UNITED NATIONS COMMITTEE AGAINST TORTURE
64th Session of the UN Committee Against Torture
[23 Jul 2018 - 10 Aug 2018]

ALTERNATIVE REPORT ON THE SIXTH PERIODIC REPORT OF THE RUSSIAN FEDERATION UNDER THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The Extraterritorial Obligation of the Russian Federation under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment over the Transnistrian Region

127 Stefan cel Mare
MD-2004, Chisinau, Moldova
Tel.: +373 22 45 00 24
E-mail: info@promolex.md
www.promolex.md

Rue du Vieux-Billard 8
1205 Genève
Tel. 022 809 49 39
E-mail: omct@omct.org
www.omct.org

June 2018

Contents

ABBREVIATIONS

MRT: ”Moldavian Republic of Transnistria”

NHRAP: National Human Rights Action Plan

ICCPR: International Covenant on Civil and Political Rights

UPR: Universal Periodic Review

ECHR: European Convention on Human Rights

ECtHR: European Court of Human Rights

OSCE: Organization for Security and Co-operation in Europe

This submission focuses entirely on issues related to the human rights in the Transnistrian region. Presentation of the names of functions and denominations of acts that emerge from the secessionist administration cannot have a political connotation and in no way implies the de jure recognition of these normative acts, de facto authorities or institutions. The use in this report of such terms as ”Constitution”, ”Court”, ”Judicial system”, ”Law”, ”President”, ”Minister”, ”Prosecutor” does not indicate any *de jure* recognition of these normative acts, *de facto* authorities or institutions. These terms are used exclusively for providing the most precise identification possible of specific documents, de facto authorities, office-holders and institutions.

INTRODUCTION

1. This shadow report was jointly written by the Promo-LEX Association[1] and World Organization Against Torture (OMCT).[2]
2. This report is submitted to the UN Committee against Torture as part of the consideration of the sixth official report of the Russian Federation on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This report aims to highlight the most pressing issues of respect for the rights in the Convention in the Transnistrian region.
3. During the preparation of the report, mainly the own results of the activities of were used, as well as information provided by international monitoring bodies, publications of the media, the ECtHR's jurisprudence in Transnistrian cases where the responsibility of Russian Federation was found.
4. In 2017, the Committee Against Torture in its Concluding Observation on the third periodic report of Republic of Moldova (21 December 2017, CAT/C/MDA/CO/3),[3] takes note of the State party's lack of ability to exercise effective control in the territory of Transnistria, which impedes the application of the Convention in this region. Nevertheless, there can be no vacuum of human rights protection as recognized by international law – which would be the case if the distinguished Committee Against Torture would deny the positive human rights obligations of the Russian Federation and Moldova in the Transnistrian region. In connection with this, we highlight persistent discrepancies between the *de facto* authority's on-going practices and the Russian Federation's obligations under the Convention Against Torture.
5. This alternative report presents the below mentioned aspects relevant on the implementation of Articles 1-16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment in the Trasnistrian region:
    - The Russian Federation's extraterritorial obligation to ensure the protection of human rights in the Transnistrian region.
    - Torture and ill-treatment in places of detention
    - Torture allegations and lack of investigation and ensuing impunity
    - Recommendations for action to be taken by the Russian Federation.

[1] **Promo-LEX Association** - a nongovernmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region. During the reporting period, Promo-LEX filed more than 100 claims described further in this report with ECtHR, of which 60 were communicated to the governments of the Republic of Moldova and the Russian Federation (considering its effective jurisdiction in the region). Promo-LEX Association has the NGO consultative status with ECOSOC.

[2] **OMCT** - the World Organisation Against Torture (OMCT) is the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. OMCT enjoys a consultative status with the following institutions: ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

[3] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=En

GENERAL BACKGROUND

6. In the past quarter-century, very little is known about and done to promote or defend human rights in the frozen conflict zones or in the territories controlled by de facto administrations. Most of the times, people living in such territories do not have the possibility to defend their rights and fundamental freedoms. This is true at least for the Transnistria region.[4] This happens for at least three reasons:
    - **First,** because nobody monitors the human rights situation in these territories;
    - **Secondly,** because there are no efficient human rights protection mechanisms in place and thus none of those who violate human rights are scrutinized
    - **Third,** because of the structural impunity, nobody is held accountable for human rights abuses. The negotiation process has failed to bring about any significant progress in human rights situation in Transnistrian region. Human Rights issue is considered as less important for the key actors in the conflict settlement process negotiation process. The people who live in such areas should equally enjoy the guarantees of the Convention Against Torture, because the human rights cannot be negotiated and must be respected.
7. Despite restricted access to the region, the Promo-LEX Association did not stop monitoring whether human rights are observed in the Transnistrian region and discovered dozens of cases of illegal detention.

