



*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 ÎN ANUL 2011**

## **REPORT**

**HUMAN RIGHTS IN TRANSNISTRIAN REGION OF MOLDOVA IN 2011**

## **ДОКЛАД**

**ПРАВА ЧЕЛОВЕКА В ПРИДНЕСТРОВСКОМ РЕГИОНЕ РЕСПУБЛИКИ  
МОЛДОВА В 2011 ГОДУ**

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Transnistria Region of Moldova*

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## Chapter I.

### Right to life

Right to life is a natural human life, devoted both nationally and internationally. Therefore, the Universal Declaration of Human Rights decides in art. 3 that „Everyone has the right to life, liberty and security of person”. The European Convention for the Protection of Human Rights and Fundamental Freedoms determines in art.2 that „Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law” and International Covenant on Civil and Political Rights decides in ar.6 p.1 „Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

Therefore, right to life is guaranteed and death penalty is abolished. No one shall be condemned to such penalty or executed.<sup>1</sup> Criminal Code of Republic of Moldova prohibits death penalty and deprivation of life of persons.

At the same time, death penalty is provided on the territory of the Republic of Moldova under local Transnistrian legislation, which stipulates separately the execution of death penalty. According to art.19 of local “constitution”- the death penalty, until abolitions, is enforced as exclusive penalty for especially serious crimes against life by court rulings only.<sup>2</sup> Capital punishment does not apply to minors who have not reached 18 years and to women.

On January 1<sup>st</sup>, 1999 through a “decision” of the “Supreme Soviet” from Tiraspol, a moratorium was applied on this form of punishment, in order to prevent influence over the external relations”.

Art.43 let. h) of the local “Penal Code” provides capital punishment, and the enforcement method is provided by art.170-172 local “execution code of criminal punishment”<sup>3</sup>. The person sentenced to death, is held alone in cells, ensuring proper security and isolation. The reasons of capital punishment execution are: final sentence of court, “command” of local “President” concerning refusal of a request for pardon, or the decision on the failure to “pardon” the convicted who refused to submit a request for pardon.

Capital punishment is executed by shooting and it is not public. The body is not transmitted for funeral and the burial place is not announced. The administration of the prison where the execution took place is responsible to communicate the execution of the sentence to relatives.

The public opinion acknowledges two cases of capital punishment in the Transnistrian region. It is the case of Ilie Ilascu<sup>4</sup>, released in 2001 and case of Negrea Fiodor<sup>5</sup>.

*In 2011, relatives of Mr Negrea Fiodor, 48 years, sentenced to death penalty by the “supreme court in Tiraspol” in 2003, have informed Promo-LEX about this situation. According them, Mr Negrea was sentenced to death penalty despite the “moratorium from 1999”. Nevertheless, the sentence was modified from capital punishment to life detention. At the moment, Mr Negrea is held in solitary confinement at Prison no.1 in district Grigoriopol. In 2009, Manfred Nowak, Special Rapporteur visited him and assessed the solitary confinement for more than five years as additional punishment to the court sentence, equalling it to torture.*

Promo-LEX is continually informed by suspicious deaths. Particularly we mention the death cases in detention institution, caused both by insufficient supervisions of detainees from prisons’ administration, and by insufficient medical assistance. According to unofficial sources,

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<sup>1</sup> Art.24 Constitution of Republic of Moldova

<sup>2</sup> <http://www.olvia.idknet.com/constit.htm>

<sup>3</sup> <http://vspmr.org/Law/?ID=385>

<sup>4</sup> [http://justice.md/file/CEDO\\_judgments/Moldova/ILASCU%20SI%20ALTII%20\(ro\).pdf](http://justice.md/file/CEDO_judgments/Moldova/ILASCU%20SI%20ALTII%20(ro).pdf)

<sup>5</sup> <http://www.moldova.ru/index.php?tabName=articles&owner=20&id=74>

often in the penitentiaries from the region, detained persons die of HIV/AIDS and tuberculosis and other diseases contracted during alleged detention and untreated at the right time. The mortality rate in detention institution is rather high, fact that questions the causes, detention conditions, and activity of administration:

*On June 6, 2011, the detainee R.Z., yob 1969, originating from Grigoriopol, being seriously ill of pleurisy died in prison no.2 in Tiraspol from lack of medical care. Prison administration delivered the body to the mother in a coffin, together with a letter informing that her son died of “drug intoxication”.*

*Another detainee died in August 2011 from untreated tuberculosis in the same institution. According to sources, in prison no.2 in Tiraspol every month detainees die of untreated tuberculosis, HIV/AIDS, etc. The dead are transported to the morgue in a bier, and relatives usually do not receive explanations on the circumstances of death.*

In his report, Special Rapporteur showed particular concern about the lack of a complaints and monitoring mechanism. He, therefore recommends to extend the activities of the national preventive mechanism on the Transnistrian region of Republic of Moldova. Moreover, torture should be criminalized and capital punishment should be abolished by law. In addition, solitary confinement of persons sentenced to death or life imprisonment should be stopped immediately.<sup>6</sup>

## **Chapter II.**

### **Right not to be subjected to ill treatment**

Universal Declaration of Human Rights determines in art.5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.<sup>7</sup>

Local criminal rules do not contain the definition of “torture or ill treatment”. The only notion that could be found is “exhaustion”(art. 114, local “Criminal Law”).

In this way, victims are unable to report actions of the representatives of the “local organs of power” (militia) for actions of torture. An internal mechanism of prevention of torture is absent, but the control task is directed to the prosecution, and monitoring of detention facilities to the regional ombudsman. Many respondents showed dissatisfaction with the performance of these institutions.

People detained/arrested arbitrarily by “local organs of power” are subject to various forms of torture in detention centers and investigators offices in order to testify. The most utilised form of torture is: placing the person in an iron chair, binding the body to this chair with a rope, then the victim’s hands are gradually pulled with another rope, causing pain and incurable finger injuries, etc. People in “militia” custody are often mistreated, being kicked with blunt, hard objects over the body, receiving blows with rubber batons and feet in kidneys area; denailing by placing needles under nails, threatening use of firearms or shooting, etc. Victims were isolated over various periods of time in a “narrow carcer”, without water, food, including access to bathroom for long period of times, in order to plead guilty.

According to local data, in January 2011 in the pre-trial detention prison in the Transnistrian region were detained 762 persons<sup>8</sup>. The number of detainees can reach, according to unofficial source, over 1000 persons. Overcrowding (3 detainees for a bed) is a “normal” phenomenon for the prisons in the region, and the roughness of detention facilities permits qualifications as acts of torture and/or ill treatment.

Detention of people with disabilities is a major problem, as well. They are held under the

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[http://www.un.md/key\\_doc\\_pub/doc/romanian/A%20HRC%2010%2044%20Add%203%20torture%20Moldova\\_ROM.pdf](http://www.un.md/key_doc_pub/doc/romanian/A%20HRC%2010%2044%20Add%203%20torture%20Moldova_ROM.pdf)

<sup>7</sup> Art.5 Universal Declaration of Human Rights, adopted by United Nations General Assembly on December 10, 1948;

<sup>8</sup> <http://guinpmr.narod.ru/>

same conditions as the other detainees, and they do not receive any special conditions or adjustments provided by human rights standards. Similarly, health care is poor, and in some cases it is absent at all. Detainees with locomotory disabilities have difficulties in moving, meeting human basic needs, access to bathroom, etc., lacking special accommodations. They clearly cause enormous physical and mental suffering.

*E.E. was convicted to 7 years imprisonment by a court from Tiraspol. At the moment is held in prison no.2 in Tiraspol. Since 1991 has second-degree disability, with third-degree post-traumatic deformity of the knee and locomotory dysfunction. In prison, he faces mobility difficulties and has limited access to bathroom (the toilet in the cell is not accustomed to necessities).*

*V.M. was convicted to 11,4 years imprisonment by a court from Grigoriopol. At the moment is held in prison no.2 in Tiraspol. He suffers from chronic polyneuropathy of the lower limbs, third-degree chronic rheumatism of the hip, radiculitis of the spine disc. In prison, he faces mobility difficulties and has limited access to bathroom (the toilet in the cell is not accustomed to necessities).*

In 2011 detainees from the prisons in the regions submitted several complaints to the European Court with accusations of torture, ill treatment and inhuman detention conditions.<sup>9</sup>

### **Chapter III.**

#### **Freedom and security of the person**

International Covenant on Civil and Political Rights decides that freedom and security of person are inviolable. Everyone has the right to freedom and security of person. No one shall be arrested or detained arbitrarily. No one shall be deprived of his freedom except on legal grounds, in accordance with the procedure prescribed by law<sup>10</sup>. At the same time, those deprived of freedom shall obtain guarantees for criminal case examination. By guaranteeing the fundamental right to freedom and security of person, it must be considered in such matters that noncompliance with verification of legality and pre-trial arrest grounds procedure constitutes a violation of procedural rules that ensure fair case litigation.

According to art.5 of European Convention on Human Rights (ECHR) every person has the right to freedom and security. No one shall be deprived of his/her freedom, excepting the following cases and according to law. In the context of the Convention, any person arrested shall be informed without delay and in a language he/she understands about the reasons of the arrest and about any charges against him/her.

Every person arrested or detained as provided by Article 5, shall be brought promptly before a judge or other authorized magistrate to exercise judicial power and shall be entitled to trial within a reasonable time or released pending trial.

Release may be conditioned by guarantees to appear for trial. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which a court shall decide the lawfulness of his detention speedily and his release ordered if the detention is not lawful. Everyone who has been the victim of arrest or detention in contravention of the provisions of article 5 of ECHR shall have an enforceable right to compensation<sup>11</sup>.

In 1997, Republic of Moldova has ratified ECHR establishing the reserve concerning the Eastern region of Republic of Moldova.

The Court's decision of July 4<sup>th</sup>, 2011 in *Ilascu and others vs. Moldova and Russia*<sup>12</sup>,

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<sup>9</sup> [http://promolex.md/upload/publications/ro/doc\\_1332166962.pdf](http://promolex.md/upload/publications/ro/doc_1332166962.pdf)

<sup>10</sup> International Covenant on Civil and Political Rights, adopted and open for signing by United Nation General Assembly on December 16, 1966. Enforced on March 23, 1976, cf.art.49, for all provisions except those in art.41; on March 28 for provisions from art.41; ratified by Parliament Decision no. 217-XII dof28.07.90

<sup>11</sup> Convention of protection of human rights and fundamental freedoms, signed in Rome on November 4, 1950 and its additional protocols;

<sup>12</sup> see cause *Ilaşcu and others vs. Moldova and Russia*, decision of June 4, 2011;

found that point 1 of the declaration of Republic of Moldova at the moment of ratification does not represent an available reserve under art.57 of the Convention, because it is too general, and it does not refer to a provision of the Convention and its applicability is not limited in time. Therefore, this declaration does not exclude Moldova's responsibility on the territory controlled by the self-proclaimed organs on the Transnistrian territory in terms of guaranteeing and ensuring the right to freedom and security of the person.

