

⁵³ <http://www.nr2.ru/pmr/411852.html>

⁵⁴ Article 41 Everyone has the right to education.

Citizens are guaranteed free secondary and vocational education in public schools. Everyone has the right to obtain free higher education in a public university on a competitive basis and in accordance with their abilities. General basic education is compulsory. The Transnistrian Moldovan Republic establishes state educational standards, and supports various forms of education and self-education.

Moldovan-language schools, 1.5% in Ukrainian-language schools, and 1.8% went to schools that teach in Romanian⁵⁵. Thus, Moldovan and Ukrainian children have very limited access to education in their mother tongue. In the region, there are only 3 schools teaching classes in Ukrainian, one of which is a mixed Russian-Ukrainian school⁵⁶. Other important ethnic groups in the region, such as Bulgarians or the Gagauz, do not have the alternative to study in their mother tongue.

In most schools, 80% of the curriculum is developed in Russian, and the region promoted a forced integration with the Russian educational system⁵⁷. According to sources, approx. 7.3% of the region's budget is spent on education, and schools also are financed from local and municipal budgets. However, the Romanian-language Latin script schools do not receive any funding from the regional budget.

There are three institutions of higher education in the region (State University of Transnistria, Tiraspol Institute of Legal Studies, and the High Music College). 14,304 active students attend these three *state institutions* and 1,025 faculty members teach there. Additionally, there are five branches of private higher institutions from Russia in Transnistria, and one of a university in Ukraine. The educational materials consist largely of Russian textbooks. With a small exception, universities do not offer courses in Moldovan/Romanian⁵⁸.

The situation is similar in pre-school education. There is no incentive in the region to create more Moldovan groups in kindergartens, or to teach children in Moldovan language⁵⁹. Thus, of the 160 kindergartens, 110 operate in Russian, 21 in Moldovan, one in Ukrainian, four are mixed Russian-Ukrainian preschools, and 24 are mixed Russian-Moldovan preschools. On July 1, 2012, 21,837 children went to preschool institutions in the region.

In effect, an active process of Russification of the local population is underway. This process aims at determining the assimilation of ethnic Moldovans and Ukrainians in the eastern region.

Conclusions

In our opinion, linguistic problems: the use of the Latin alphabet, the functioning of national educational institutions and the use of the national education curriculum in the region will stir heated debates in any lucrative negotiations and political discussions between Chisinau and Tiraspol. It is hard to imagine that a solution can be identified soon. A new generation was raised and educated in the region since 1992 in a pro-Russian and anti-national way. The regional administration insists that the Latin script school pass under the authority of the local alleged education ministry, and be registered and operated as private institutions. Under this pretext, which may seem to resolve the problem of the schools, Tiraspol will enforce its own policies that will lead to the disappearance of these institutions. Similarly affected are ethnic Ukrainians who do not have the opportunity to study in their mother tongue.

Recommendations

- The legal authorities and parties involved in the negotiations must intervene and demand the regional administration to cancel provisions restricting the use of Latin script, return the buildings seized from the schools teaching in Latin script, allow

⁵⁵ http://minpros.org/index.php?option=com_content&task=view&id=95

⁵⁶ A Lyceum in Tiraspol a gymnasium in Bender, and a high-school in Rabnita.

⁵⁷ http://www.undp.md/presscentre/2011/NHDR2010_2011/NHDSreport_2010_ROM_26-04-11_web.pdf

⁵⁸ <http://www.nr2.ru/pmr/400832.html>

⁵⁹ <http://www.nr2.ru/pmr/400663.html>

these schools to conduct curricular activities under the program approved by the Moldovan Ministry of Education, cancel the re-registration and licensing obligation for the Latin-script schools and stop persecution and harassment of those who want to study in Latin script.

- The legal authorities should actively support the Latin script schools, including by opening training courses for preschool children in the three gymnasiums. They must also take action to support the Ukrainian minority in the region to enable them to study in their mother tongue.

CHAPTER 9

THE RIGHT TO SOCIAL SECURITY AND HEALTHCARE

Moldova is a country with single system of social protection. However, on its territory there are two different and separate social security systems, one legal and the other illegal. For this reason, Moldova is probably the only European state that admits discrimination against its citizens based on a territorial criterion. Citizens living in Transnistria are treated differently and have no access to health services and social protection guaranteed by the Constitution.

Formally, the Transnistrian region's social security seems to be a good one. Many local *acts* provide generous incentives, facilities, and exemptions virtually for all social groups and strata⁶⁰. Depending on the social category, these include: provisions of medical drugs; dental and orthopedic implants; treatment in rehabilitation institutions; annual leave; provision of housing; preferential bank loans; fixed telephone lines and services at reduced prices; tax exemptions; exemptions for consumption of natural gas, electricity, water, heating and other utilities; free public transport passes, etc. In effect, these are possible due to substantial, direct and illegal support from the Russian Federation⁶¹.

The amounts paid from social funds by the Moldovan legal authorities and the Transnistrian regional administration for wages, allowances and other social benefits do not differ significantly. The visible differences relate to the purpose, scope, size and nature of these social benefits. For example, the retirement age on the left bank of the Nistru River is 55 years for women (52 years for women with 3 children, and 50 years for those with 5 children) and 60 for men. In the rest of the country, the retirement age is 57 years and 62 years, respectively. The amount of the average pension does not differ substantially between the banks; however in Transnistria absolutely all pensioners receive a supplement of approx. 15 USD from the Government of the Russian Federation and benefit from reduced prices for some foods and medicines.

The right to healthcare is *guaranteed* by providing free medical care, hospitalization and treatment in public health facilities. The Moldovan compulsory medical insurance system does not function in Transnistria; in 2013, the region will implement the respective system, which will improve the quality of services provided by local medical institutions⁶².

In the following paragraphs, we will describe how the State declined its legal obligation to provide its citizens on the left bank of pensions and allowances from the state social insurance budget.

9.1 Refusal to pay social allowances to residents and citizens of the region

The *administration* of the region provides *social security* to approximately 200 thousand beneficiaries (pensioners, children, disabled, etc.), most of whom are citizens of Moldova. The citizenship and domicile in Moldova formally gives these persons full rights, including the right to protection and social assistance (see Article 47 of the Constitution of Moldova). The national institution that establishes and provides social benefits to recipients in Moldova is the National Social Insurance House (NSIH) and its territorial subdivisions.

However, and contrary to legal guarantees, NSIH refuses to establish and provide

⁶⁰ Law enforcement employees (police, judiciary, prosecution, KGB, military and ex-military, war veterans, victims of Chernobyl, the disabled, pensioners, the *president* and *vice-president* of the region's supreme soviet, families with many children)

⁶¹ An approx.15-dollar supplement to the retirement pension received in the region

⁶² <http://www.nr2.ru/pmr/391278.html>

social payments to beneficiaries in the Transnistrian region. That payments must be made according to a territorial principle serves as a usual pretext. At the same time, NSIH believes that the region operates another *system of social protection*, and that its field offices refuse to “cooperate” with NSIH. Moreover, in some cases, NSIH field offices encouraged citizens from the Security Zone to renounce their pensions paid by the Moldovan Legal authorities. We assume that this happens because some servants want to save money for the institution's budget.

In effect, without any legal reason, the legal authorities refuse citizens residing in a particular area of the country their legal right to assistance and social protection. Therefore, in order to receive social payments from the Moldovan social insurance budget, a person must prove that he or she does not receive a *pension* paid by the Transnistrian *administration*⁶³. The authorities may not restrict this legal right without a legal basis. At the least, they could establish a minimum pension guaranteed by the state to pension beneficiaries, especially and including those who cannot claim to have contributed. On the other hand, the Moldovan law allows people to have access to a private pension (including that provided by the separatist administration), but that does not rule out the person's entitlement to a pension from the social security budget. Thus, the legal authorities could admit that some people may benefit from a pension in the region, that is be paid an alleged pension from a private fund, but this does not relieve the Moldovan state from the obligation to ensure payment of a minimum pension to citizens from a region of the country. We believe that this situation amounts to discrimination and constitutes a serious violation of national law thus therefore of human rights⁶⁴, and must be resolved. Such territorial discrimination reduces the confidence of the residents of Transnistria in the Moldovan legal authorities.

9.2 Health insurance

The mandatory health insurance is an autonomous financial protection system of the population in the field of health care, guaranteed by the state. The mandatory health insurance system provides citizens with equal opportunities to obtain timely and quality medical care; the National Healthcare Insurance Company (NHIC) serves as the insurer in the system⁶⁵.

In 2010, the Government adopted the Regulation for committees for the examination of appeals from Moldovan citizens residing in localities from the left bank (Transnistria) and in settlements adjacent to the administrative border from the categories for which the Government is the insurance party. The decisions of these committees and the lists of insured and uninsured persons residing in the eastern region are then sent to the Bender territorial office of the NHIC. Given that health insurance policies are sold through Moldovan post offices, NHIC has no information on the number of people in the eastern region of the country benefitting from healthcare insurance. In 2011, 228 persons purchased health insurance from the Bender office of NHIC, and 153 persons did so in 2012. Since 2010, the Government is mandated by law to provide insurance to the above mentioned categories of people. We believe this is a positive gesture of the Government for its citizens from the eastern regions, which is not the case with regard to pensions.