I. The Extraterritorial Obligation of the Russian Federation under the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Article 2 - CAT).

8. Based on the fact that the Committee Against Torture in its Concluding Observation on the third periodic report of Republic of Moldova (21 December 2017, CAT/C/MDA/CO/3),[5] takes note of the State party's lack of ability to exercise effective control in the territory of Transnistria, which impedes the application of the Convention in this region, the observance of the right not to be subjected to torture in the Transnistrian region will be analyzed in the light of positive obligations of the Russian Federation.
9. We reiterate that according to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, but also jurisprudence of

[4] Transdniestria, also spelled Transnistria, also called *"Moldovian Republic of Transdniestria" ("MRT"),* is the separatist enclave in Moldova located on the east bank of the Dniester River. The self-proclaimed (1990) "MRT", is not recognized by any state. It has a national bank, national currency (the ruble), customs house, and its own flag and national anthem. The main city is Tiraspol. Transnistrian authorities governed through parallel administrative structures. There were regular reports that showed violations of human rights, including police engaged in torture, arbitrary arrests, unlawful detentions, and pressure being placed on Latin-script schools. The facts concerning the armed conflict of 1991-1992 are set out in more detail in the case *Ilaşcu and Others v. Moldova and Russia (no.48787/99, §§ 28-183, ECHR 2004-VII).*

[5] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=En

the ECtHR; the Convention Against Torture - as well as like ECHR - has not to be interpreted and applied in a vacuum; it must be interpreted in harmony with the general principles of international law.

10. We emphasize that the Russian Federation, according to the effective control it exercises on the Transnistria region, must undertake its treaty obligations with regard to all individuals under its jurisdiction. The object and purpose of the UNCAT is to create legally binding standards for human rights placing them in a framework of obligations which are legally binding for those States which ratify it; and to provide efficacious supervisory machinery for the obligations undertaken.
11. Article 2, paragraph 1, requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also ***"in any territory under its jurisdiction."*** The Committee has recognized that "any territory" includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to "any territory" in article 2, like that in articles 5, 11, 12, 13 and 16, refers to prohibited acts committed not only on board a ship or aircraft registered by a State party, ***but also during military occupation or peacekeeping operations*** and in such places as embassies, military bases, detention facilities, ***or other areas over which a State exercises factual or effective control*** *(§16, Compilation of general comments and general recommendations adopted by human rights treaty bodies, Volume II,* HRI/GEN/1/Rev.9 (Vol. II)27 May 2008*).*
12. Where States parties can take steps to influence third parties (non-State actors) within their jurisdiction to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.[6]

1.1. International Law Materials Concerning Extraterritorial Jurisdiction

13. On October 2015, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, presented his seventeenth expert's report[7] to the Third Committee of the UN General Assembly during its 70th Session, in New York. The report (*A/70/303/ from 5 August 2015*) addresses the extraterritorial obligations that arise under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and its Optional Protocol.
    - The Special Rapporteur tackles extraterritorial obligations in order to ***"ensure that there is no vacuum of human rights protection that is due to inappropriate and artificial limits on territorial jurisdiction,"*** which might provide States with an incentive to "avoid

[6] Compilation of general comments and general recommendations adopted by human rights treaty body (HRI/GEN/1/Rev.9 (Vol. I)27 May 2008; paragraph 54).

[7] https://ijrcenter.org/2015/10/29/special-rapporteur-highlights-extraterritoriality-of-torture-convention-obligations/

absolute legal obligations and [give rise to' serious breaches of international law." (para. 13).

- Moreover, he asserts that the State's responsibility to protect human rights extraterritorially is presumed, in part because international law no longer emphasizes territorial sovereignty as a basis of jurisdiction (para. 16). State actions giving rise to extraterritorial jurisdiction can include […] the occupation of foreign territories, […] the exercise of de facto control or influence over non-State actors operating in foreign territories.
- The report refers to decisions of the International Court of Justice, the European Court of Human Rights (ECtHR), the UN Human Rights Committee, and the Inter-American Court of Human Rights (IACtHR) holding that *"construing State responsibility so as to allow a State to perpetrate on the territory of another State human rights abuses that it could not perpetrate on its own territory would produce unconscionable and absurd results" (*para. 14).