In the Transnistrian region of Republic of Moldova is enforced local "legislation", which corresponds in content with the soviet legislation. Regional legislation, in terms of right to freedom and security of person includes local "constitution"<sup>13</sup> (art.16 Right to individual freedom), local code of criminal procedure<sup>14</sup>, local administrative code, local penal code, local law on detention of suspected or accused of committing the offence.

Therefore, according to local criminal procedure, the term of criminal prosecution shall not exceed 18 months, and the hearing of a criminal cause shall not exceed 6 months. However, the alleged investigative bodies and courts do not respect this term. Thus, the arrest warrant can be prolonged as many times as requested for a term of 2-6 months and the court of first instance can examine a criminal cause in a undetermined term. In the absence of a legal, credible and effective legal mechanism, the situation in the region allows the illegal detention of many people, who were convicted by an incompetent and illegally created court, lacking any international control and responsibility for the committed acts. The abuses in "arrest, investigation, judicial and detention" processes are numerous and clear, accompanied by impunity. For example, suspects are not brought promptly in front of a judge or other magistrate authorized by law to exercise judicial attributions and the right to be judged in a reasonable terms or released during procedure, as stated by the Convention is not respected, considering the fact that in the Transnistrian region there is no judicial control mechanism in person of a investigating magistrate. Persons deprived of liberty are not guaranteed the right to appeal in a court, in order to prevent their release on illegal detention terms, if it is the case. Moreover, persons who were victims of illegal arrest or detention are not guaranteed the right to an equitable compensation.

In terms of freedom and security of the person, the aggravating problem is that bodies that took the responsibility of law and judicial bodies execute deprivation of freedom. In these circumstances, there is no clear and efficient way to influence the "decisions" of the region administration and its structures, in terms of international and national law provisions. Meanwhile, these "decisions" have effects on the Eastern Republic of Moldova, persons are "arrested, judged, convicted, tortured and detained" in inhuman and degrading conditions. Moreover, there is no national rehabilitation mechanism of the victims of the regime in Tiraspol. Even the relatives of victims who denounce the activity of these illegal structures of the bodies of constitutional law, are often intimidated, threatened, followed by these structures. Constitutional structures are not capable of ensuring the right to freedom and security of the person and efforts to implement national legislation against those who have illegally assumed responsibility for investigator, prosecutor and judge (the majority of them being RM citizens) and who violate human rights.

The right to freedom and security of person is violated for numerous categories of persons. The "detaining", "investigation" and "trial" process are nothing but a profitable way, in financial terms, for those who serve the illegal regime. The vast majority of victims declared they have paid large sums of money or have been requested such amounts for better detaining facilities or for their release from illegal captivity.

In 2011, "Promo-LEX" Association has provided legal assistance to many people, who had their fundament rights and freedoms violated, including the right to freedom and security of person. An example in this context is the case of P.B.<sup>15</sup>, citizen of Republic of Moldova, born in 1978 and residing in village Roghi, district Dubasari. On August 11, 2011 8 employees of the local militia in Dubasari physically assaulted him. They forced him into a private car, and carried

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<sup>13</sup> Constitution "rmm" in June 22 edition;

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<sup>15</sup> Case from "Promo-LEX" practice

to the militia office in the city. Militia said that they arrested him for “public nuisance”. He was immediately placed in the basement of the militia department detention in Dubasari.

On August 12, 2011 the alleged court in Dubasari rules a preventive measure, administrative detention for 5 days for “hooliganism” and “violence against militia officers”. On August 18, 2011, “Judge” Estifeeva ruled detention for indefinite term, indicating a false arrest date (August 16 instead of August 11, 2011). The complainant’s allegations of terrible dental pain and suffering were rejected.

Another relevant case is that of V.E., citizen of Republic of Moldova, businessman in the transnistrian region. He was “arrested” on March 29, 2011 by representatives of local militia on charges of “deprivation of money”. Within 10 hours following the arrest, V.E. was beaten and threatened with death. Medical assistance was not provided at all. He could not inform his family and contact a lawyer. Throughout March 29, 2011 he did not receive food or water. People who were held in the same cell with V.E. shared food with him. In conditions of impunity and irresponsibility for the status quo in the region, such situations are not singular, becoming a phenomenon in recent year in this area of Republic of Moldova.

Another worrying problem is the unofficial cooperation of the constitutional police with the representatives of the local militia regarding transportation of persons. These cases are not usually documented according to legal constitutional procedures and are not brought to public awareness, given the illegal nature of these facts. In this respect, in 1999 an agreement was signed between the constitutional police and militia from Tighina<sup>16</sup>, by which an obligation of cooperation in criminal matters, particularly in transportation of persons was established. Although this agreement has no legal value, the police continue to transport people to the illegal militia in the transnistrian region.

Similar cases have been registered in 2011 as well. For example, on September 9, 2011 V.F. (yob. – 1986, citizen of RM), residing in Telita village, Anenii Noi district (married, minor child- 4 years) was transmitted by police officers from Anenii Noi to the representatives of the separatist militia in Grigoriopol (6 persons). The police officers took him from home, transported to Anenii Noi for hearing, and released him. Although it was late in the evening, police officers proposed to give him a ride in the village he resides. The young man agreed and went by their car. In Telita village, the police officers drove on the bank of the river Dniester, beat him, placed him into a boat and transported across the Dniester River. There he was transmitted to the representatives of the separatist structures<sup>17</sup>.

More people, victims of the regime in Tiraspol, are forced even now to leave the transnistrian region or even Republic of Moldova. This is due the pressure or the risk of being arrested. Many detainees who were abusively convicted have abandoned their families and home, just to feel safe.

There are many cases where young men, being “hunted” for enrolment in the alleged army in the region, avoid returning to their families, or refuse to see the families in the region in order to prevent being caught and taken by force in the paramilitary structures (mainly students who are study in Chisinau or in some European countries).

Another serious problem remains the kidnapping cases of people from the localities controlled by the constitutional authorities or even from Ukraine. Representatives of militia intensely patrol the neighbouring localities; effortlessly detaining persons, conduct searches and other illegal actions. They also, as citizens of RM, Ukraine or Russia Federation, freely travel through Ukraine, Russia and other regions of RM, working closely with the employees of constitutional authorities and are able to obtain any type of information, to kidnap and transport people, etc. Most victims interviewed by Promo-LEX lawyers in 2011, express distrust in law enforcement authorities and feel unprotected in Moldova in terms of freedom and security of the person. Because of the defective mechanism of the Security Zone, militia and local MGB search

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<sup>16</sup> Locality in the assumed zone with intense security and administered by constitutional authorities and by illegal separatist structures

<sup>17</sup> Raken by force and transmitted to local militia - <http://www.zdg.md/investigatii/luat-cu-forta-de-politisti-si-transmis-militiei-transnistrene>

the police officers of constitutional authorities. Some of them can not work in Tighina or return to their home villages and families in the localities controlled by the illegal regime.

A very important aspect to mention, however ignored in the past about 20 years by the constitutional authorities is that: although structures on the left bank of Dniester River are illegal and their actions violate fundamental rights and freedoms of the population, contrary to its obligations, Republic of Moldova has not and does not insist on a national protection and rehabilitation mechanism of the victims of the illegal regime. Even relatives of victims who denounce actions of these illegal structures to constitutional or international bodies are often intimidated, threatened, persecuted, punished and chased by the regime. Constitutional authorities disclaim any responsibility and continue ignoring the situation, declaring that they have no control over this area.

Constitutional authorities refuse to enforce the norms of national and international law to sanction those who have taken duties of investigator, prosecutor or judge, violating fundamental human rights and freedoms in this area. These happenings take place even if those who have accepted such official capacity and violate human rights are also citizens of the Republic of Moldova, unprecedented circumstances in other areas with frozen conflicts. In the absence of any clear support from the constitutional authorities, victims had no other choice but to leave, perhaps forever Moldova. In host states, they lack financial resources, employment and housing and can easily become victims of trafficking, sexual exploitation, etc. therefore, Republic of Moldova does not protect its citizens, providing minimum guarantees and sometimes are subjected to risk.

Another serious problem concerning freedom and security of the person is the facility of prisoners in transnistrian region. Thus, detention facilities are not part of the penitentiary system of Republic of Moldova. Neither constitutional authorities, nor international organizations have any access to these institutions. Therefore prisons in the region could be considered private, given that they are illegal and run by people who took those duties.

According to some information of penitentiary institutions department, in the transnistrian region, in 2011 in three detention facilities (УИН-1, УИН-2, УИН-3), in prison no.1 (Тюрьма-1), in one detention facility for minors (Воспитательное учреждение), one detention facility for women (Женский участок исполнения наказания), in correctional-health centers (лечебно-трудовой профилакторий), except pre-trial detention isolator (СИЗО) and militia isolators (ИВС) are around 2819 detainees, thus around 508 detained persons per 100000 inhabitants. For comparison, in the remaining part of Republic of Moldova are around 6300 detainees in 19 penitentiaries, thus around 180 detainees per 100000 inhabitants. In member states of EC, according to 2008 statistics, the average is 105 persons. Out of 2819 detainees, 165 are women, 83 minors, 70 have tuberculosis, 167 have HIV/Aids and 671 are held in pre-trial detention isolators. According to unofficial data, the number of detainees would be much higher, considering overcrowding (the medium surface for a detainee is just 2 m<sup>2</sup>). For example: in prison no.1 in Hlinaia are 1000 detainees, in prison no.3 in Tiraspol – 1100 detainees, in prison no.2 in Tiraspol – around 1120 detainees. Detention facilities in prisons and isolators in the region do not comply with international requirement or at least to average accommodation requirements for a long-term.

From statements of relatives and prisoners:

*One of the detention isolator in Tighina is a basement, which is 2 floors to the ground. It has continuous artificial lighting, thus prisoners are deprived of daylight. There is no ventilation system (detainees have the possibility to ventilate the cell only through the door window, when food is provided). Food quality is very poor, containing molluscs and garbage; prisoners often refuse to eat because they claim some substances are introduced in it. The toilet in the cell is a container with a lid. The detention isolator has a common toilet, near the bathroom, which was not cleaned for a long time and the odor persists. The bathroom is in a separate room, with 3 sinks and 2 pans (iron, plastic), there is just cold water, mildew damp walls.*

*Detainees wash themselves together (women with men) in one of these pans. In cell there*

*is no running water, so that prisoners take with them plastic bottles in order to carry water for a whole day. The bathroom is also the promenade area. The cells are made of concrete, very cold and wet, and the floor is also made of concrete. The bed is a wooden platform, placed along a wall. There are no linens. The nurse seldom visits the detainees, asking about their needs through the cell door window (there is no direct examination). The detainees are recommended to refrain from any request, because there are no drugs. Because of the odor, the detainees are forced to smoke intensely.*

In Hlinaia prison, because of contaminated and poor quality water facility, detainees complain of toothache, intestinal pain and serious skin diseases. Information on conditions of detention in this prison is described in ECHR decision in *Ilascu and Others vs. Moldova and Russia* case.