⁶³ Until August 1 2012, only 52 people received benefits provided to families with children in Dubasari, Rabnita, Bender and Tiraspol. Other 97 people from Bender and Dubasari received nominal compensations.

⁶⁴ Moldovan citizens cannot be deprived of their legal rights just because they live in a region of the country that is not controlled by the legal authorities

⁶⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311622>

Conclusions:

Providing social security in the absence of de facto control over the region is a sensitive and problematic issue; however strictly in juridical and human rights terms, we believe that the legal authorities allowed discrimination of a part of its citizens who reside on the territory of the State. At the same time, the State has no information about the social status of citizens in the region and does not budget expenditures to provide social security to beneficiaries in the region. In such circumstances, the central authorities may find it difficult to learn and be aware of these problems, and they are certainly unable to find any solutions or develop recommendations to solve them.

Recommendations:

- Identify and adopt a clear and non-discriminatory mechanism for guaranteed social payments for beneficiaries from the eastern regions;
- Identify ways to offer free healthcare insurance for beneficiaries from the eastern regions.

CHAPTER 10

WOMEN'S RIGHTS

The chapter is divided into four subchapters as will look at the most problematic aspects of women's rights in the Transnistrian region. The main problems in this regard relate to the lack of a legal and institutional framework or ensuring equal opportunities for women and men, which contributes to discrimination against women. The other subchapters examine gender-based violence, sexual offenses, sexual harassment and trafficking in women. Sexual offenses are treated with bias by the local *de facto investigative bodies* that focus on proving that the victim posed minimum resistance; in effect, offenders who acted on the psychological coercion of the victim remain unsanctioned. On the other hand, sexual harassment remains unpunished due to a lack of local *legal provisions* in this regard. Last but not least, we point out that although there is a *legal framework* in place, local victims of human trafficking do not receive rehabilitation services.

10.1 Absent legal and institutional framework for ensuring equality between women and men

To date, the region doesn't have a *law* ensuring equal rights and opportunities to men and women⁶⁶. At the same, there are no institutions that would have the resources, authority and qualified personnel to ensure the implementation of policies regarding equal rights and opportunities for men and women. Issues regarding women's rights and opportunities for women are dealt with by various administrative bodies of the region. The region does not have a formal regional policy to ensure equal rights and opportunities for men and women. Though gender equality seems to be respected in the region with respect to occupying public *offices*, there are no data to confirm this in the private sector. If inside the administration, where salaries are paid from the public budget, women are not discriminated in terms of remuneration for work, in private enterprises, there are differences in the wages paid to a man and a woman for performing the same work. Because of this, women are also discriminated when it comes to calculating pensions.

According to the Convention on the Elimination of All Forms of Discrimination against Women, a society in which women do not have equal rights with men cannot develop sustainably⁶⁷.

10.2 Investigation of sexual offenses

Lack of victim protection is one of the most important issues noted in this subchapter, and, as a consequence, perpetrators remain virtually unpunished for sexual crimes committed by threat or if victim failed to defend himself. Here we will try to describe how sexual offenses are investigated in the region, without providing statistical data in this regard, due to our inability to access such information.

Both the local and the Moldovan national *criminal codes* criminalize "rape" and "violent actions of sexual character". Unlike national criminal legislation, the local Transnistrian law also criminalizes "coercion to sexual actions", but does not criminalize marital rape.

The *law enforcement bodies* from the region focus more on the behavior of the victim than on that of the aggressor although the local *criminal law* does not require evidence that the victim posed physical resistance for this crime. In practice, according to

⁶⁶ <http://www.law-civilsociety.com/zaschita-prav-zhenschin.html>

⁶⁷ <http://ngointeraction.org/main/ru/prioriteti/gendernoe-ravenstvo>

the statements of victims, in the absence of such evidence, the case is not investigated, and the investigation appears to be motivated by evidence that contradicts the victim's version. In effect, cases of rape committed by using threat of force against the victim or another person remain unresolved.

Another problem is the fact that cases of marital rape and violent actions of sexual nature committed in family remain unreported by victims because of their distrust of the *investigation bodies* or their choice to ignore them.

10.3 Unpunished sexual harassment

Transnistrian women face sexual harassment on the street and at work. Although no statistics are available in that regard, the phenomenon was confirmed in discussions with beneficiaries. Women say they cannot defend themselves because there are no *legal* provisions in the local legislation that would penalize sexual harassment, and the Moldovan national legislation is not applied in the region.

General Recommendation no.19 of the CEDAW Committee refers to workplace harassment as a specific form of gender based violence, saying that such behavior “can be humiliating and may constitute a health and safety problem”. Harassment becomes a form of discrimination “when an unwanted conduct related to any prohibited topic takes place with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment”. Given that sexual harassment can damage a person's dignity or create a degrading work environment, such discriminatory behavior may meet the criteria defining a “cruel, inhuman or degrading treatment”.

Sexual harassment is not criminalized in Transnistria under local law, and no sentences punishing such acts were registered in the region. This means that the phenomenon of sexual harassment can escalate.

However, the Moldovan Penal Code criminalizes sexual harassment, which is punishable by: (1) a fine of 300 to 500 conventional units, (2) unpaid community work from 140 to 240 hours or (3) up to three years in prison time.

10.4 Lack of rehabilitation centers for victims of trafficking in human beings

Although there is a *legal framework that regulates* trafficking in human beings, the region lacks the institutional framework that would provide rehabilitation services for trafficking victims. There are no rehabilitation centers for victims of trafficking in the Transnistrian region. According to representatives of local organizations, with the support of international bodies, victims are transported to rehabilitation centers in Chisinau or Causeni⁶⁸.

The regional administration does not know the number of trafficking victims, stating that “no data about the number of trafficked persons is available because they do not go to “*militsia*” for help”.

Locally, statistics are provided by some nongovernmental organizations, but those figures do not reflect the real situation. Thus, according to statistics provided by the "Women's Initiative" Association in Tiraspol, between January and September 2012, 282 people addressed them for help. Of these, 27 are women victims of human trafficking. According to the Association, not only women become victims of trafficking, but also their children who suffer from the fact that their mothers are not with them. Of the 27 trafficking victims, only one agreed to go to the “*militsia*”. The 27 victims are from Tiraspol or nearby towns. The situation of victims living in other areas is unknown⁶⁹. Most victims seeking

⁶⁸ <http://www.europalibera.org/content/article/24758453.html>
⁶⁹ Idem

help need lodging in a specialized center, but not all get to benefit from these services because the number of places in the existing shelters is limited.

The provisions of the *law* on combating human trafficking and the local *criminal code* are similar to those in the national legislation, with slight differences in terms of punishment for such acts. Victims of this phenomenon are protected if they agree to testify against traffickers, and their confidentiality is protected. According to the regional *administration* and local civil society organizations, very few victims seek help with the “*militia*” (*local police*). Currently, traffic continues to be mainly associated with the sexual exploitation of women, although the problem of trafficking for forced labor is another major challenge. This poses a serious problem because the cases of trafficking for forced labor remain neglected and are not properly qualified or investigated.

Nationally, trafficking in human beings constitutes a criminal offense under Article 165 - “Human trafficking” and Article 206 - “Child trafficking” of the Criminal Code of Moldova. Other traffic offenses are: Art. 168 - “Forced labor”, Art. 207 - “Illegal removal of children from the country”, Article 220 - “Pimping” and Article 362/1 - “Illegal migration”.

Conclusions

Despite international commitments, the legal authorities did not get involved in any way in promoting and defending women’s rights in Transnistria. We also state the presence of gender-based discrimination, in particular regarding the amount of wages and pensions paid for the same work. Another issue is the discriminatory and problematic approach to investigating, prosecuting and punishing cases of sexual violence. *Prosecution* focuses more on the behavior of the victim and not that of the aggressor; subsequently, the investigation focuses on collecting proof that could undermine or contradicts a victim’s statements that invoke rape or violent actions of sexual nature.

Marital rape cases committed within the family remain unreported or are ignored by the *law enforcement*. No *criminal cases* were started in region for crimes of marital rape or sexual harassment.

The legal authorities have no information regarding the number of sexual offenses and human trafficking cases in the region whose victims are women. The region doesn’t have a rehabilitation center for victims of human trafficking, thus they are transported to other regions of Moldova, where they are admitted upon availability.

Recommendations

- Effective monitoring of women’s rights in all areas of life, in accordance with international standards, and the establishment of a data base that would contain all relevant statistics;
- Granting the necessary protection of women victims of sexual activities, in particular by opening criminal cases for sexual harassment and marital rape;
- Effective use of the legal framework and internal procedures to prevent, combat and punish gender-based discrimination and ill-treatment of women in the Transnistrian region;
- Creation of rehabilitation centers for human trafficking victims of trafficking for the local residents.