14. The International Law Commission (ILC) adopted its Draft Articles on the Responsibility of States for Internationally Wrongful Acts ("Draft Articles") in August 2001. Article 8 of Chapter II of the Draft Articles provide: *"the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct."*

15. In its advisory opinion "*Legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970*)", the ICJ held, on the obligation under international law to put an end to an illegal situation*: "South Africa, being responsible for having created and maintained a situation which the Court has found to have been validly declared illegal, has the obligation to put an end to it. It is therefore under obligation to withdraw its administration from the Territory of Namibia. By maintaining the present illegal situation, and occupying the Territory without title, South Africa incurs international responsibilities arising from a continuing violation of an international obligation. It also remains accountable for any violations of its international obligations, or of the rights of the people of Namibia. The fact that South Africa no longer has any title to administer the Territory does not release it from its obligations and responsibilities under international law towards other States in respect of the exercise of its powers in relation to this Territory. Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability for acts affecting other States."*

1.2. Extraterritorial Jurisdiction – the European Court of Human Rights

16. The European Court of Human Rights ruled Russia responsible for actions in the Transnistrian region. In *Ilaşcu and Others v. Russia and Moldova*,[8] the Court established some principles regarding the presumption of territorial jurisdiction: this presumption may be limited in exceptional circumstances, particularly

[8] https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22ilascu%22],%22itemid%22:[%22001-61886%22]}

where a State is prevented from exercising its authority in part of its territory. That may be as a result of military occupation by the armed forces of another State which effectively controls the territory concerned,[9] acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned.

- In the light of the principles set out in *Al-Skeini and Others v. the United Kingdom,*[10] the cases of violation of rights in the Transnistrian region fell within Russia's jurisdiction due to the continuous military presence, which had prevented the settlement of the conflict.

17. As regards the general principles concerning the exercise of extraterritorial jurisdiction, the Court, summarized them as follows in *Catan and Others v.Russia and Moldova*.[11]
    - One exception to the principle that "jurisdiction" is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration.[12] Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights.[13]
    - Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see *Ilaşcu*, cited above, §§ 388-394; *Al-Skeini*, cited above, § 139).
18. In three verdicts published on 31 May 2017, the ECtHR recognized Russia guilty for the actions of the authorities self-proclaimed Transnistria. The verdicts of the ECtHR concern three Moldovan citizens. The cases *Vardanean vs. the republic of Moldova and Russia*, *Apcov vs. the republic of Moldova and Russia*, and *Soyma vs. the republic of Moldova, Russia, and Ukraine* concern the fates of three convicts who were accused of committing crimes on the territory of the Transnistrian region of Moldova. The cases are all very different, but have one thing in

[9] see *Loizidou v. Turkey* (preliminary objections), judgment of 23 March 1995, Series A no. 310, and *Cyprus v. Turkey*, §§ 76-80, cited above, and also cited in the above-mentioned *Banković and Others* decision, §§ 70-71.
[10] *ECtHR case no. 55721/07, 7 July 2011*
[11] https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-114082%22]}
[12] *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 62, Series A no. 310; *Cyprus v. Turkey* [GC], no.25781/94, § 76, ECHR 2001-IV, *Banković*, § 70; *Ilaşcu*, §§ 314-316; *Loizidou* (merits), § 52; *Al-Skeini*, § 138.
[13] *Cyprus v. Turkey*, §§ 76-77; *Al-Skeini*, § 138.

common: in them, the decisions and arguments of the ECHR are identical – Strasbourg considers Russia responsible for any court decisions taken by the puppet state of Transnistria, which proclaimed its "independence" from Moldova in 1991-1992 and exists thanks to the financial and military support of Russia. It cites two previous decisions it reached in 2004 and 2012, in which it found that due to the fact that *"the Russian Federation contributed both militarily and politically to the creation of a separatist regime in the region of Transdniestria in 1991-1992"* and that *"up until July 2010, the 'MRT' ['Moldovan Republic of Transnistria'] was only able to continue to exist, and to resist Moldovan and international efforts to resolve the conflict and bring democracy and the rule of law to the region, because of Russian military, economic and political support,"* there is "*a strong indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdniestrian authorities."* Therefore, the ECtHR decided that Russia is responsible for the rulings of the Transnistrian "court". The court decided that the Transnistrian "courts" are created illegally, they are not organs of justice and do not adhere to the minimal judicial standards. Therefore, the fact that a person was detained by such a "court" was enough for the ECtHR to conclude that an extrajudicial, illegal punishment has taken place, for which Russia should pay a compensation to the convict.[14]