The access to health care is inadequate and in some detention facilities there are no drugs and no competent medical personnel. According to unofficial sources, detainees often die of tuberculosis or other serious diseases due to lack of medical care. For tuberculosis treatment in detention facilities in the region there is only one doctor for this specialization. His working schedule is busy and due to lack of modern medical equipment and technology, patients can not be treated. They are forced to treat themselves. According to a local regulation, for 50 detainees is allowed to use only a single pair of scissors. The probability of infection in such circumstances is evident.

In conclusion, in 2011 in the transnistrian region is registered a worsening situation of freedom and security of the person, the formal legal framework in the transnistrian region being contrary to international regulations. This is reflected in abusive “arrests” by “structures” from the region. Constitutional authorities of Republic of Moldova were unable to get involved and act to face its positive obligations on securing and protecting basic human rights. This demonstrates the need for a mechanism that would guarantee access to justice and fundamental rights of the inhabitants of the region. Constitutional authorities should stop the transmitting process of people from constitutional police to the illegal militia from the transnistrian region. Moreover, Moldova should endeavour to ensure the rights of detained persons in the region.

#### **Chapter IV. Free access to justice, right to a fair trial**

Apart from issues of legality of law enforcement institutions in Transnistria, emerged a dangerous trend in alleged trials undertaken by the regional administration, concerning the violation of the principle of accessibility of the courts. The main problem is related to the use of language in courts. According to Promo-LEX observations, in the transnistrian region, during law enforcement procedures Russian language is exclusively used, thus the majority of population, speakers of Romanian (Moldovan) or Ukrainian language have inadequate conditions in relation to administration and, in some cases, Russian-speaking opponents.

Article 6 of the European Convention stipulates that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide either on violation of rights and obligations of civil nature, or on grounds of any criminal charges against him/her.

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. Everyone accused of a criminal offence, shall be informed promptly, in a language he understands and in detail, of the nature and cause of the accusation against him; as well as shall have the free assistance of an interpreter if he cannot understand or speak the language used in a court.

Article 22 of the local “constitution” stipulates, everyone accused of criminal offence is considered not guilty until proved guilty according to law and confirmed by enforced conviction sentence. The accused is not obliged to prove his innocence.” Article 46 of the same document

stipulates “Everyone is guaranteed judicial protection of rights and freedoms, right to appeal in court the illegal actions and rulings of state bodies, civil servants and public associations”.

Article 4 of the local “Code of criminal procedure” states that “no one shall be guilty unless recognized on the basis and method provided by law. The accused is considered innocent until proved guilty of the criminal offence as required by this Code and enforced conviction sentence”.

According to article 11 of the local “Code of criminal procedure” “Court proceedings are conducted in one of the official languages (Moldovan, Russian, Ukrainian) or in the language accepted by most participants in the process. Procedural documents, according to the present provisions of the Code shall be given to the accused and participating persons, in the translation in their mother tongue or any other language they speak. Criminal proceedings are conducted in Russian”.

The “constitution” of the transnistrian region stipulates in art 12 that “status of official languages on the principles of equality is granted to Moldovan, Russian and Ukrainian languages”.

In this way it is easily noticed the contradiction between the so-called local constitutional norm and the norm of the local code of criminal procedure, which gives clear priority to Russian language and implicitly to Russian-speaking parts involved in the process, in comparison to parts that are not Russian-speaking. This trend is observed in a region where, according to public data<sup>18</sup> confirmed including by regional administration live 31,9% Moldovans, 30,4% Russians, 28,8% Ukrainians. Thus, even if majority of population is ethnic Moldovan they are forced to use Russian language in the alleged courts, being placed in unfavourable conditions in comparison to the system and its members, Russian speaking.

According to Promo-LEX observations, during the so called procedures of the “low enforcement bodies”, regardless of the nature of the dispute, civil, criminal, administrative, Russian language is used exclusively. In this respect, provisions and so-called guarantees provided by local norms are inconsistent with the reality in the region. No person who has received legal assistance from Promo-LEX, and explained in detail the examining conditions did not communicate using other language than Russian in the proceedings of the structure in the transnistrian region.

Moreover, during a televised debated<sup>19</sup>, a victim of the illegal regime, E.V. declared “I have spoken more often in Moldovan language, because the absolute majority of the detainees are Moldovans, citizens or ethnic Moldovans. This fact has always surprised me. I could not understand why I was hearing in prison Moldovan language, Romanian language”.

According to I.C. relating: “I must say that I requested the court to have a translator, but I was refused. I had evidence of my innocence, but they were in Romanian. The detention term was extended. The hearing lasted 7 minutes”. Another person deprived of liberty, A.U, made analogue declarations to Promo-LEX lawyers.

In some particular cases, when during the “criminal” process another language is used than that requested by the person detained, the representatives of the separatist administration sanction the solicitant for daring. Regionally, the administration is trying to ignore, cover up and skip this fact.

Similarly, constitutional authorities have never invoked, in any respect fair trial rights violations, especially in terms of the use of other language than the native one of the person detained, simply because the constitutional bodies do not recognize in any way the process and its legitimacy, without considering technical and specific details.

Most beneficiaries of Promo-LEX services invoked poor quality of legal assistance from the lawyers in the region. The main criticism is the related to the fact that lawyers are under constant pressure from the administration and do not take direct measures to protect the rights of the beneficiaries of fear of persecution. Furthermore, access to lawyers from other regions of the

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<sup>18</sup> <http://pmr-pridnestrovie.es-pmr.com/>

<sup>19</sup> <http://www.eurotv.md/video-emisiune-in-oglinda-22-12-11>

country (Lawyers Association of the Republic of Moldova) in courts in the transnistrian region is maximally limited, prevented with numerous formal obstacles.

In particular, no lawyer from the Bar can not provide legal assistance in the region without having a local “curator” lawyer, however obtaining the consent of such a “curator” is very difficult and expensive.

Given the situation, we believe that decision makers, especially the constitutional authorities and international organizations shall address the problems of fair trials organized by the transnistrian region administration in its complexity, considering all guarantees and international standards, including so minor as ensuring a translator to the person who does not understand at all of what he is incriminated and the consequences to criminal procedure the use of another language than the native one.

## **Chapter V.**

### **Right to private property**

According to international standards, particularly reflected in article 1 of the Additional Protocol to the European Convention: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by law and by general principles of international law”.

Article 37 of the local “constitution” states that “everyone is guaranteed the right to property. The owner, at his discretion, owns, uses and disposes of the property that he owns. No one shall be deprived of his possessions, except by a court ruling. The execution of right to property should not affect the environment, cultural and historic assets, to harm the rights and legally protected interests of other persons or of the state. The right to inheritance is guaranteed”.

Article 5 of the local “constitution” of the transnistrian region provides that “Land, subsoil. Water, forests, air space, and other natural resources are the exclusive property of the state. Lands can be granted to citizens for life possession, with the right to pass this right by through inheritance, but the limits and method of using this right is regulated by law.”

Furthermore, similar rules can be found in other local regulations used in the transnistrian region, which clearly indicate providing some “guarantees” of right to property.

However, some inconsistency between international standard noted and local regulations in the transnistrian region is observed. This contradiction leaves space for disposition of property in favour of high-ranked persons in regional administration.

Thus, if national and international standards stipulate that no one can be deprived of his possession except in the public interest and only according to law, local regulation stipulates that no one can be deprived of his property except by a court ruling. Obtaining a favourable “court ruling” is rather predictable when all “judges” are appointed and dismissed by so called local Transnistrian President, particularly when the regional administration is interested in obtaining certain goods. Moreover, during 2011 in the transnistrian region have been reported multiple cases of forced change of owners. In particular such cases occurred with deprivation of goods by some presumably investors.

Referring to the transnistrian situation, we clearly support the position expressed by many experts, according which the occupying power may, de facto, control the economic resources of the territory, but, de jure, the legitimate owners are the previous ones. Any economic activity jointly undertaken with the separatists or insurgents by another party are made on the party in question<sup>20</sup>. Thus, there are sufficient legal arguments in conformity with the legislation of Republic of Moldova to request cancellation of any document that was signed by parties who do not have this right.

However, we remain deeply concerned about the buyouts of proprietries emerging in 2011 in the transnistrian region. Thus, if according to public information, during 2008-2010 were examined by so called arbitration court in the transnistrian region only 3 legal cases related to

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[www.europa.md%2Fupload%2FFile%2FSumarExecutivaiRaportului.doc&rc=j&q=proprietate+in+”RMN”&ei=of1bS-\\_mF6XgnAPWnKCCaAg&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg](http://www.europa.md%2Fupload%2FFile%2FSumarExecutivaiRaportului.doc&rc=j&q=proprietate+in+”RMN”&ei=of1bS-_mF6XgnAPWnKCCaAg&usg=AFQjCNE8ISaq1-MhzsYS2R1YWpD6gkq0Rg)

failure of respecting the investment obligations by the buyers of the “state or municipal” goods within privatization and then forced return of the property to “state or municipal” property, then in 2011, 10 such requests were examined, of which 9 were admitted during 2011 and one in early 2012.

The right to private property to agricultural land in transnistrian region represents another uncertain issue. Even if since 1993 began dismantling the collective farms (kolkhoz) and therefore the distribution of land sectors, since 1998 the process was so intense, that up till now there is no clear administration mechanism of the right of landowners.

Although people formally have certificates that confirm the ownership of a land, in reality they have only the certificate and have no access to use the land. Most of the land with large surfaces, sometimes of former sovkhoses and kolkhoses, are given in administration to some economic agents who are loyal to the local administration for up to 99 years.

Similar situation occurred in 2011, but land was taken from individuals and from legal entities with right to property. Relevant are the examples of the enterprise “Dnestr”<sup>21</sup>, “Kvint”<sup>22</sup>. Moreover the situation of the land in the village Cremenciug is particularly eloquent and confirms the happenings in the region since the take over in 1992. De facto, this is a situation where one person, the alleged local President of Transnistria, administers everything.