CHAPTER 11

RIGHTS OF THE CHILD

Moldova has ratified a number of international conventions on children's rights⁷⁰. Having ratified these documents, the Government is obliged to ensure equal rights to every child in Moldova, without exceptions.

The chapter is composed of three subchapters, which examine problematic issues of child rights in the Transnistrian region. The first subchapter highlights two important issues, and namely: children from the region who have Moldovan identity documents are not documented or registered; and the regional administration refuses to register and issue a newborn's birth certificate in cases where parents provide identity documents issued by the Moldovan legal authorities. At the same time, the situation reflects a discrimination against children from the region by the State of their citizenship. On the one hand, the Legal authorities refuse to pay allowances for children in Transnistria, and on the other hand, there are cases when children are not accepted into kindergartens or schools in the region because they do not have *registration documents* issued by the regional *administration*. We also describe here the absence of Legal guardianship authorities for the respective categories of children in the region, which is an obstacle in granting legal protection to children. At the same time, we refer to the situation of children at risk, who were abandoned or fled abroad where they vagabond, and the problem of their repatriation.

11.1 Registration and documentation of children in the region

The Promo-LEX Association notified the authorities about the absence of documentation and registration records of children from the region who have Moldovan identity documents.

Since 1997, the National Statistics Bureau of Moldova exclude from their published data on newborns from Moldova the information on the newborns from the Transnistrian region, including the special cases of registration of persons in the region⁷¹. Only between January and September 2012, 3739 children were born in Transnistria⁷², and we believe that their rights are infringed.

There are also cases when the regional (separatist) administration refuses to register children born in the region; therefore these children are not issued birth certificates. The child is registered and is issued a birth certificate only if one or both parents present a local ID document, which presumes possession of local *citizenship*. There were cases in which the regional authorities have refused to register the birth of a child and issue a birth

⁷⁰ *Convention on the Rights of the Child* - ratified by Decree of Parliament of the Republic of Moldova no. 408-XII of 12.12.1990; *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* - ratified by Decree of Parliament of the Republic of Moldova no. 1468-XIV of 29.01.1998; *Convention on the Civil Aspects of International Child Abduction* - ratified by Decree of Parliament of the Republic of Moldova no. 1468-XIV of 29.01.1998; *European Convention on the Legal Status of Children born out of wedlock* – ratified by Parliament via Law no. 722-XV of 07.12.2001; *ILO Convention no. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor* – ratified by Parliament via Law no. 849-XV of 14.02.2002; *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* – ratified by Parliament via Law no. 315-XV of 18.07.2003; *Optional Protocol on the involvement of children in armed conflict to the Convention on the Rights of the Child* – ratified by Parliament via Law no. 15-XV of 02.06.2004, the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* - ratified by Parliament in December 2011.

⁷¹ <http://statbank.statistica.md/pxweb/Dialog/view.asp?ma=POP0304&ti=Nascuti-vii+dupa+Raioane+si+orase+si+Ani&path=../quicktables/RO/02%20POP/POP03/&lang=1>

⁷² www.mepmr.org/zip/gss/demografiia.3kv.2012.zip

certificate because the parents presented identity documents issued by the Moldovan legitimate authorities. One such case was monitored by Promo-LEX in Rabnita. Parents failed to obtain a birth certificate for her child on the grounds that they did not have documents issued by the regional *administration*.

The UN Convention on the Rights of the Child states that every child from birth shall have the right to a name and the right to acquire a nationality, the right to know his/her parents and be cared for by them. The Transnistrian region has a *law on the Rights of the Child*, which enshrines these rights. The Law of the Republic of Moldova on the Rights of the Child guarantees every child from birth the right to a name, to be registered according to the Family Code. Therefore, in the circumstances described, in some cases, the child's fundamental rights are ignored or violated both by the regional *administration* and by the central legal authorities.

11.2 Single birth allowances, social aid for childcare

The Transnistrian region has serious problems in terms of social protection of children. Thus, children from the region who have documents registered and issued by the Moldovan legal registry offices do not receive social aid from the Moldovan authorities nor from the *administration* of the region. Furthermore, children cannot go to kindergarten or school⁷³.

Although, in accordance with Article 5 of the Law of the Republic of Moldova on Social Aid⁷⁴ caregivers of children up to 3 years are entitled to social support, residents from the Transnistrian region do not benefit from the indemnity at birth nor do they receive social aid. Without any legal grounds, the legal authorities also declined any obligations to certain categories of citizens, including providing social support guaranteed by national legislation (allowances, pensions or child indemnities). The argument of the central government is that all children in the region are already protected by the regional *administration*, which is, in fact, outside national and international law.

The Moldovan Law on state social insurance budget for 2012 provides a lump-sum indemnity at childbirth born in 2012 of 2,300 lei for the first child, and 2,600 per any subsequent child. According to our analysis, the 3739 children born in the Transnistrian region of Moldova between January and September 2012 did not benefit from the lump-sum indemnity at birth guaranteed by Moldovan law. The same is true for the children's caregivers. In this situation, we believe that the Moldovan State illegally and knowingly admits mass discrimination of persons and its citizens residing in a particular area. The situation is particularly serious because it concerns, in this case, the fundamental rights of children and their families.

11.3 Legal protection of the child

Another serious problem that brings harm to children's rights in the Transnistrian region of Moldova is the absence of a legal custody authority for children in the region. Establishment of custody, termination of parental rights, registration of adoptions, etc. are areas that raise many issues in national courts that examine such situations.

According to Article 35 of the Civil Code of Moldova, the custody of a child is established by custody authorities, which are local government authorities located near a person's domicile. The custody established by the Transnistrian regional administration does not have a legal effect in the rest of Moldova, and tutors have to go to a recognized

⁷³ See page 46 of this chapter

⁷⁴ Published on 30.09.2008 in the Official Gazette

court to have their guardianship confirmed. This entails another problem. Moldovan courts are not allowed by law to confirm guardianship established under illegal acts issued by the regional administration. In accordance with national legal provisions, established custodies or revoking parental rights are considered invalid if issued by illegal regional bodies and courts.

In this context, one should note that, in the first few months of 2012, the court of Bender had over 50 pending cases on the enforcement of the rights of the child (adoption approval, determination of residence of the child, termination of parental rights and confirmation of custody). The presence of a custody authority is mandatory in such cases. Similar situations are observed in courts of Grigoriopol, Rabnita and Slobozia. Competent authorities found occasional and sporadic solutions to these appeared problems. The court of Bender indicated the Department of Social Protection and Family of the Anenii Noi district as a guardianship authority on a case in 2012; however the Department sent a request to decline presence in court on grounds of violation of territorial jurisdiction.

To be able to resolve such situations, including the adoption of children, Transnistrian residents often have to obtain and hold 2 sets of documents and decisions. First they must go to regional (unrecognized) courts and institutions, and, subsequently or in parallel, they must also file their cases to recognized courts. This issue was brought to the attention of the Moldovan central government by the court of Bender, but the situation remains unchanged.

With reference to the adoption of children in Transnistria, the local *law* provides that the adoption of children by foreign parents is decided by *court ruling*. Also, there is no mechanism for post-adoption control. Legal authorities don't have data about the adoptive parents and are unaware of the situation of the adopted children; in these circumstances, there may be various incidents that can greatly harm the children's rights and go against their interests.

Moreover, children in the region are not guaranteed protection against all forms of violence. The region doesn't have a special *law* on the protection of children from physical, mental, and sexual abuses or domestic violence. Although the Moldovan state is responsible for the care of children who are at risk, the authorities are often unaware of the real problems faced by children, as many of them choose to flee their environments. Children from the region who were victims of abuse often flee and end up as vagabonds in Ukraine⁷⁵. Their repatriation and seeing to their situation may constitute another problem. According to the Ministry of Labor, Social Protection and Family, one major problem is that information about Moldovan children abroad, which is gathered by the country's embassies overseas, is incomplete. Communication with the Transnistrian separatist *administration* on this matter is particularly difficult. Certain difficulties occur in the collaboration with Russian and Ukrainian authorities, which are not always quick to inform the Moldovan government about Moldovan children remaining without care in these countries.

Conclusions

Contrary to international commitments, the Moldovan legal authorities have failed to observe and ensure the rights of children in Transnistria. Numerous children born in this country remain undocumented and unregistered by the Moldovan government. These children are not included in statistics, and do not have protection, medical care and social benefits. The central authorities do not have any data on the number of children abused, trafficked, or abandoned in the Transnistrian region. At the same time, the inability to

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www.investigatii.md/index.php?art=382

effectively control the eastern of Moldova cannot represent an excuse or justification, because in light of positive obligations, ensuring the interests of children should be a priority. Oftentimes, one may have the impression that the Moldovan legal authorities rely solely on activities of the civil society and foreign or international organizations in the region. This practice must be changed.