Only in early 2012, the transnistrian region administration in the person of the new local leader, Evghenii Sevciuc addressed this particular issue and planned to organize an inventory in this field. However the risk is this inventory will actually be a reassessment of the current landowners in the event of changing them as in the example given above in Cremenciug village.

The situations described above, prove the formal nature of the right to property in the transnistrian region in relation to the will of separatist region administration.

Moreover, Promo-LEX was informed several times about the situations where persons who opposed to undertake the property rights over the goods were deprived of the land by more or less barbaric ways. Relevant in this sense is the case of V.E.<sup>23</sup>, businessman in the region, who on March 29, 2011 was arrested by the illegal bodies in the transnistrian region on charges of asset misappropriation. He was illegally deprived of liberty and tortured and the representative of the law enforcement bodies requesting one million US dollars for the alleged compensation of damages brought to the victim. Through various fraudulent schemes, V.E. was dispossessed of the shares in the companies he was administering. His private house was seized and the family was forcibly evacuated from the house, including his minor child.

If in the case of friendly take over or the change of landowner the constitutional bodies did not intervene in any way, if imprisonment occurred in this process and the constitutional bodies became aware of the situation, some efforts to analyse the issue closer, intervening at least on the right to freedom of the victim. Unfortunately there are no clear actions taken to redress the right to property over the seized or even removed goods.

Thus, the property rights in Transnistria is a formal one, and if the regional administration leaders are willing to take over ownership from one entity to another there are available various methods, from orders of the alleged local president to deprivation of liberty and forced property take over.

## **Chapter VI.**

### **Freedom of thought and conscience**

According to article 18 of the Universal Declaration of Human Rights, everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom to change the religion, as well as either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

According to article 9 of the alleged local “constitution”, no religion can be declared as “state” religion, the region being secular. Although the Orthodox Church is the determinant

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<sup>21</sup> <http://www.president.pmr-gov.org/zakon/index.php?category=2&id=3414>

<sup>22</sup> <http://www.president.pmr-gov.org/zakon/?category=2&id=3558>

<sup>23</sup> <http://promolex.md/index.php?module=news&item=711>

church in the region, being considered part of history.

Formally in the eastern part of Republic of Moldova, religious cults can freely organize their activity, following formal registration at the local registration body. Internal rulings also consider religious groups that are not subject to registration. However formal notice on the creation of the group is required.

In order to register a religious organization it must have at least 10 members, over the age of 18 years, residing permanently in the region and be capable of confirming residence in the region. It shall be also presented the status of the religious organization, minutes of the founding meeting, evidence of activity of 10 years or more, the religious doctrine, contact information of the governing body of the organization and proof of payment of state fee. A local religious organization can be as well registered as part of a central religious organization, which must contain at least three local religious organizations. The religious organization must inform annually the registration authority about intentions to extend its activity.

At first sight, the registration procedure is identical to that carried by the constitutional authorities, however, local legal acts provide some possibilities that are designed to delay, prevent or even block registration of certain religious groups. On March 30, 2009 the local separatist leader established Council of Experts to organize religious expertise for registration. This body, subordinated to the leader, has the role to assess the constituting acts and to examine whether the activity of some groups are convenient to the regime. The assessment includes examination of religious basis, organization and conduct of rituals and other aspects of exclusively religious cult. According to regulations, the Council may examine the documents up to 6 months.

There have been cases of refusal or suggesting recommendations on amending or changing the content of the constituting act, therefore there was unfounded delay in the registration process and during the reporting period. "Jehovah's Witnesses", "Lutheran Church", etc have reported such cases.

Generally religious cults prefer to register at constitutional bodies and the component bodies register in the transnistrian region to avoid cases of activity prohibition in the region. In many cases, religious cults are forced to register at central bodies in the region. This registration would create great difficulties in administration of the cult.

The local "Penal Code" proved the right to interfere in the activity of religious organizations, only if their activity violates law. Similarly committing any crimes related to hatred based on religion is considered as an aggravating circumstance.

Despite these provisions, restrictions on the right to freedom of religion were noted particularly in relation to the religious cult "Jehovah's Witnesses", who during reference period informed about a biased attitude of militia authorities, which in most cases refuse to examine the cases of aggression towards members of the religious cult. It is generally known the official position of Tiraspol administration and representatives of the Russian Orthodox Church in the region regarding this cult, considering it discriminative.

Persons who refused to enrol to military services in the so-called transnistrian army have court cases on conscientious charges. There is no information on the criminal cases filed in previous years, or according to some data from 2009, there were over 200 criminal cases. The regional government continued to persecute members of Jehovah's Witnesses particularly for their conscientious refusal of military service.

The problems related to religious sites have persisted in 2011. Lutheran Church and Catholic Church did not receive their goods back. Lutheran Church, cult registered by the constitutional authorities in Chisinau, claim several building owned until the inter-war period. However, the requests were not respected. The Church unsuccessfully tried to buy land in Tiraspol for a church building, but was repeatedly refused. The region administration offered a sector of land proved to be an old Lutheran cemetery, therefore unacceptable for congregation.

On the other hand the Russian Orthodox Church received maximum support from the regional authorities to strengthen its position in this territory, including through submission of

the churches, even those that did not belong to them in the past.

We must acknowledge that the above-mentioned problems are known by Tiraspol administration, however they are considered as normality. Nonetheless the constitutional authorities did not closely regard the problems confronted by the regional citizens. The issue of freedom to religion had not been included on the political discussions agenda during the debates on transnistrian conflict.

Even if the evolution of freedom of religion in 2011 in the transnistrian region demonstrated a negative dynamic compared to 2010, the trend of marginalization of cults and religions other than Orthodox, persists. In this respect are created local blocking mechanisms of registration and free organization of these cults.

Sanctioning religious followers who refuse enrolling in the so-called transnistrian army on conscience ground represents a serious interference with fundamental rights.

## **Chapter VII.**

### **Right to education**

According to provisions of article 2 of the additional protocol to the European Convention, no person shall be denied the right to education. In the exercise of any functions, which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

According to article 41 of local “constitution” of the transnistrian region, “Everyone has the right to education. Citizens are provided general and vocational secondary education in state educational institutions. Everyone has the right to receive higher education in state educational institutions, following a competence competition organized by the institution. General secondary education is mandatory. Transnistrian Moldovan Republic enforces educational state standards, supports various forms of education and self-education.”

Although local regulation corresponds with international standards, in reality there are many issues that violate the right to education.

Firstly, in the transnistrian region is prohibited the use of Latin alphabet for Romanian language (Moldovan). Even worse is that this remains to be expressly stated in local legislation. Therefore, according to article 6 of the local “law” on the use of languages on the transnistrian territory, “Written Moldovan language in all cases of use is made with the Cyrillic alphabet. Imposition of Latin script for Moldovan language leads to liability under law”. According to article 200<sup>3</sup> of “local code on administrative offenses”, violation of the provision of the law on spoken languages can be penalized by a fine of 50 conventional units. Even if Promo-LEX did not register any liability or sanctions on this violation and imminent risks were permanent over the last 20 years.

Thus, there is continuous violation of right to education in native language for Moldovan and Ukrainian ethnic people. Although in the region live 1/3 of Moldovans, Ukrainians and Russians and their languages are declared “official”, according to some public information<sup>24</sup>, in the transnistrian region are 124 Russian-speaking schools, 33 Moldovan-speaking schools, 14 mixed Russian-Moldovan speaking school, 2 Ukrainian schools and 4 mixed Russian-Ukrainian schools. From a total of 50000 children in the region, around 40000 children study in Russian, 8000 in Romanian (Moldovan) and 1000 in Ukrainian.

Accordingly the ration of population by ethnicity in the region is approximately the same for about 30%, but the ratio of schools ensuring the study in native language is dramatically disproportionate. So, if to believe the figures<sup>25</sup> shown by the local “ministry of education”, then in the transnistrian region are 75% Russian schools, 20% Moldovan schools (Cyrillic alphabet) and 2% Ukrainian schools and only 2% Moldovan schools (Latin alphabet).

Equally serious and discriminatory is the situation in higher education system in the

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<sup>24</sup> <http://www.pridnestrovie-daily.net/gazeta/articles/view.aspx?ArticleID=23246>

<sup>25</sup> <http://www.olvia.idknet.com/edic.html>

region. Following an analysis of the admission plan<sup>26</sup> for academic year 2011 at the local University in Tiraspol, it was observed that 1696 places were provided from the state budget. Of these, 130 were reserved for Moldovan-language groups, which accounts for 7,67% of the total budget provided. Accordingly, more definite and more serious is the situation of teaching in Ukrainian language with only 15 places reserved, accounting for just 0,89% of the total budget.

Therefore, the figures demonstrate a clear trend of Russification of the population in the transnistrian region, particularly through education. This is a practice that continued from Soviet times, but to a much more pronounced intensity in the last 20 years in the eastern region of Moldova.

## **Chapter VIII. Women rights and domestic violence**

In Transnistria domestic violence is treated as a private matter and not a social problem. Due to the fact that regional administration is not subordinated to the constitutional authorities, Law no.45 of Republic of Moldova on the prevention and combating domestic violence<sup>27</sup> is not enforced in the region, and victims of domestic violence, citizens or residents of this region are not protected by state.

Republic of Moldova has ratified several international conventions on human rights, including the International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>28</sup> and United Nations Convention on Elimination of All forms of Discrimination against Women (CEDAW)<sup>29</sup>. By ratification of CESCR, the State acknowledged the necessity of providing family support and article 10 of the Covenant refers to the domestic violence phenomenon. With ratification of CEDAW, Moldova condemned discrimination against women taking the obligation “to contribute by all adequate means and without delay, promoting policy of eliminating discrimination against women” by taking actions under Article 2 of the Convention. General recommendation no.19 issued by CEDAW Committee addresses the issue of violence against women, requesting the member states to take positive measures to eliminate all forms of violence against women<sup>30</sup>. This general recommendation provides examples of gender-based violence, including domestic violence, beating, rape, other forms of sexual assaults, and forms of mental violence, which are perpetuated because of traditional attitudes.

According to General Recommendation no.19, gender-based violence “includes actions that cause harm or physical suffering, mental or sexual, threats of such actions, coercion and other deprivations of liberty”. Moreover the recommendation states that the obligation of member states to protect people from gender-based violence is not limited to cases of violence committed by/or on behalf of the state. Member states “may be held responsible for private actions in cases when they fail to react with sufficient diligence to prevent violation of rights or to investigate and to punish acts of violence, as well as to provide compensation”.

With the adoption of Law no.5 of 2006 on ensuring equal rights between women and men<sup>31</sup>, Republic of Moldova made a significant step towards elaboration of the legal and institutional framework for ensuring gender based equality and establishing an efficient system to address violence against women.

Considering the recommendations of CEDAW Committee, on March 1<sup>st</sup>, 2007 the

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<sup>26</sup> [http://www.spsu.ru/index.php?option=com\\_content&view=article&id=564:-2011-&catid=27:2011-02-18-08-43-47&Itemid=138](http://www.spsu.ru/index.php?option=com_content&view=article&id=564:-2011-&catid=27:2011-02-18-08-43-47&Itemid=138)

<sup>27</sup> Law on prevention and combatting domestic violence no. 45-XVI, of March 1, 2007, Official Law record of Republic of Moldova, no. 55-56/178, March 18, 2008. The law was enforced on September 18, 2008, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=327246>

<sup>28</sup> Ratified by Parliament Decision no.217-XII of July 28, 1990.

<sup>29</sup> Ratified by Parliament of Republic of Moldova according to Decision no. 87-XII din 28 aprilie 1994, în vigoare pentru Republica Moldova din 31 iulie 1994.

<sup>30</sup> Comitetul ONU pentru eliminarea discriminării împotriva femeilor, Recomandarea generală nr. 19, Violența față de femei, sesiunea a unsprezecea, 1992.

<sup>31</sup> Legea privind asigurarea șanselor egale pentru femei și bărbați, Nr. 5-XVI, din 09 februarie 2006, Monitorul Oficial al Republicii Moldova, Nr. 47-50/200, 24 martie 2006.

Parliament of Republic of Moldova adopted Law no.45 on prevention and combatting domestic violence, enforced on September 18, 2008. According to article 2 provisions of that law, domestic violence is defined as: “any deliberate action or inaction, except the self-defence or defence, verbally or physically manifested, through physical abuse, sexual, psychological, spiritual or economic or the infliction of moral or financial pecuniary, committed by a family member against other family members, including against children and against common or personal property”. Significant is that provisions of Law 45 shall extend to cohabitants (if this is the case), therefore the Law provides protection to “family members” within both formal and informal relations. Moreover from September 3<sup>rd</sup>, 2010 domestic violence is incriminated in art.201<sup>1</sup> of the Penal Code of Republic of Moldova, the aggressor obtaining up to 15 years of prison.

According to the law in Republic of Moldova, currently is possible to obtain an order for victims of domestic violence both in civil and criminal procedure, the court ruling such request up to 24 hours of its submission.

Considering that the separatist administration do not enforce the constitutional norms of Republic of Moldova, in the transnistrian region there is no mechanism or regulation on prevention and combatting domestic violence. In such situation, victims of domestic violence are not protected. They are not provided with the right to appeal in front of national courts, law enforcement bodies or other relevant institutions. Or, if victims of domestic violence could, in principle, address to courts in order to obtain protection ordinance, these protection measures would be executed in the eastern part of Republic of Moldova, due to the lack of effective control over this territory.

During 2009-2011, a local organization<sup>32</sup> conducted sociological studies on domestic violence in the region. According to these studies, one in four women was subjected to physical and economic violence in the family. Studies also show that 35,7% of all women participants at the survey, have been subjected to physical violence by their men. Moreover, women are mainly subject of psychological, physical and sexual violence. In most cases domestic violence goes unpunished. 79,9% of the women subjected to domestic violence have not requested medical assistance; 75,4% of women did not report violence cases at local militia; 81,5% of women have not told their families and friends about their problems.

However according to “local Ministry of internal affairs” in the region, over 60% of all murder cases occur in families.

According to another study conducted by another local organization<sup>33</sup>, 40% of the children surveyed have witnessed domestic violence in their families. Of them, 56,3% have witnessed acts of psychological violence, 23,4% have witnessed physical violence, 15,6% have witnessed economic violence and 4,7% sexual violence.

Meanwhile, 32% of children respondents admitted that were victims of domestic violence. However, experts mentioned that the number of children-victims of domestic violence is less than the number of children-witnesses of domestic violence.

Locally, in the region there is no special law designed to protect the victims of domestic violence or to prevent the phenomenon of domestic violence, as there is no institution for the protection and assistance of domestic violence victims. Thus, cases involving domestic violence are under “Penal Code” provisions or “Local Code of Administrative Offenses”, relating to murder, serious injury of the physical integrity, life attempt and others.

The victims case, usually, is ruled either with imprisonment of the offender for a certain period of time, depending on the extent and consequences of injury, or with reconciliation, or the victims leave their home. Most victims are reluctant to seek help at local authorities, considering the nature of the queries, ignorance and humiliation in the investigation and trial.

One of the many cases of domestic violence in the region<sup>34</sup> had the victim the aggressor’s

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<sup>32</sup> Declarație de presă, disponibilă pe pagina: <http://nr2.ru/pmr/367162.html>

<sup>33</sup> Declarație de presă, disponibilă pe pagina: <http://www.nr2.ru/pmr/370205.html>

<sup>34</sup> Articol publicat în presă, disponibilă pe pagina presă, disponibilă pe pagina

former wife, which although is divorced, is forced to live in the same house with the former husband. In a moment of anger, among the insults brought to the victim, the aggressor physically injured her, completing the abuse with a knock with an ax, while threatening with death. The victim managed to escape at the neighbours, where called the police. The aggressor was arrested and according to investigative body, a criminal prosecution had to start, on the offense of “threatening with murder or causing serious injuries” under the local “Penal Code”, which provides imprisonment up to 2 years.

However, under the constitutional provisions, for the offence committed, the perpetrator would have been brought to criminal liability under art.201<sup>1</sup>, par. (3) of Criminal Code, risking up to 15 years imprisonment. Moreover, in the case of release of the perpetrator from administrative arrest until the completion of criminal prosecution, the victim would have had the possibility to request a protection ordinance for a period of 3 months. So far, there has not been issued any protection ordinance for the victims of domestic violence in the transnistrian region.

Domestic violence remains one of the most serious problems of human rights in Republic of Moldova, including Transnistria.

## **Chapter IX. Children rights**

In 1989, the United Nations General Assembly adopted the Convention of children rights, which has quickly become the most ratified treaty in history, being ratified by almost all countries, including Republic of Moldova on December 12, 1990. Since then, the Government of Republic of Moldova must permanently ensure that every child enjoys all rights enshrined in the convention without exception.

Despite these international commitments, constitutional authorities have shown weaknesses in achieving and securing children rights from transnistrian region. They do not have statistics on the number of children born, abused, trafficked or abandoned in the region. The failure to exercise effective control over the eastern territory is not an excuse, because the interests of children in the light of positive obligations must be treated with superiority. Moreover, authorities should not rely solely on the activities of civil society and international organizations in the region, assuming only the monitoring role. On the contrary, they are to take concrete and prompt measures.

In previous reports, Promo-LEX has notified authorities about the problem of registration failure of children in the region with national identity cards. This problem persists even now. Thus, hundreds of children born in Transnistria remain unregistered by the constitutional authorities. Thus they are unable to identify, monitor, assist and ensure children’s rights within Moldova. According to local data, in the transnistrian region live around 100000 children. Of them, about 1586 lack parental care, 408 are orphans, 600 are social orphans and around 1715 with disabilities. Over 4000 children in the region need complete and permanent care<sup>35</sup>. Many children, because of the difficult situation in their families, abandon schools. These data, although unofficial, demonstrate that in the region are serious problem in terms of social protection of children.

Meanwhile, constitutional authorities have refused to respect their responsibilities in providing social support, through children allowances. The argument of the national/central authorities is that all children in the region are already socially protected by the regional administration. In this regard, is relevant the case of S.Family in Grigoriopol village.<sup>36</sup>

*Ms. S originates from Grigoriopol and is mother of 4 minor children. Her husband is in a “prison” in the region. She submitted a request to the constitutional authorities (National House of Social Insurances) to establish and receive allowances for her children, as stipulated in the legislation of Republic of Moldova. The National authority refused to provide allowances for her*

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<http://pmrinform.com/ru/news/20111228/01853.html>

<sup>35</sup> <http://www.radiopmr.org/programs/1818/>

<sup>36</sup> <http://www.europalibera.org/content/article/24482869.html>

children (all citizens of RM), because she is residing on the territory controlled by the separatist structures in Transnistria. Ms. S took legal action that was rejected by the Supreme Court on the same grounds<sup>37</sup>. On January 4, 2012, Promo-LEX lawyers representing interests of S.Family, have sent a complaint to ECtHR accusing the RM Government of violating art. 6,8,13,14, art. 1 of the Protocol 1 of European Convention. The applicant claimed that she was discriminated on grounds of residence in relation to the right of allowance for raising children. She argues that RM legislation on social protection does not include conditions of residence, such as be resident of the territory controlled by the Constitution, situation that led to a different treatment between persons in similar situation.

Another problem identified during the monitoring period is the absence of constitutional guardianship authorities in the region, responsible for organizing guardianship, adoption record, etc. according to Art.35 of the Civil Code of RM, guardianship of children is established by the guardianship authorities, which are authorities of local public administration at residence. De jure, the guardianship established by regional authorities has no legal effect in Moldova. Therefore, tutors are unable to record identity cards for tutelary, particularly to protect their rights and legitimate interests. Consequently, tutors are required to address the constitutional courts in order to legally recognize the establishing of guardianship. But here is a problem. The courts are not entitled by law to rule on the guardianship established by illegal documents issued by the regional government. Moreover, both guardianship and decisions of revocation of parental rights are illegal, as are issued by illegal bodies and courts.

Thus, over 2011, just in Bender court were examined 57 cases on the enforcement of children rights (such as consent of adoption, establishing the domicile of the child, revocation of parental rights and establishing the guardianship), where the presence of the guardianship authority was obligatory. In 2012, in the same court are already 50 similar cases. A similar situation is observed at the courts in Grigoriopol, Ribnita, Slobozia. Competent authorities, sporadic and occasionally solved problems, for example at Bender Court as guardianship authority during 2011 has participated the department of Social and Family Protection from Anenii Noi, which during 2012 refused to be present in courts on grounds of violation of territorial jurisdiction.

The same problem is with children adoption<sup>38</sup>. Adoptive parents have to submit requests to the constitutional courts to solve repeatedly adoption procedure. However, in cases when children have reached adulthood, it is impossible to establish the adoption registration, because it did not occur under Moldovan law. The Court in Tighina has referred the above-mentioned issues to the Ministry of Labor, Family and Social Protection, but things have not changed.

Here we mention of cases of physical/psychological abuse and sexual on children in the region. According to a local organization, out of 160 interviewed children, 77 were abused in school, 64 witnessed psychological violence in family, and 51 children said they were abused in the family<sup>39</sup>. A special local law on protection of children against physical, psychological, sexual abuse or domestic violence does not exist in the region. Moreover, such actions are considered, according to general qualification of criminal and administrative law, phenomenon-taking scale.