Recommendations

- Facilitation of procedures of issuing birth documents for children born in Transnistria and whose birth was not legally registered;
- Ensuring the right to non-discriminatory social protection to all children, including those in the Transnistrian region of Moldova;
- Establishment of recognized custody authorities for residents of Transnistria;
- Conducting a census of children in the region, followed by the creation of a database of children by categories of problems: special needs, disabled, victims of violence and abuse, trafficked, adopted, etc.
- Expanding the activities of the Moldovan Ombudsman for children to the Transnistrian region and adoption of a system and effective mechanism to protect the rights and freedoms of children in the region.

CHAPTER 12

DOMESTIC VIOLENCE

Domestic violence is a social problem that greatly affects the rights and freedoms of individuals. In the Transnistrian region, domestic violence is treated as a strictly private matter.

There is no *special* regional law to regulate the issue of domestic violence. The region is outside of the control of the Moldovan Constitution, which means that victims of domestic violence from in this area cannot receive effective protection from the Moldovan. In the first nine months of 2012, 134 victims of domestic violence who called the regional hotline for help were not provided protection from the legal authorities.

At the same time, there are inadequate support services in the region for victims of domestic violence, and there is no rehabilitation center for perpetrators.

12.1 Treating domestic violence as a private matter

According to the latest reports from the field, every fourth woman in the Transnistrian region (in relationship of marriage or cohabitation) was subjected to physical violence in the family. Nevertheless, the *administration* of the region does not recognize this as a social phenomenon and does not make efforts to combat and prevent it. The Moldovan legal authorities don't make any efforts either as they have no access to this area.

In the first 9 months of this year, the hotline for domestic violence in the region registered 1006 calls, of which one third reported psychological problems, 249 were SOS calls, 134 were related to domestic violence, 80 calls were proposals of cooperation and 160 were calls on other issues⁷⁶. For example, in July 2012, there were 103 calls, 44 were psychological issues cases, and 15 were cases of domestic violence⁷⁷. In September, the number of cases of domestic violence rose to 23⁷⁸.

Promo-LEX granted indirect legal aid to a victim of domestic violence from Grigoriopol. According to the beneficiary's statement, the region's *militsia* refuse to intervene in cases of domestic violence under various reasons, and put psychological pressure by explaining that it is normal to differentiate the roles of men and women, by mocking the victim and by suggesting that she best return home, or simply refuse to accept the complaint citing unwillingness to get involved in family matters. The legal authorities also failed to promptly and adequately respond to this case. The judge from the court of Grigoriopol verbally refused to accept a filed application for issuance of protection order for victims of domestic violence, arguing that it is of no use, and that even if he was to issue the protection order, this will not help the victim in any way.

12.2 Imperfect legal framework

A domestic violence case in Transnistria usually ends with a temporary isolation of the perpetrator, depending on the extent and consequences of injury, with reconciliation between parties or with victims leaving their homes. For lack of an effective mechanism, most victims are reluctant to asking for help the local *authorities*, given the specific procedures or humiliation they endure during the *investigation* or *trial*.

Moldova has ratified several international human rights conventions, including the

⁷⁶ <http://www.nr2.ru/pmr/406728.html>

⁷⁷ <http://www.nr2.ru/pmr/399551.html>

⁷⁸ <http://ngointeraction.org/main/ru/prioriteti/net-nasiliy-v-semie>

International Covenant on Economic, Social and Cultural Rights (CESCR)⁷⁹ and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁸⁰.

General Recommendation No. 19 issued by the CEDAW Committee addresses the issue of violence against women, requiring the states parties to take positive measures to eliminate all forms of violence against women⁸¹. The general recommendation provides examples of gender-based violence such as domestic violence, including battering, rape, other forms of sexual assault, mental and other forms of violence, that are perpetuated because of traditional attitudes. However, the recommendation states that the obligation of States Parties to protect people from gender-based violence is not limited to cases of violence committed by or on behalf of the state. States Parties “may be responsible for private acts if they fail to act with sufficient diligence to prevent violations of rights or to investigate and punish acts of violence and to provide compensation.”

In Moldova there is a Law on Preventing and Combating Domestic Violence, which came into force on 18 September 2008⁸². Since September 2010, the perpetrator faces up to 15 years in prison as domestic violence was criminalized in Article 201(1) of the Penal Code.

According to national legislation, a protection order for victims of domestic violence may now be obtained in both civil procedure and criminal procedure, and a court shall pronounce a ruling within 24 hours of registering the respective request.

There is no *special law* on preventing and combating domestic violence in the Transnistrian region. Cases of domestic violence are treated and punished under the provisions of the regional *penal* and *administrative contraventions codes*, for example, in terms of the provisions relating to homicide, causing medium or serious injury, attempt to life and others.

The civil society in the region addressed the regional *supreme council* with facts and evidence about the situation of domestic violence, calling for the adoption of a *law*⁸³. The *administration* says that a *draft law* on preventing and combating domestic violence in the region is on the books, and that it shall seek further funds to implement it⁸⁴.

We will illustrate, to better understand the difference between the national and regional provision. A 50-year old woman victim domestic violence from the region was able to call *militia* for help. The conflict between spouses occurred in June 2012 in their commonly owned apartment. The husband, aged 40, inebriated, hit the wife multiple times causing her numerous bruises and wounds, and a fractured right hand. The perpetrator fled the house, but was soon arrested. The case against him was filed under the criminal offense of causing intentional medium harm to health, as provided by the local *penal code* (Article 111, up to 3 years in prison)⁸⁵.

If this incident had been investigated by the Moldovan law enforcement, for the offense committed, the perpetrator faced penal sanctions under Art.201/1(3) of the Criminal Code, risking unpaid community work 180 to 240 hours or up to 5 years

⁷⁹ Ratified by Moldova on July 28, 1990

⁸⁰ Ratified by Moldova on April 28, 1994

⁸¹ UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, Session XI, 1992

⁸² Law on Preventing and Combating Domestic Violence, no. 45-XVI, dated 1 March 2007, Official Gazette, no. 55-56/178, March 18, 2008. The law entered into force on 18 September 2008 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

⁸³ <http://www.pridnestrovie-daily.net/gazeta/articles/view.aspx?ArticleID=24085>

⁸⁴ <http://www.nr2.ru/pmr/392064.html>

⁸⁵ http://mvdpmr.org/index.php?option=com_content&view=article&id=9532:v-rezultate-semejnego-skandala-v-bolnicze-okazalas-50-letnyaya-zhenshhina&catid=1:2010-08-26-11-02-06&Itemid=131

imprisonment. Moreover, if the perpetrator were released from administrative detention before the completion of the criminal investigation, the victim would have been able to obtain a protection order for up to 3 months.

12.3 Inadequate services for victims of domestic violence

Currently, there are only four organizations in Transnistria where victims of domestic violence can seek help⁸⁶. If in west of Moldova people who have been subjected to violence can call social services for victims of domestic violence and require shelter, in Transnistria victims of violence cannot benefit from such services.

Only one rehabilitation center for victims of domestic violence operates in the region, and it can temporarily accommodate up to six people⁸⁷. However, the center cannot provide the services needed by victims of domestic violence. It functions within a specialized Boarding school for children, and can accommodate only mothers with children or women in the last month of pregnancy. Beneficiaries may be accommodated for up to six months with children up to six years of age. The center also has a daytime nursery for children with disabilities⁸⁸.

At the national level, however, the victim is entitled to assistance in physical, psychological and social rehabilitation through specialized medical, psychological, legal and social services. The provision of protection and assistance is not conditioned on the victim's willingness to testify and participate in the trials to prosecute the perpetrator. The right to privacy and confidentiality of information concerning the victim are guaranteed.

Note that the region does not have a rehabilitation center for perpetrators of domestic violence, where specialists could work with offenders to prevent future new violence.

Conclusions

Domestic violence remains one of the most serious human rights problems in Moldova, including the Transnistrian region. Victims of domestic violence in the Transnistrian region cannot benefit from the full range of necessary services and guarantees because they do not exist in the region, and because they cannot access those offered in the rest of the country. The region has practically no norms or appropriate mechanisms for preventing and combating domestic violence. In these circumstances, victims of domestic violence have no protection or effective remedies in national courts, law enforcement or other institutions. Although victims of domestic violence could seek to obtain a protective order in a national court, this measure would be implemented in the eastern region of Moldova because national authorities lack effective control over that territory. So far, no protective orders have been issued for victims of family violence in Transnistria. Domestic violence is one of the many complex problems to be solved in the context of the dialogue for Transnistrian settlement.

Recommendations

- Establishing a form of interdisciplinary interaction between legal authorities to engage in prevention, resolution and combating domestic violence in the region;
- Involvement of legal authorities in resolving domestic violence cases by bringing perpetrators to justice and providing immediate and effective assistance and protection to victims;

⁸⁶ <http://www.pridnestrovie-daily.net/gazeta/articles/view.aspx?ArticleID=24085>

⁸⁷ <http://www.nr2.ru/pmr/395803.html>

⁸⁸ Article published in the press, available on <http://pmrinform.com/ru/news/20120719/07483.html>

- Ensuring access of victims of domestic violence to rehabilitation services regardless of domicile/residence or establishing such free services for victims of domestic violence in the region.