Particularly serious is the fact that in the region, especially those with disabilities and special needs are not protected, not even in the specialized institutions in the region.

Thus, over 3 years, an employee of the local ministry of defence from Tiraspol, has continuously sexually abused 4 minors with mental disabilities from the psycho-neurological boarding school in Tiraspol.<sup>40</sup> In 2011, the aggressor was sentenced to imprisonment by the regional courts. However, the employees and officers of the institution remained unsanctioned, continuing their activity. Promo-LEX notified the prosecution of the above facts, requesting the initiation of criminal prosecution under art.172 of the Penal Code of Republic of Moldova. On January 30, 2012, Prosecution in Tighina refused initiation of criminal prosecution because

<sup>37</sup> <http://www.csj.md/admin/public/uploads/Dosarul%20nr.%203r-820-11%20%C5%9Eutac%20vs%20CNAS.pdf>

<sup>38</sup> Potrivit unor date regionale, în 2008 în regiune au fost adoptați i – 17 copii, 2009 – 23 și în 2010 – 36 de copii.

<sup>39</sup> <http://novaiagazeta.org.ru/index.php?newsid=3357>

<sup>40</sup> <http://www.nr2.ru/pmr/363700.html>

*of the lack of offense and because of the political situation. Later, the prosecutor's ordinance was contested and through court ruling prosecution was required to conduct further investigation. The court warned the prosecution that the plea invoked is inadmissible in the light of positive obligations of Moldova guaranteed by article 1 of European Convention.*

We believe that this judicial precedent will be relevant in identifying child protection mechanism in the transnistrian region. At least after 20 years of neglect of the fate and rights of hundreds and thousands of people, are needed clear and firm actions to enforce legal instruments, reliable and effective to protect human rights in this region of Republic of Moldova.

Given the above-mentioned findings, in order to ensure child protection rights it is appropriate that the concerned actors to take the following actions:

- 1) Establish the process of registering the children born in transnistrian region. Facilitation of issuing birth documents for children whose birth was not legally registered;
- 2) Organize a census of children in the region. Create a database of children in need, abused, with special needs, disabled, abused and trafficked, etc.
- 3) Establish the guardianship authority for the transnistrian region, responsible for enforcing guardianship, record of children, adoption procedure, etc.
- 4) Expansion of child ombudsman activity from RM to transnistrian region;
- 5) Social non-discriminatory insurance of children in transnistrian region;
- 6) Adoption of a system and efficient mechanism of protection of fundamental rights and freedoms of Transnistrian residents.

## **Chapter X.**

### **Recruits and military rights**

On the territory of Republic of Moldova, contrary to international law and national legislation, Moldova's citizens are forced to make "oath" and to "serve" an unconstitutional regime. Youth in the region are told that they will take the military service in paramilitary structures and that they are required or have the possibility to complete military service in Russian Federation, Ukraine or Republic of Moldova, if they are citizens of these states.

Thus, article 11 of the local "Constitution"<sup>41</sup> stipulates that "armed forces" of the region are established to protect the local "sovereignty and independence", and article 58 stipulates about the "sacred obligation" of every individual to protect the separatist region<sup>42</sup>. References of "military obligations" are included in almost all regional norms, and their enforcement is achieved through punitive norms of local "Penal Code".

The problem of forced enrolment, as already mentioned, is not characteristic only for Moldovan citizens in that region. Local legislation "allows" double citizenship and regional government consider all permanent residents of the region as "local citizens". Thus, local residents of the region who are citizens of Moldova, Ukraine, Russia etc. are enrolled in the illegal paramilitary structures.<sup>43</sup>

According to local regulation, enrolment in paramilitary structures in region is twice a year: April 1<sup>st</sup> – August 10<sup>th</sup> and October 1<sup>st</sup> – December 30<sup>th</sup> (constitutional authorities organize enrolment during May 1<sup>st</sup> – June 30<sup>th</sup> and November 1<sup>st</sup> – December 31<sup>st</sup>). In the region, information about the youth who are to be enrolled is in the "military records", are sent to local migration services, customs officers and militia. They are obliged to deny the request for domicile withdrawal of these youth. In the same circumstances, another responsibility is to monitor the activity or movement of youth, being responsible for their forced enrolment.

Only in 2011 the representatives of local migration services detained at local control offices 21 persons with search notice for "evasion" of "enrolment" in illegal paramilitary

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<sup>41</sup> <http://vspmr.org/?Part=216>

<sup>42</sup> Защита Приднестровской Молдавской Республики - священный долг для **каждого**. Законом устанавливается всеобщая воинская обязанность

<sup>43</sup> Art.1 al „legii” cu privire la serviciul militar obligatoriu stipulează că deținerea dublei cetățenii nu scutește cetățenii regiunii de obligațiunea militară în regiune

structures.<sup>44</sup>

For avoiding enrolment, recruiting age youth can be deprived of liberty for a term of up to 2 years or to receive a fine amounting to 500 euro, according to local criminal law.

For the purpose of local criminal law, avoiding enrolment is by: failure to present at subpoena at the military stations; violation of military record; leaving the region during enrolment campaigns; failure to inform the military offices on resettlement place of residence; on grounds of confession or peace, etc.

In such situations, local military offices inform the local militia, who makes the lists to identify and establish the location of youth who would avoid enrolment. Basically, military offices are limited to sending the summons by post or hand them directly to youth in primary military records (16-17 years). For this reason, many young people are caught on streets, in schools, clubs, escorted to local militia offices, where they are informed about some criminal case for avoiding enrolment.

Once enrolled, the youth obtain the status of local “military” and in 1-2 weeks take the military oath, being forced to adjust to the casern program. The atmosphere is tense, with numerous abuse cases and problems in these structures. Many young have complaint about cases of harassment (*dedovshchină*), torture and other forms of punishment and cruel, inhuman and degrading treatment in the paramilitary structures in the region (burning on body of items, kicks on the head, push-ups at night in the courtyard of the casern, sinking the head in the toilet, kicks on various parts of the body, forced harmful work, turns for more than 3 days without interruption, strangulation, etc.).

For breach of military discipline, militaries are isolated in cells (*гауптвахты*) within paramilitary units. According a local ombudsman report, no room corresponds to international standards or at least minimum detaining standards<sup>45</sup>. The facilities of these institutions have created a similar atmosphere to the one in prisons. The soldiers can be subjected to disciplinary detention for a period of 3-10 days. After a monitoring visit at a “military unit” in Ribnita, local ombudsman found that detention facilities did not meet sanitary and hygienic norms, narrow space, lack of thermal isolation and ventilation, dirt, etc. The military unit’s cells in Tiraspol is the same situation: lack of beds, bed sheets, poor lightning, there is no bathroom (only cold water allowed once a day), the toilet is in the backyard (the soldiers are allowed to go the bathroom once a day), overcrowding is normal (because of overcrowding, prisoners sleep on turns, on the floor). As a disciplinary measure, prisoners are forced to sit upright during the day only.

Many conscripts do not resist the treatment (irregular relationship, officer’s behaviour, etc.), therefore they leave the military unit. Only in 2011 there were 276 “deserters”, 121 brought to criminal liability. Same report notes that in 2010 for the violation of “irregular relationships” were initiated 9 criminal cases by local military prosecution.

Another serious problem is the enrolment of youth with various pathologies. According to some information provided by some beneficiaries of Promo-LEX, the youth are intentionally superficially examined. Every fifth school student graduates with chronic and endocrine diseases, malnutrition. Obviously, they cannot be enrolled, thus they are declared unfit or the treatment is delayed. However, after being examined by the so-called “military medical commission”, only 19-20% of the total number of recruits, they are declared unfit.<sup>46</sup>

*C.S. from Ribnita has a kidney disease. Following the medical examination by the local medical commission, he was declared fit for military service and incorporated in “transnistrian army”. His mother could not demonstrate the unfitness of his son. The military unit commander assured her that her son would be released as soon as they find out that his health worsened.*<sup>47</sup>

*According to another case analysed by Promo-LEX, a young man from Ribnitsa was subjected to a military medical examination by the constitutional authorities. He was*

<sup>44</sup> <http://www.nr2.ru/pmr/374919.html>

<sup>45</sup> [http://ombudsmanpmr.org/doclady\\_upolnomochennogo.htm](http://ombudsmanpmr.org/doclady_upolnomochennogo.htm)

<sup>46</sup> <http://tv-pmr.com/news.php?id=11097>

<sup>47</sup> Caz din practica Promo-LEX

*declared unfit for military service. Meanwhile, a medical commission from Ribnitsa declared him fit for military service and sent him a summons for enrolment.*

*In June 2011, E.G. was enrolled in the local army. According to medical diagnosis, the young man suffered from scoliosis, phase I, osteochondrosis, chronic lower-back morbidity, flat feet in Phase II. After a week of military service, E.G. got seriously ill. He was hospitalized in the health unit for 2 months, where he took only painkillers, as prescribed by doctors. By the end of this period, E.G. could not move because of foot paralysis.*<sup>48</sup>

The condition in the transnistrian army and the lack of guarantees from the constitutional authorities determines the young men to seek alternative measures to avoid enrolment (bribery, pretending the existence of a disease, migration, etc). However, the repressive bodies of the region often severely punish some in order to intimidate others.

At least 8 young men remain with search notice by local law authorities, and local prosecution for avoiding enrolment searches another 17. In 2009, local courts have examined over 239 criminal cases for “military offenses”. “Annually, over 400 young men avoid enrolment and study in Chisinau”, mentioned the Minister of Defence in a press release.<sup>49</sup>

Regional authority prohibits civil service (as alternative), although young citizens of this country have this right provided by national law. Thus, young men with pacifist, religious or human beliefs are forced to enrol in an illegal paramilitary structure, against their will. If they refuse enrolment, they are fined or convicted to imprisonment, or searched by legal authorities for avoiding enrolment.

*S.V. from Tighina refused to sign the order of enrolment in transnistrian army because of religious beliefs. He was fined for refusing enrolment with around 1300 USD.*

However, even if they are held criminally liable for refusing enrolment, they are repeatedly called to the local enrolment commissions. Moreover, the conviction rulings of persons who refused enrolment on religious grounds are publicly announced to intimidate the population.<sup>50</sup>

Although in the transnistrian region are registered several religious cults (Orthodox Church, Jehovah’s Witnesses, Lutheran Church, etc.), their members are confronted with serious problems during enrolment campaigns, being forced to perform military service for an illegal regime. Constitutional authorities did not make substantial efforts to protect fundamental rights and freedoms of these young communities and people.

Local legislation provides the exemption of military service in favour of another civil service on the territory of another state. However, there were reports of enrolment of young people who performed civil service or the Commissioner intentionally broke their military book. Civil service is not considered a reason for exemption from military service.