Chapter 13

RIGHT TO RESPECT FOR PRIVATE AND FAMILY

The right to privacy contains aspects such as the right to image, marital status, identity, religious affiliation, physical and moral integrity, but also more “modern” concepts such as the protection of personal data in databases, personal data marketing, online social networks and virtual communities.

This chapter presents the situation of the right to private and family life in the Transnistrian region of Moldova. It reflects the actions of some representatives of the legal authorities with respect to the right to respect for private and family life in the region are also reflected. Similarly, it analyses the problems caused by the local “legislation”, which contains very few provisions that protect individual privacy against interference by representatives from the region’s administration.

13.1 Illegal provision of personal data

The legal authorities of Moldova continue to collaborate informally with the representatives of the Transnistrian administration in several areas. Exchanges of information between the law enforcement agencies of the legal government and representatives of the illegal regional administration are among those areas of collaboration. The provided information usually constitutes personal data.

The informal collaboration is based on several protocol agreements signed between some agencies of the legal government and institutions in the Transnistrian administration. For example, in 1999 and 2001, two agreements were signed between the Ministry of Interior and representatives of the region’s militia establishing mandatory cooperation in criminal matters, particularly related to exchanges of persons and information on criminal cases. Although these agreements were terminated by the Interior Ministry on 17 September 2004 by order no. 329 as their provisions contravened the Moldovan Constitution and the European Convention on Human Rights, the police continue to informally use these invalid documents in their operations. What is worse is the fact that information requested by representatives of the Tiraspol administration is transmitted by official means.

At the beginning of 2012, at the request of the unconstitutional Transnistrian authorities, the Interior Ministry provided information about six Moldovan citizens, including E.V., illegal detained by the Tiraspol regime. Police colonel Gheorghe Tretiacov from the Moldovan Interior Ministry sent to Tiraspol a document of 9 pages containing personal data of six Moldovan citizens. On 29 May and 9 July, E.V. family members petitioned the Center for Personal Data Protection on this case, requesting the Center’s intervention in defense of their rights to protection of personal data. In its response to the petition, the institution noted that no violations were committed, because the transmission of personal data to the “Transnistrian authorities” was legal based on the agreements concluded in 1999 and 2001 between the Moldovan Interior Ministry and the department of internal affairs from Tiraspol – although the agreements had been denounced in 2004 by the Interior Ministry.

Providing personal data to unauthorized persons, particularly to representatives of illegal authorities, leads to violations of the right to private and family life and of international standards of personal data protection, which may lead to new condemnations of Moldova in the European Court on grounds of violation of Article 8 of the ECHR.

The illegal administration of the region may use personal data for blackmail, intimidation and other illegal purposes. For example, in the case of E.V. described above, the illegal administration tries to use information on the property owned by E.V.’s family to

extort from him, according to E.V.'s statements, as much as 1,000,000 dollars in exchange for his release from detention.

There may be many more similar situations that have not become public since instances of providing personal data under invalid agreements still take place.

13.2 *Interception of correspondence and telephone calls*

Interception of correspondence and telephone calls is used in criminal proceedings as well as other cases in Transnistria. This conclusion can be drawn from the provisions of the local "legislation" regulating mail and telephone interception. Thus, in accordance with article 5 of the "law" on local operative investigations⁸⁹, interception of mail and phone calls is listed among the tools and methods of operative and investigative activities. The local "law" is the only act that mentions this method of obtaining information for operative purposes. The criminal procedure code does not refer to such methods⁹⁰.

Article 21 of the above "law" provides that the president of the region, the supreme soviet of Transnistria, and the region's prosecutor exert control over the use of mail interceptions and phone tapping⁹¹. There is no mechanism of judicial supervision.

Based on the provisions of the local "laws", it is beyond reasonable doubt that representatives of the local law enforcement and administration can intercept correspondence and telephone calls from the region. The regional administration does not disclose information about the number of people who have undergone operative measures described above, and this number may be huge.

Even if the European Court stated clearly the positive obligations of the Moldovan Government, it did not intervene in any way in order to protect the right to private and family life of people who live in the region. The Government did not put forth demands for ensuring this right during political negotiations.

Since international standards laid down by the European Court practice are not applied in the eastern region, an unspecified number of people living or visiting the region is likely to be subjected to interceptions by representatives of the Transnistrian administration, which constitutes a default violation of their right to privacy. Taking into account the European Court practice, the Governments of Moldova and the Russian Federation face condemnation on the grounds that local "legislation" governing interception of mail and telephone calls contains no safeguards against these measures.

13.3 *Forced psychiatric treatment*

According to local "legislative" provisions, the Transnistrian region continues to apply forced psychiatric treatment. Articles 25 and 26 of the "law" on psychiatric care and citizens' guarantees during psychiatric treatment, below are the grounds for admitting a person to a psychiatric institution:

- Confirmed mental illness, and a psychiatrist's decision on admission to a psychiatry ward;
- Patient poses danger to himself and those around;
- Patient is helpless or unable to meet the vital needs;
- Considerable damage to patient's health resulted from worsening of psychological state;

⁸⁹ Law of 2008

<http://justice.idknet.com/web.nsf/767eb8a58ad76a2bc22574d5002acf15/b2c2f37e161bd0bdc225751d00361275!OpenDocument>

⁹⁰ Criminal Procedure Code of Transnistria:

<http://www.justice.idknet.com/web.nsf/767eb8a58ad76a2bc22574d5002acf15/31a8202c34dea4bdc22576be00482c00!OpenDocument>

⁹¹ Idem

- Court decision, in accordance with art. 33 of the law.

According to article 36 of “law”, the decision to release a patient from a psychiatric ward is taken by doctors when they feel that the person is cured, even if the patient may think they are healthy and wants to leave the medical facility. According to the same article, when the person was admitted in a psychiatric institution by court decision, then discharge the person must be ordered only by the court. According to “law”, a person may not be voluntarily discharged.

There are three psychiatric medical institutions in the Transnistrian region of Moldova, namely a republican psychiatric hospital in Vihvatînți village, a psycho-neurological clinic in Tiraspol and a psycho-neurological boarding school in Bender. The number of people treated in these mental health facilities is unknown.

According to the European Court of Human Rights, hospitalization and patient treatment without a valid consent constitutes an interference with private life. Regardless of his mental state, a person is able to decide on their admission to a psychiatric hospital, and the medical staff must involve the patient in the decision-making process regarding his treatment. According to the local “law”, doctors have an obligation to explain the given treatment and describe the alternatives to hospitalization and treatment. The entire procedure is mechanical, does not involve the patient, and is limited to filling out special forms.

The risk persists in Transnistria that large numbers of people may be forcibly interned in psychiatric institutions. There is also a risk that the regional administration and law enforcement may abuse the local “law” in order to persecute those who are opposed to the regime.

Conclusions

Local regulations that would establish a procedure for processing personal data are virtually absent in the eastern region. Moreover, the local “law” is inconsistent with local international human rights standards in terms of interception of correspondence and telephone calls, and the forced internment in psychiatric institutions.

Even if, in the case of *Ilașcu and Others v. Moldova and the Russian Federation*, the European Court established the positive obligation of the Moldovan Government to guarantee the right to private and family life in the Transnistrian region, the Government has not made any visible steps aimed at protecting this right. On the contrary, representatives of the legal authorities continued to officially provide information containing personal data to the illegal administrative bodies of the region.

Recommendations

- Investigate cases concerning the illegal transfer of personal data to representatives of the illegal regional administration, and apply sanctions in accordance with law;
- Amend internal regulations of state institutions by adding provisions prohibiting the transmission of information and personal data to Transnistrian regional authorities. Training law enforcement staff in that sense;
- Identifying a legal mechanism of cooperation with the law enforcement agencies de facto functioning in the eastern region;
- Extension of the mechanism of personal data protection to the eastern region;
- Develop public information programs in the region on constitutional rights and obligations related to the right to private and family life.

Chapter 14

RIGHTS OF RECRUITS AND THE MILITARY

Contrary to constitutional provisions and obligations, Moldovan citizens residing in the Transnistrian region are forced to take an "oath of allegiance" to an anti-constitutional regime. In order to maintain control over this area, the Tiraspol administration promoted harsh policies to prevent rapprochement between the people from the two banks of the Nistru River. Moreover, it encouraged and educated hatred and enmity among the population against their own state, which has been presented as the main enemy in the region. This aggressive approach is promoted especially among young people, who are mostly forcibly recruited to the paramilitary structures of the region. If a military conflict were to start between banks of the river, it will be citizens of Moldova fighting against each other.

14.1 *Forced enrolment to paramilitary troops*

De facto and de jure, Transnistrian militarized structures are but illegal paramilitary formations. Those who establish, organize and run them face criminal liability⁹². However, the Moldovan judicial practice does not have precedents of sentences applied under Article 282 of the Criminal Code. The legal authorities are in a very delicate situation and do not file criminal charges against people who worked in illegal paramilitary formations. Perhaps the authorities do not want to increase tensions or to complicate the situation of those who will surely become victims of revenge from the illegal administration.

In another line of thought, however, conscripts from the region and those who are enrolled in paramilitary formations can be considered direct victims regardless of their choice because:

- Transnistrian paramilitary structures are not part of the legal Armed Forces; they have been constituted illegally to support an anti-constitutional regime;
- The military obligations of the local residents are founded on local *acts* contrary to national laws and international treaties;
- The region has a "forced conscription" approach, and the residents of the region are practically forced by to perform *military service* the local punitive *norms, law enforcement*, and social-economic situation;
- Military service in illegal formations may amount to illegal deprivation of personal liberty, expressed by extensive detention in the units of the region;
- "Forces" maintenance of people in *military units* qualifies as arbitrary detention, and in some cases is a form of torture and ill-treatment;
- People performing military service are arbitrarily deprived of the right to circulation and free movement within the country;
- This "*military service*" is an interference with private life, and is prejudicial to human dignity.

On the other hand, young people from Transnistria face criminal liability both under the Criminal Code of Moldova as well as the *local penal code* for evasion from *performing military service*⁹³.

According to the latest amendments to the law, the local *law enforcement* has the right to detain people who evade conscription. This also applies to those who intend to

⁹² According to the Ministry of Interior, a single criminal case, registered under no. 2004058008 in the central database, was opened under Article 282 on 23 September 2004 by the Bender municipality prosecution office. The case was later suspended because the perpetrator was not identified.

⁹³ Art.325 of the criminal code of Transnistria <http://vspmr.org/Law/?ID=384>

leave the region⁹⁴. The local *migration service* is also in charge of checking the *military situation* of young people aged 18 to 27 years entering or leaving the region. If identified, young people wanted by the authorities are *detained*, *handed* to the local *militsia* (police), which takes them directly to the *military units*. There they are told they can choose between *military service* and *criminal sanctions*. Students who are studying in universities or colleges in Chisinau or in other universities in Europe are faced with the same situation. To avoid problems when passing through *migration checkpoints*, they must present an identification card and a document (in Russian) certifying their current studies.

De jure, detention and kidnapping of people at *migration checkpoints* qualify as offenses of kidnapping and illegal deprivation of liberty of persons, which fall under the Criminal Code of Moldova. Arbitrary arrests and illegal deprivation of liberty by persons who have illegally assumed such prerogatives in the eastern region of the country constitute a violation of Article 5 of the European Convention. In fact, kidnapping young people in order to enroll them to service in paramilitary formations qualify as to forced conscription.

14.2 Military personnel records and medical military examination of conscripts

Military records of youth from the region are established in school. Schools are obliged to keep records of teenagers, to conduct pre-military and patriotic training, to keep their and their parents' contacts, and to follow up students' migration to and from other schools. Local schools send quarterly renewed lists of youth that reached the age of 16. Moreover, even the eight schools that are subordinated to the Moldovan legal authorities also have the obligation to submit such lists to *local paramilitary commissariats*.

According to *local law*, all enterprises, organizations and institutions in the region are required to prepare lists of young people who reach the age of 16-17 years. Lists are sent to a *commission of conscription*. Once included on the list, young people are *obliged* to go to the *district military commissariat* to be registered into military personnel. Once registered, they become *recruits*, receive a *recruit certificate*, and pass a medical examination by a specialized *commission*⁹⁵. The military medical commission determines the fate of the youth depending on his health. When the *recruit certificate* is issued, recruits are given the date and time of enrolment date in paramilitary service. This serves as evidence that the youth has been officially informed of his obligation to show up for conscription.

At the same time, institutions and organizations in the region are prohibited from hiring persons who do not have *service record certificates*, and must immediately denounce such persons to the local authorities. Young people who are unemployed or not studying are required to submit independently to the district *military commissariat* for be registered with military records, otherwise they cannot be employed.

According to local rules, all *citizens* of the self-proclaimed entity are required to be registered with the military records, except for those incapable of military service, those performing military service, persons serving prison sentences and women who do not get military training. Similarly, employees of the local *interior*, *customs* and *penitentiary system* are also required to be in the military records⁹⁶.

The Moldovan legal authorities are unable to keep evidence of young recruits from the region (the local governments and military centers are subordinated to the regime in Tiraspol). Thus, a large group of Moldovan citizens has been virtually abandoned by the

⁹⁴ <http://www.nr2.ru/pmr/327261.html>

⁹⁵ Medical certificates issued by military medical commissions of other states establishing the inability of citizens to perform military service are not recognized by military medical commissions of the Transnistrian region

⁹⁶ <http://vspmr.org/Law/?ID=393>

state and are not protected against this illegal practice. The exact number of young people that are annually registered with military records and enrolled in these units is unknown. What is certain however is that, on 1 August 2012, there were 272,854 Moldovan citizens in Transnistria who had documents issued by the Moldovan legal authorities⁹⁷.

Young people and their relatives complained of cases of superficial military medical examination; of distrust of military medical commissions that were corrupt and conscripted youth with serious health problems or physical disabilities; and of abuses in paramilitary units. Aware of the conditions in the “Transnistrian army”, parents prefer to buy their sons “service record certificates” for fees ranging from 500 to 1,500 US dollars, or use other methods to avoid in any way having their children conscripted. Such sums are enormous for vulnerable families with many children who, for lack of financial means, are forced to send their sons to the “army”. Thus, the vast majority of conscripts are young people from vulnerable families.

14.3 Performing paramilitary service

The duration of military service in the region is 18 months (compared to 12 months on the right bank). For one to three weeks, recruits are held in *quarantine*, and later are moved to *barracks* (large rooms lodging 80 to 100 people each). Many *conscripts* said they were intimidated, subjected to various forms of ill-treatment, or bullied for money. In his reports⁹⁸, the regional ombudsman acknowledges the phenomenon of *non-statutory relations* (hazing or *dedovscina*) in the Transnistrian army, where intimidation, beatings and humiliation of human dignity are an evident fact.

Currently no data are available for 2012, but we will mention that in 2011⁹⁹, 22 criminal cases were initiated on *hazing*, and 12 *officers* were *criminally prosecuted*; 594 *cases* were started on violations of *internal military regulations*, 408 soldiers were *criminally prosecuted*. 122 soldiers were *convicted* for other *military offenses*¹⁰⁰. The ill-treatment faced by young *conscripts* leads many to *desert* the *military units*. Once caught, they face criminal prosecution and some are sentenced to 4 to 7 years in prison. In 2011, 326 conscripts fled their *military units*.

According to new local *regulations*, from 1 June 2012, *military service* may be performed at the nearest *military unit* to the *recruit's* home. Conscripts will also benefit from additional leave on weekends and holidays¹⁰¹. The reform seems to bring positive change, but not to the situation of conscripts. In fact, the paramilitary units will be filled with recruits from the same town or district, thus further unifying the contingent. In such circumstance, the phenomenon of hazing may escalate, and its consequences may be more severe, as young soldiers will be forced to go home to their parents more often and to bring back food, beverages or other goods. To do this, they will have to leave their military units, and face the risk of disciplinary arrests.

14.4 No right to refuse conscription

Civil (alternative) service is prohibited by the local administration of the region. Young people with pacifist, humanist or religious beliefs are forced to perform *military service* in an illegal paramilitary unit and contrary to their beliefs, along with others conscripts. If they decline *conscription*, they are fined or *sentenced* to prison, or are *added to a wanted list* for *evading performing military service*.

⁹⁷ http://www.mtic.gov.md/statistica_rom/

⁹⁸ http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm

⁹⁹ Data on the situation in 2012 has not been released; in fact, the information presented above is to illustrate the problem

¹⁰⁰ www.ombudsmanpmr.org

¹⁰¹ <http://pmrinform.com/ru/news/20120628/06935.html>

The local law states that persons who performed civil service in another State are exempt from *military service* in the region. However, there were cases when young people were *conscripted* despite having performed civil service elsewhere or had their *service record books* intentionally damaged by the district military commissioner and others.

Court proceedings started by youth with pacifist or religious beliefs against *local* and *regional conscription commissions* were rejected on basis of a final ruling of the local *constitutional court*¹⁰².

The regional administration is rather stern on the issue of military service. An alleged *commander* of the region said during a televised program that “the *military service* is not a commercial service and paying 3-6 thousand rubles (300-600 US dollars) in exchange of not performing military service is a defiance of *Transnistrian interests*. *Transnistria* has the *duty* to train soldiers for its defense; no other service can substitute that¹⁰³”.

This *official* position once again defies the fundamental interests of persons, even those provided by local *normative acts*, by imposing prohibitions and sanctions for those who cannot perform military service under arms. In fact, on the one hand, the *local constitution* proclaims freedom of religion and humanitarian principles, and on the other hand, it penalizes people who cannot perform military service as it is contrary to their beliefs.

Recommendations

- Develop public information programs for the residents of the region to inform them on their constitutional rights and obligations, including those related to the military;
- Creating a military center for the Transnistrian region responsible for providing military records, resolving the problems of recruits from the eastern region, and other aspects.
- Conscription of citizens from the region capable of military service to the Armed Forces of Moldova;
- Start criminal procedures of the establishment and operation, in the Transnistrian region, of illegal paramilitary organizations, and bringing those responsible to justice.