The initiation of judicial cases against “enrolment commission” and/or “republican commission” led to rejection of actions of young men with religious and pacifist beliefs. The basic argument of local courts is that constitutional authorities law provisions do not recognize civil service.

In a rather special situation are the reservists of the Armed Forces of Republic of Moldova, residents of transnistrian region. They are forced to enrol in paramilitary structures. In particular are enrolled students who have studied in other region of the country and have military training from the military departments of the educational institutions concerned. To discourage the phenomenon, the separatist administration does not accept, but seize or destroy military books issued by constitutional authorities. Meanwhile, some employers of the region do not employ young men who present their military books issued by constitutional authorities, and local administration refuse to register at their home location, where they were born and lived with parents.

Given the above findings, to ensure the rights of conscripts and recruits we consider

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<http://profvesti.org/2011/10/01/6578/#comment-1528>

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[http://www.prokuror-pmr.org/index.php?option=com\\_content&task=blogcategory&id=0&Itemid=4636](http://www.prokuror-pmr.org/index.php?option=com_content&task=blogcategory&id=0&Itemid=4636)

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<http://www.nr2.ru/pmr/271760.html>

appropriate the following actions:

- 1) Elaborate informational programs of citizens on their constitutional rights and obligations, including military;
- 2) Military registration of youth in the transnistrian region at their first registration with identity cards, by Ministry of Informational Technology in partnership with Ministry of Defence;
- 3) Send summons for military medical commissions to young citizens according to residency addresses registered by IS “CRIS Registru”, during September 1<sup>st</sup> – January 1<sup>st</sup>;
- 4) Issue recruit certificates to young people in the region at the moment of passing the medical examination;
- 5) Amendment of p. 9 of military book for the citizens of Transnistria, who have taken military service at military departments with the note: Completed Military service, according to art. 5 of Law no. 1245 of 18.07.2002 on training citizens for homeland defence;
- 6) Enrolment of citizens fit for military service from transnistrian region in the Armed Forces of Republic of Moldova;
- 7) Initiate criminal prosecution for organizing and leading illegal paramilitary structures in the transnistrian region and prosecute those responsible;
- 8) Adopt an efficient system and defence mechanism of rights and fundamental freedoms of citizens of transnistrian region.

## **Chapter XI.**

### **Causes from the Transnistrian region to the European Court of Human Rights**

#### **Petitions communicated to respondent Government:**

1. On August 23, 2011 the European Court of Human Rights (ECHR) decided the examination of the case **Eriomenco vs. Moldova and Russian Federation**<sup>51</sup>, case no. 42224/11, submitted by the lawyers of Promo-LEX on 01/07.2011.

In the case **Eriomenco vs. Moldova and Russian Federation**, Vitalie Eriomenco is the plaintiff, citizen of Republic of Moldova, resident of Slobozia. According to ECHR’s findings:

On the arrest of the plaintiff and alleged transfer of his property.

The applicant is a businessman in the transnistrian region. Also he is the co-founder and director of several private limited companies based in the region. V.P. is his main business partner, with whom he found a company.

According to the plaintiff, transnistrian militia arrested him on March 29, 2011 at around 9 am. Militia officers had two other persons arrested. A. and R., who came to audit one of the companies at the request of V.P. Following detention, he was humiliated and intimidated, including A. and R. in order to be forced to surrender all proprieties to V.P., including his shares in companies or to pay V.P. the sum of 1 million US dollars. The plaintiff was transported at the Economic Crime Division within the “ministry of domestic affairs”, where he was accused of having extorted money from V.P. For 10 hours in custody, the plaintiff declares he was beaten and threatened with death by the employees of the concerned division. Medical assistance has not been granted. The plaintiff was unable to inform his family of his arrest, nor contract any lawyer. During March 29, 2011 he did not receive any food or water.

On the same day, the transnistrian authorities conducted a search at his resident and started to seize the property. The plaintiff’s minor son was expelled from the house, being unable to return to retrieve things. Currently, the plaintiff’s son lives with relatives.

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<sup>51</sup> <http://lhr.md/news/285.html>

On March 29, 2011 at midnight, the plaintiff was transferred to a pre-trial detention facility in transnistrian region. He says that ill treatment continued here. On April 3<sup>rd</sup> and 5<sup>th</sup>, he was forced to sign all minutes dated March 29, 2011 by which the applicant offers R. his shares in companies. According to a letter of June 7, 2011 the “ministry of justice” in the transnistrian region, in the register of local entities were introduced changes in regard with the change of director of companies, in person of R.

On detention facility and health situation of the plaintiff.

According the plaintiff’s declaration, he was detained in prison in Tiraspol over the period of April 29 to May 17, 2011. It seems that at the moment of submitting this petition, he was still imprisoned. The plaintiff asserts that he was placed in a cell of 2,5 x 5 m together with other eight persons. The cell was located in a basement, with poor lightening, ventilation and fresh air (the detainees were permanently smoking); the odor was persistent, high humidity, the toilets were miserable with strong odor; there were no hygiene products; in the cell there was a rusty sink that was constantly dripping. The water was rusty and the detainees were forced to drink it. The detainees were washing their laundry and dry it in the same cell. It was impossible to sleep due to overcrowding and insects. The detainee was taking shower once a week. Due to the lack of hygiene the plaintiff had swollen legs. The outdoor walks were limited to once per day. In the first days of detention, the plaintiff did not receive food due to the absence of proof of provisional arrest. The detainees were sharing food with the plaintiff. The food was bad and impossible to eat. The plaintiff declared that he lost 5kg in 10 days of detention.

According to the documents presented by the plaintiff, he suffered from hypertension, respiratory heart failure, duodenal ulcer, prostates and hernia. He believes his health condition worsened in detention.

According a letter dated May 30, 2011, the center of medical assistance and social rehabilitation under ministry of justice in the transnistrian region informed the plaintiff’s lawyer about his hospitalization for surgery, which was impossible at that moment. On June 8, 2011 the plaintiff was hospitalized. The rehabilitation centre “Memoria” has sent requests to the transnistrian authorities on presenting all medical certificates related to the plaintiff. Meanwhile, the plaintiff’s parents have requested the possibility to visit their son. according to a letter dated June 17, 2011 the head of Economic Crimes Division of ministry of domestic affairs in transnistrian region has informed the parents about the inappropriate time for a visit.

On legal procedures of arrest.

According a decision on April 1, 2011 the court in Tiraspol has placed the plaintiff in pre-trial detention facility for 60 days, on charges of committing a particularly serious crime. Moreover, the court noted that the plaintiff did not have good reputation at work, that has two citizenships and that he is not permanent resident of Transnistria. The period of 60 days was calculated from March 29, 2011, 19:00.

The plaintiff appealed the decision and by a final ruling on April 8, 2011 the supreme court of Transnistria upheld the ruling of lower court.

On May 26, 2011 the court in Tiraspol extended the plaintiff’s arrest until July 29, 2011, arguing the need of some more investigation. The final ruling on June 3, 2011 the Supreme Court upheld the decision on May 26, 2011.

On notification of authorities other than in Transnistria.

At different times, the plaintiff’s parents sent several letters to authorities in Republic of Moldova, Ukraine and Russian Federation denouncing their son’s situation. They also contacted several European embassies.

According to a letter on May 31, 2011, Embassy of Ukraine in Republic of Moldova informed the plaintiff’s parents that his complaints would be sent to the authorities in Transnistria, since the plaintiff is not a citizen of Ukraine.

According to a letter dated June 7, 2011, General Prosecution Authority of Republic of

Moldova informed the parents that they initiated the criminal prosecution in respect of illegal deprivation of liberty of their son.

According to a letter dated June 7, 2011, Prosecution of Russian Federation informed plaintiff's parents that Russian jurisdiction does not extend to this territory and the complaint would be sent to Prosecution Authority in Republic of Moldova.

According to a letter dated June 27, 2011, Prosecution authority in Dubasari informed the plaintiff's mother that Moldovan authorities cannot intervene in Transnistria to protect the rights of citizens and added that Moldova has shown reservations when ratifying the European Convention for human rights, under which they do not assume responsibility for omissions and action of transnistrian authority.

The plaintiff complained about the detention facilities and absence of medical assistance during detention. The plaintiff considers that deprivation of liberty procedure was not executed according law and the courts that have ruled his arrest were not competent to act on this matter. Moreover, he complains about the lack of serious argument of these courts. The plaintiff asserts that the illegal search at his house and seizure of his goods, as well as the refusal of transnistrian authorities to receive visits from his family, violated the right to privacy and right to family. Vitalie Eriomenco asserts that his right to an individual appeal was violated by the authorities in the region, because he was unable to communicate with his family and his lawyer did not have access to his file, including the medical records in the detention facility. Moreover, the plaintiff complains about the illegal search of his house and the transfer of his goods to some tertiary persons and the absence of an effective appeal.

2. On December 12, 2011 the European Court of Human Rights communicated authorities of Republic of Moldova and Russian Federation about a new case in the transnistrian region of Republic of Moldova, Elitov vs. Moldova and Russia (no. 64075/11) submitted on July 10, 2011<sup>52</sup>.

According findings of ECHR, Eduard Elitov, citizen of Russian Federation, doctor and resident of Tiraspol is detained since August 2008 in inhuman conditions in a prison in transnistrian region, and his life is endangered because of untreated diseases lack of medical assistance. Eduard Elitov has third degree disability, and since July 20, 2010 until now is held in Surgery Department of Center of treatment and rehabilitation in Tiraspol. Elitov suffers from high blood pressure, chronic heart ischemia, and third degree posttraumatic deformity of the knee, which led to movement dysfunction. Thus in two years of prison, Eduard Elitov lost 16 kg, suffered a serious dental deterioration, partially lost eyesight and can not move normally.

Because prisons in the region do not have drugs, his wife bought and transmitted medicine, and later the Center for Rehabilitation of Victims of Torture in Chisinau provided with necessary medicine and with complex rehabilitation assistance to his family.

Besides serious state of health and inhuman detention facilities, Eduard Elitov is held in a cell of 12.5 m<sup>2</sup> together with other 7-8 persons. The cell is humid and lacks ventilation and lighting, water, and the food is most of the time inedible. Also, for more than a year Elitov was prohibited to see his wife.

To the Supreme Court, the plaintiff asserts the violation of art.2 of the Convention (right to life), art.3 (prohibition of torture), art.5 par.1 (right to liberty and security), art.8 (right to private life and family) and art.13 (right to an effective appeal).

In both cases above-mentioned, Promo-LEX lawyers represent the victims at ECHR.