¹⁰² In 2009, the local *constitutional court* ordered as inadmissible the petition of K.I. to examine the constitutionality of normative acts which expressly limited his right to perform alternative civil service and are contrary to Article 30 of the local *constitution*. The young man refused to perform *military service* and requested the *military commissariat* in Bender the right to perform alternative service on grounds of religious belief. This fact was denied to him, and K.I. was *criminally charged* with *evasion of military service* and *sentenced* to one year of conditional jail. The young man challenged the *constitutionality* of local laws that limit the rights and freedoms stipulated by local *constitution* at the alleged *constitutional court* in the region. However, the *court* ruled that “...until a mechanism of alternative service is established, the refusal to perform military service invoking the right to alternative military service does not affect the legitimacy of the drafting process, and the examination of criminal intent to evade military service in invoking this pretext”

¹⁰³

<http://www.nr2.ru/pmr/374360.html>

CHAPTER 15

FREEDOM OF MOVEMENT

Moldova does not have *de facto* control of a part of its territory in the east. Following the 1992 military conflict on the Nistru River bed, a Security Zone was established around the river bed and its adjacent areas. The Security Zone is controlled by joint peacekeeping forces. Under the watch of peacekeepers, the secessionist administration illegally installed a number of checkpoints. This established a *de facto* administrative “border” between the region and the rest of the country. The effects of this illegal action consist in the violation of several rights, including the right to freedom of movement of goods and persons who live in the area or visit the region and businesses who wish to pursue economic activities.

The administration in Tiraspol holds *de facto* control of a territory measuring 4,000sq.km. This represents 12% of the territory of the Republic of Moldova, with a population of 513,000 people¹⁰⁴. The region is crossed by several railways and highways of national and international importance. There are also gas pipelines and electricity lines that pass through the Transnistrian part of Moldova.

The *de facto* control over some segments of communications ways and the establishment of internal customs posts have strengthened the ability of the regional administration to arbitrarily limit the freedom of movement of goods and people. The topic of free movement of goods and people was used mostly as an element of pressure by the Tiraspol administration in talks with the Moldovan legal authorities¹⁰⁵.

As a result of the illegal actions taken by the regional administration, in 2012, individuals continued to be limited in their right to free movement in different areas, and businesses prefer to avoid transiting the region or continue to operate under the conditions imposed by the illegal administration. Lastly, Moldova supports losses as a state. A general assessment of economic losses has not been carried out however, and the economic loss indicators are not publicly available.

15.1 Illegal Transnistrian checkpoints

The arbitrary placement of illegal Transnistrian checkpoints remains one of the most serious problems related to ensuring the right to freedom of movement in that region of Moldova. Thus, in 2012, the regional administration installed new checkpoints in Moldova's Security Zone. These checkpoints were located near Teia village in the Grigoriopol district, and near Chircaiesti village in the district of Causeni¹⁰⁶. According to some opinions, installing illegal checkpoints is a way of casting pressure on the legal authorities and of expanding the area of influence of the regional administration¹⁰⁷ in the Security Zone.

The checkpoints that were illegally installed in 2012 have not been dismantled despite repeated requests of the Moldovan representatives to the Joint Control Committee (JCC) to do so. The practice of previous years shows that, once installed by the separatist administration, these illegal checkpoints are never removed, despite requests in that regard

¹⁰⁴ Annals of Statistics PMR 2011, p. 28, <http://www.mepmr.org/pdf/statistic.pdf>

¹⁰⁵ The use of the right to free movement in the eastern region of Moldova
http://promolex.md/upload/publications/ro/doc_1232984043.pdf

¹⁰⁶ Challenges on the Nistru River. New separatist checkpoints in the Security Zone
http://adevarul.ro/moldova/actualitate/provocari-nistru-posturi-separatiste-noi-zona-securitate-1_50aea9777c42d5a6639edab9/index.html

¹⁰⁷ Transnistria strengthens its area of influence through customs posts:
<http://politicom.moldova.org/news/transnistria-i-ntrete-zona-de-influen-prin-posturi-vamale-ilegale-video-226066-rom.html>

from the OSCE, other international organizations and Moldovan Government representatives¹⁰⁸.

Moreover, representatives from the regional administration responded to such appeals from Moldovan representatives in JCC meetings by rebutting information presented by the Moldovan side and accusing the Moldovan government of attempts to increase tensions in the Security Zone¹⁰⁹.

In 2012, the issue of the right to freedom of movement of goods and people was included on the agenda of talks between Moldova and the representatives of the Transnistrian administration¹¹⁰. Thus, the issue of dismantling of illegally installed checkpoints and resumption of traffic on some sections of the “border” was discussed repeatedly in the negotiation process. For example, during Vienna negotiations, the representative of Moldova insisted on the opening of the bridge near Gura Bacului village that connects the left and right bank, which could lead to easier access to and from the region for people and vehicles. A consensus could not be reached on this subject: in return, the representative of the Transnistrian administration in negotiations asked for recognition of Transnistrian vehicle registration plates, and for allowing vehicles with Transnistrian plates to conduct passenger and freight transportation overseas on the basis of documents to be issued by Chisinau, a demand that could not be accepted by the Moldovan Government¹¹¹.

On the other hand, international organizations have made several calls in reference to the free movement of persons in the region. OSCE Mission in Moldova stated that the OSCE expects more progress on freedom of movement and in the functioning of Latin script schools¹¹². At the same time, the Council of the European Union cancelled the travel ban for the leaders of the region as a result of progress in the 5 +2 negotiations¹¹³.

Moldova has positive obligations in terms of guaranteeing and ensuring the right to freedom of movement of people and goods in the Transnistrian region of Moldova, despite the fact that it does not hold effective control of this territory¹¹⁴, which is emphasized in previous Promo-LEX reports¹¹⁵.

In order to strengthen control of the border with Ukraine, a EU Border Assistance Mission to Moldova and Ukraine (EUBAM) was established and was launched on November 30, 2005, at the joint request of the Presidents of Moldova and Ukraine to the European Commission. Unfortunately, the EUBAM mandate does not cover the illegal checkpoints installed by the Transnistrian administration in the Security Zone.

¹⁰⁸ Illegal Transnistrian customs posts: Pohrebea villagers continue protests: <http://www.timpul.md/articol/posturi-vamale-transnistrene-ilegale-locuitorii-satului-pohrebea-protesteaza-si-astazi-28175.html>

¹⁰⁹ Statement of the inadmissibility of politicization of the peace process and the dissemination of untrue information about the events in the Security Zone by the delegation of Moldova in the JCC: <http://www.okk-pridnestrovia.org/p0215.htm>

¹¹⁰ The negotiations, archive of documents signed by year, agenda of formal negotiations process, <http://www.gov.md/slidepageview.php?l=ro&idc=615>

¹¹¹ Vienna: Carpov wants opening of Gura Bacului bridge; Ștanski wants recognition of Transnistrian plates: <http://reintegrare.moldova.org/news/viena-carpov-vrea-deschiderea-podului-de-la-gura-bacului-stanski-recunoaterea-numerelor-de-inmatriculare-transnistrene-232888-rom.html>

¹¹² OSCE expects more progress on free movement and functioning of Latin script schools: <http://reintegrare.moldova.org/news/osce-asteptam-mai-multe-progrese-in-domeniul-liberei-circulatii-si-functionarea-scolilor-cu-predare-in-grafia-latina-233037-rom.html>

¹¹³ Tiraspol leaders, free to travel to the UE: <http://reintegrare.moldova.org/news/liderii-de-la-tiraspol-liberi-sa-circule-in-ue-233191-rom.html>

¹¹⁴ See *Ilașcu and Others v. Moldova and Russia*, judgment of 4 July 2001, see *Ivantoc and Others v. Moldova and Russia*, judgment of 15 November 2011

¹¹⁵ Report on Human Rights in the Transnistrian region of Moldova 2011: http://promolex.md/upload/publications/ro/doc_1340371540.pdf

The illegal “border”-crossing checkpoints installed by representatives of the Tiraspol administration impede people living or visiting the region to exercise their right to freedom of movement and other rights. Thus, one of the reasons why a checkpoint was installed near Chircaiesti, Causeni, was to limit farmer’s access to their land lots. The locals cannot properly work the land that they own or possess. To gain access to their land, these people must pass through a checkpoint illegally installed by the Tiraspol administration.

Promo-LEX noted several times that numerous illegal acts are committed at the checkpoints installed by the regional administration. For example, on June 22, Causeni criminal police inspector A.D. and his son were arrested at the same post near Chircaiesti, installed in 2012. They were accused by the representatives of the separatist region of “illegal crossing of the border”. The arrested persons were subjected to immoral treatment and humiliation, and to psychological pressure.

A similar incident took place on June 27, at the same checkpoint, when Moldovan citizen M. Z., a judicial officer, was also arrested on charges of “illegal crossing of the border”.