#### Decisions.

On November 2011, ECHR ruled on case Ivantoc and others vs. Moldova and Russia (request no.23687/05)<sup>53</sup>. According to the decision, Andrei Ivantoc, Tudor Popa, Eudochia Ivantoc and Victor Petrov are citizens of Moldova and born in 1961, 1963, 1963 and 1988,

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<sup>52</sup> <http://promolex.md/index.php?module=news&item=790>

<sup>53</sup> <http://lhr.md/news/284.html>

respectively. Mr. Ivantoc has Romanian citizenship. At the moment of submission of complaint, the first two plaintiffs were detainees in Tiraspol and Hlinaia, respectively. Andrei Ivantoc was released in June 2, 2007 and Tudor Popa on June 5, 2007. The third plaintiff is the wife of the first plaintiff. She is unemployed and lives in Chisinau. The fourth plaintiff is the son of Tudor Popa, is a student and lives in Chisinau.

#### **A. Request no. 48787/99 and ECHR ruling on July 8, 2004**

The facts that led to the complaint no. 48787/99, including the armed conflict in Transnistria during 1991-1992 until the end of 2003, were established in the case *Ilascu, Ivantoc, Lesco and Petrov-Popa vs. Moldova and Russia*, no. 48787/99, §§ 28-183, ECHR 2004 VII.

The first and second plaintiffs were detainees up to their release, respectively on June 2 and 4, 2007 in Transnistrian Moldovan Republic.

On December 1993, the first and second detainee were sentenced by the supreme court of Transnistria on charges such as murder, intentional destruction of property of another person, unauthorized use and theft of munitions and explosive substances. They were sentenced to 15 years of imprisonment and confiscation of their property.

Through European Court on Human Rights decision, adopted on May 7, 2004 and issued on July 8, 2004 on the request no. 48787/99, the Court found that due cooperation between Russian Federation and separatist regime in Tiraspol, its assistance and the contribution of Russian soldier to the arrest and conviction of the first two plaintiffs, the Russian Government was held responsible for the acts of separatist regime. In other words, the Court found that the first two plaintiffs are under Russian jurisdiction, under article 1 of the Convention.

The Court also noted in ruling adopted on May 7, 2004 that in the specific circumstances of that case under article 1 of the Convention there is positive obligation of the Republic of Moldova government to take measures to protect the right of petitioners' guaranteed by Convention. The court concluded that since May 2001, during official negotiations, the Moldovan Government never tried to discuss the issue of petitioners. For this reason, the Court decided that Republic of Moldova did not honour its positive obligation under article 1 of the Convention, for the violations that occurred in May 2001.

The court found that art 3 of the Convention was violated by Russian Federation, because of ill treatment and detention conditions that Mr.Ivantoc was subjected, which shall be qualified as torture, under article 3 of the Convention. The Supreme Court also found that Russian Federation violated article 3 of the Convention, because of ill treatment and detention conditions that Mr.Popa was subjected, which shall be qualified as inhuman and degrading treatment. For failure to fulfil positive obligations, under article of the Convention for the violation that occurred in May 2001, the Court found guilty and the Government of Republic of Moldova for similar violations of the article 3 of the Convention.

The Court mention regarding the plaintiffs Andrei Ivantoc and Tudor Popa:

1. their detention was contrary to article 5 § 1 (a) of ECHR, because since the plaintiffs are still in detention, violation of rights is permanent and that this conduct, which is a violation of this provision, was attributable both to the Russian Federation from May 5, 1998 and to Moldova on My 2001.
2. Any further illegal and arbitrary detention of the three plaintiffs, clearly would led to an extended violation of article 5 of the Convention found by Court and violation by respondent states of their obligations according to article 46 § 1 of the Convention to respect Court's rulings, and the respondent states shall take all measures to end arbitrary detention of plaintiffs and ensure their immediate release.
3. Persecution, ill treatments and restrictions to which Mr.Ivantoc was subjected while in custody represent "torture" under article 3 of the convention, and Russian Federation was held responsible for the treatment applied on Mr.Ivantoc from May 5, 1998 and Moldova was held responsible for the inhuman treatment from May 2001.

4. Detention conditions in which Mr. Popa was held could be qualified as inhuman and degrading treatment under article 3 of the Convention, that Russian Federation was held responsible for this violation from May 5, 1998 and Moldova was held responsible for this violation from May 2001.
5. The court obliged Russian Federation and Moldova to pay every plaintiff the amount of 190.000EUR for non-pecuniary damage and considered the sum of 17,036 EUR as costs and expenses.

#### **B. States' responsibility under article 1 ECHR following July 8, 2004**

The plaintiffs referred to a number of facts relating to responsibility of states under article 1 ECHR following July 8, 2004, date on which was enforced the ruling on Ilascu and others vs. Moldova and Russia.

On July 8, 2004 the Press Service of Ministry of Foreign Affairs of Republic of Moldova presented a press release saying, among other things, Moldovan Foreign Minister regret about the delay of Russian Federation to withdraw its troops from Republic of Moldova's territory, according to the Istanbul Summit decision in 1999, which would have led to the final resolution of the transnistrian conflict.

On July 9, 2004 Ministry of foreign affairs of Moldovan Transnistrian Republic made a press declaration about the rulings of the court of July 8, 2004. It is mentioned that the Court examined superficially and biased the case. According to this declaration, Transnistria expressed its deep indignation of the Court's decision and considered impossible the early release of Tudor Popa and Andrei Ivantoc.

On August 1, 2005 Republic of Moldova prohibited import and exports of goods from/in Transnistria and requested the Government in Kiev to act similarly.

The plaintiffs presented a comprehensive factual information related to the alleged political support, ensured by Russian Federation.

Russian Federation did not comment these facts.

#### **C. Detention of Andrei Ivanțoc and Tudor Popa following July 8, 2004**

The plaintiffs referred to a number of facts about the detention conditions where Mr. Ivantoc and Mr. Popa were placed following July 8, 2004, the issuing date of the decision on cases of Ilascu, Ivantoc, Lesco and Petrov-Popa, up to the release date in June 2007, as well as the effects non their families.

##### **Plaintiffs' detention**

On July 21, 2005 the Supreme Soviet of the Moldovan Transnistrian Republic decreed general amnesty. According point 10 of this Decree, the imprisonment term for sentenced person on charges of intentional murder for more than six years, was reduced by one third. On October 10, 2005 Mr. Gribincea sent a letter to transnistrian ministry of justice, requesting an interpretation of the decree relating to the plaintiffs, and if yes when and under which circumstances the plaintiffs would be released.

On April 10, 2006 the ministry of justice informed Mr. Gribincea that communication and information transfer was no possible, because Mr. Gribincea is not entitled to represent persons on transnistrian territory.

Following ruling on July 8, 2004 did not occur significant changes in the regime and detention facilities of the plaintiffs. Therefore, both petitioners were held in solitary confinement conditions.

Mr. Popa was detained until his release from Hlinaia prison and places in the prisoners sentenced to death. The cell was about 8m<sup>2</sup>. Inside the cell there was a metal cage with the same dimensions as the cell. In the cage was a bed, table, both from metal

Mr. Ivantoc was detained in prison no.2 in Tiraspol, in a cell of approximately 16m<sup>2</sup>.

The petitioners spent 23 hours a day in their cells, which did not have natural lightning. The sunlight access was blocked by special wheels, which also kept them from seeing what is

happening outside.

Both plaintiffs were allowed a one-hour walk in a closed yard; no other prisoners were having a walk at that time. From the yard the prisoners could see only the sky and 4 walls. The prisoners did not have access to the gym or other facilities.

Petitioners could take shower once a week. During winter of 2004-2005 the shower had only very hot water. All winter, Andrei Ivantoc had access only to really hot water.

None of the cells occupied by petitioners during custody was heated, even during winter. During winter, the cell of Mr.Ivantoc was heated by an electric hob brought by his relatives. Mr.Popa did not have an electrical hob, because he was not allowed.

Mr. Ivantoc suffers from liver problems and Mr. Popa suffers from tuberculosis. They did not receive adequate treatment for their medical condition and did not receive adequate food prescribed by doctors. They were forbidden to receive medicine from their relatives.

Doctors in Chisinau at the request of OSCE mission examined them, because the doctors from prison could not visit them. In March 2005, doctors of Red Cross visited them, and Mr.Popa had a dentist consultation.

Mr.Ivantoc was allowed to have 4 short meetings (2 hours) and 2 long meetings (three days) per year. However, the only person who was allowed to visit him was his wife.

Tudor Popa was allowed to have four short visits per year. In 2004 and 2005 only his sister, Raisa Camenschi visited him. During visits he was watched by a guarding who spoke Romanian.

During last four years of detention, Dl.Popa did not receive any visits.

Dl.Ivantoc was allowed to receive packages, which contained special diet food.

The petitioners were not allowed to have phone conversation or to have meetings with their lawyers.

The plaintiffs were not allowed to receive papers in Romanian language.

Andrei and Eudochia Ivantoc have no children. The closest family member of Ms. Eudochia is her husband, who was imprisoned for 13 years and released in 2007. Up to the moment of submitting the complaint to ECHR she could visit her husband only once in two months. She spent three days per year with her husband. Every time her husband had health problems and the meetings were not allowed. She found about her husband's medical condition from newspapers.

Dl. Victor Petrov was not allowed to visit his father without the presence of an adult, because he was a minor and did not have identity documents.

During 2004 and 2007, Victor Petrov saw his father only two times, last time in March 2004.

Up to the release of this father, for the last three years he lived without his mother, who migrated due to financial situation. During this period he took care of his little sister.

European Court ruled that Republic of Moldova honoured its positive obligations to protect the rights of the petitioners guaranteed by the Convention, in respect to their claims starting July 2004 and that it was not an omission of Republic of Moldova to protect the petitioners rights, thus no violation of these articles occurred. The Court accepted the objections of the Moldovan government regarding the lack of effective control in the transnistrian region and consequently the extension of liability under the Convention, for complaints.

The European Court decided that the plaintiffs were under Russian jurisdiction under article 1 of the Convention. Thus, the Court ruled as guilty Russian Federation of violation of article 3 of the Convention regarding the detention conditions where Dl.Ivantoc and Mr.Tudor Popa were held; that article 5 and 13 were violated in regard to the detention of Mr.Ivantoc and Mr.Popa and the lack of effective solutions; that article 8 was violated in regard to the right of plaintiffs Eudochia Ivantoc and Victor Petrov to right of privacy and family and correspondence.

The Supreme Court obliged Russian Federation to pay the petitioners for non-pecuniary and material damage amounts between 20.000 and 60.000 EUR. Only Judge Kovler (Russian Federation) formulated a dissident opinion regarding the admissibility of the cause. V.Nagacevschi and V.Gribincea, lawyers from Chisinau, represented the petitioners.