15.2 Movement of vehicles registered in the region

The issue of the legal status of vehicles registered by the administration of the region persisted in 2012. Thus, vehicles registered in Transnistria continue to circulate throughout Moldova without having an established legal status.

According to unofficial information, approximately 200,000 vehicles are registered in the eastern region of Moldova. The number is so large partly because it vehicle registration costs amount to about 30% of the costs owners would have to pay in right-bank Moldova. In this way, owners of cars with license plates from the Transnistrian region can circumvent high registration costs, and other charges under Moldovan law, such as road maintenance fees, environmental fees, mandatory liability insurance payments, and others. The region also allows registration of cars that are older than those admitted by Moldovan law. According to information from the Ministry of Interior, a vast majority of these cars are owned by Moldovan citizens residing on the right bank. It should be noted however that owners of car registered in the Transnistrian region cannot travel to the EU.

In order to resolve the problem of movement of cars registered in the Transnistrian region of Moldova, the Moldovan government, in cooperation with EUBAM, proposed the application of new rules for registration and movement of vehicles registered in the eastern region, including the introduction of new registration plates containing Moldovan identification elements, such as the state emblem, and the initials TN symbolizing the Transnistrian region of Moldova. The proposal was made during official negotiations on the Transnistrian problem that took place in Vienna in the fall of 2012. However, this proposal to regulate the problem was not accepted by the representatives of the Tiraspol administration¹¹⁶.

At the same time, some Moldovan and Transnistrian media published information that owners of cars registered in Transnistria were to pay a vignette fee similar to that paid by owners of vehicles which were not registered in Moldova¹¹⁷. Despite these reports, neither the bill nor the law passed by parliament contain for any obligation to pay the vignette fee for owners of Transnistrian-registered cars.

With regard to sanctions of owners of cars with Transnistrian registration plates, although Article 121 of the Road Traffic Rules stipulates that the exploitation is cars with improper registration plates in prohibited, and such plates shall be removed by the traffic

¹¹⁶ The EUBAM Mission introduces MD TN marked registration plates: http://ru.publika.md/link_689871.html

¹¹⁷ Transnistrian plates don’t exempt drivers from paying the vignette fee: <http://info-prim.md/?x=&y=49752>

police, such measures are not applied to persons driving cars that carry Transnistrian registration plates.

The unclear and confusing situation about the legal regime of cars registered in Transnistria leads to a differentiated treatment of owners of cars registered in Moldova. Thus the law-abiding citizens must pay fees provided by law for road maintenance, mandatory liability insurance and other.

15.3 Railroad movement in the eastern region

In 2004, the movement of Moldovan trains through the Transnistrian segment was restricted. During that period, the region's illegal administration said the assets of the Moldovan Railway Company (CFM) located in the region were regional property. Some data estimate the total value of the assets at 700 million lei or more. The assets included train station facilities, depots, 100 km of railroads, 20 motor engines, 200 train cars and other goods¹¹⁸.

Two years ago, only the Chisinau-Odessa train resumed its route through the region, while the remaining cargo trains and passenger trains travelled through the north of Moldova.

In 2012, the transport of goods underwent some changes. The Tiraspol administration agreed to allow resumption of rail freight through the region. Although the first cargo train travelled through the region on April 26, 2012¹¹⁹, the number of echelons currently crossing the region is very small¹²⁰. After the resumption of rail traffic, the legal authorities and the regional administration set up joint customs control commissions that are located in the Rabnita and Bender-2 train stations. A protocol of cooperation between the Moldovan Customs Service and the regional customs was signed in this regard. Technological schemes were developed and will be implemented in the control of import-export goods passing through Transnistria¹²¹.

The negotiations on the resumption of rail traffic did not touch upon the issue of returning the assets or the value of assets taken illegally in 2004 from the Moldovan State Railway Company. Even if the CFM suffers hundreds of millions in losses from the resumption of rail traffic through Transnistria, due to the reduction of freight distance, the Government accepted this to facilitate the freedom of movement.

15.4 Peacekeeping operation in the region

The peacekeeping operation in the Transnistrian region of Moldova is one of the most controversial in the world¹²². In order to properly understand the problematic of the peacekeeping operation in Moldova, one must examine it in the historical context of events that happened in Moldova, especially during the armed conflict in the eastern part of the country.

The presence of fixed peacekeeping posts and armed soldiers on the roads of access to the eastern region leads to impediments to the free movement of goods and

¹¹⁸ Who will benefit from the resumption of cargo trains through Transnistria? <http://www.europalibera.org/content/article/24558875.html>

¹¹⁹ Rail traffic through Transnistria may be resumed: <http://politicom.moldova.org/news/traficul-feroviar-prin-regiunea-transnistreana-va-fi-reluat-229425-rom.html>

¹²⁰ Rabnita's Still Mill sent out 128 train cars of products between 7 and 21 May: <http://reintegrare.moldova.org/news/productia-uzinei-metallurgice-din-rabnita-a-fost-expediata-cu-128-vagoane-in-perioada-721-mai-230594-rom.html>

¹²¹ Joint customs control commissions were set up at Rabnita and Bender2 trainstations: <http://reintegrare.moldova.org/news/in-garile-rabnita-si-bender2-au-fost-create-comisii-de-control-mixt-230625-rom.html>

¹²² Marcel Garaz, The involvement of the OSCE in solving the Transnistrian dispute: <http://ipp.md/lib.php?l=ro&idc=162>

people. There were cases when the lives of people passing by the peacekeeping posts were endangered. For example, on January 1, 2012, a Russian peacekeeper fatally shot a young man on the Vadul lui Voda to bridge on grounds that he did not want to stop the vehicle at the request of Russian peacekeepers¹²³.

The Moldovan authorities and international organizations made repeated calls to change the format of the peacekeeping operation¹²⁴. On the other hand, experts say that the liquidation of peacekeeping military stations on the Nistru River is a priority¹²⁵. However, the Russian Federation is not open to negotiating a new format of the peacekeeping operation. On the opposite, the representative of the Tiraspol administration in talks said the number of Russian troops should be increased, although the Parliamentary Assembly of the Council of Europe called Transnistrian conflict as “posing a danger” to the security of Europe¹²⁶.

The Agreement¹²⁷ that established a peacekeeping operation in the eastern part of Moldova is contrary to all provisions of international law, practice and documents of international organizations in the field.

As members of the UN and CSCE, both the Republic Moldova and the Russian Federation have breached the statutes of these organizations when they agreed to establish a trilateral peacekeeping force with the participation of Moldova, Russia and Transnistria, which were fighting parties in the military conflict. The agreement doesn't specify the duration of the operation, although the practice of these organizations provides that peacekeeping operations must be clearly delimited in time, since the idea of peacekeeping forces is to serve as a complementary tool to political methods of settling conflicts.

The further functioning in the current format of the peacekeeping operation may lead to abuses such as limitation of the right to movement of persons crossing these posts, and other rights such as the right to liberty and security, and the right to property. Moreover, with coverage from the peacekeeping operation, the separatist regime strengthens its so-called state institutions and sets up new checkpoints that increase tensions in the region.

Conclusions

Problems related to freedom of movement in the Transnistrian region continued to be registered in 2012. With the exception of a partial resumption of rail freight, no other progress was recorded in that sense. The separatist administration of the region continued its abusive practice of installing illegal checkpoints in the Security Zone in 2012. Moreover, local residents were abused at these checkpoints. No consensus was reached regarding the legal status of cars registered in the eastern region. The militarized peacekeeping mission continues to operate, creating obstacles to the free movement of people and endangering their lives.

¹²³ Young man shot by “peacekeeper” dies during surgery: <http://m.protv.md/stiri/social/impuscat-in-cap-de-pacificatori-un-tanar-de-18-ani-a-ajuns-in.html>

¹²⁴ OSCE decries presence of armed Russian peacekeepers in Transnistria: <http://news.yam.md/ro/story/960643>

¹²⁵ Expert opinion: The withdrawal of military peacekeepers on Nistru, a priority: <http://www.arch.actualitati.md/md/md-opinia-expertilor-lichidarea-posturilor-militare-de-pacificatori-de-pe-nistru-sunt-o-prioritate/>

¹²⁶ Scandalous statement: Stanski says that the number of Russian troops should be increased: <http://unimedia.info/stiri/declaratie-scandaloasa-Stanski-spune-ca-numarul-soldatilor-rusi-trebuie-marit-52925.html>

¹²⁷ Agreement on the principles of peaceful settlement of the armed conflict in the Transnistrian region of Moldova, signed on July 21, 1992 in Moscow by Moldovan President Mircea Snegur and Russian President Boris Yeltsin

Recommendations

- The legal Moldovan authorities and other players involved in the negotiations should negotiate the liquidation of illegal checkpoints located in the Security Zone;
- The legal Moldovan authorities and other players involved in the negotiations must establish a mechanism for legal registration of cars in the eastern region of Moldova;
- The legal Moldovan authorities and other players involved in the negotiations must insist on the change of format of the peacekeeping mission.