19. Another ECtHR case concerning the prohibition of torture is the case of *Boris Mozer against Moldova and Russia*[15] concerning his detention for a suspected fraud by the self-proclaimed "Moldavian Republic of Transnistria (MRT)" was analyzed and judged by the Grand Chamber of the ECtHR. The Court found Russia responsible of violating the right of not being tortured. The complaints fell within the jurisdiction of both Moldova and Russia, but only the second had de facto control and influence over the separatist authorities of Transnistria and the related "Tiraspol People's Court".
20. According to all information, the "MRT" continued to survive only by virtue of Russia's military, economic, financial, informational and political support. Russia had "effective control or at the very least a decisive influence" over the "MRT" until nowadays. Transnistrian forces held joint military exercises with Russian troops in August 2017, and in September Shevchuk issued a decree mandating that Transnistria adjust its legislation to comport with Russian laws in order to realize the result of a 2006 referendum in which the territory's voters affirmed the independence of Transnistria and their desire for it to join the Russian Federation.[16]
21. The Justice Minister of Moldova emphasized that the Republic of Moldova is confronted with a situation of inter-state conflict with the Russian Federation. [17] As the

[14] *case of Vardanean v. the Republic of Moldova and Russia nr.22200/10* *https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-173802%22]}* ; case of Apcov v. the Republic of Moldova and Russia nr.13463/07 https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-173798%22]} ; case of Soyma v. the Republic of Moldova, Russia and Ukraine nr.1203/05 https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-173797%22]} http://euromaidanpress.com/2017/06/06/european-court-of-human-rights-ruled-russia-responsible-for-transnistria/

[15] https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Mozer%22],%22itemid%22:[%22001-161055%22]}

[16] https://freedomhouse.org/report/freedom-world/2017/transnistria

[17] http://www.moldova.org/en/justice-minister-moldova-inter-state-conflict-russia-control-transnistria/

ECtHR repeatedly stated, the Republic of Moldova does not exercise an effective control in the occupied territories.[18]

22. Recently, on 22 of June 2018, the United Nations General Assembly adopted two resolutions, the first of which urged the Russian Federation to unconditionally withdraw its troops and armaments without delay from the territory of the Republic of Moldova. Introducing the draft text on "Complete and unconditional withdrawal of foreign military forces from the territory of the Republic of Moldova" (document A/72/L.58), that country's Foreign Minister noted that the Operational Group of Russian Forces were stationed in his country without its consent. The principles of sovereignty and territorial integrity were at stake, he noted, underscoring that the proposed resolution was in no way a bid for confrontation, nor was it intended to politicize the issue.[19]

II. Torture and Cruel, Inhuman or Degrading Treatment in Places of Detention

23. Promo-LEX Association has previously described the situation inside the detention institutions in the Transnistrian region.[20] The ECtHR continued to communicate to the Governments of the Russian Federation and the Republic of Moldova complaints about violations of Article 3 of the Convention in the Transnistrian region, and to pay attention mainly to torture investigations and detention conditions.

2.1. Conditions of Detention and Health Care

24. Conditions in most prisons and detention centers in Transnistria remained harsh and did not improve significantly after the reported period.[21]
25. In 2013, the UN Senior Expert on Human Rights Thomas Hammarberg made several documentation visits to places of detention in Transnistria, and concluded that the conditions of detention were unsatisfactory and did not meet international requirements.[22]
26. From May 28 to June 1, 2018, the UN Senior Expert on Human Rights, Thomas Hammarberg was in Moldova as a follow-up to three fact-finding missions that he conducted in 2012 and to assess the implementation of recommendations he made in 2013 that were meant to improve the human rights situation in the Transnistrian region. In result of these visits, the UN Expert has found that the

[18] *Catan and others v. Russia and Moldova, Grand Chamber Judgment from 19 October 2012; Pisari v. Moldova and Russia, Third Section Judgment from 21 April 2015; Mozer v. Moldova and Russia Grand Chamber Judgment from 23 February 2016 and others)*
[19] https://www.un.org/press/en/2018/ga12030.doc.htm
[20] https://promolex.md/wp-content/uploads/2016/04/doc_1456905480.pdf
[21] U.S.Department of State 2014 Human Rights Reports: Moldova http://www.state.gov/j/drl/rls/hrrpt/2014/eur/236554.htm
[22] Senior Expert Hammarberg Report TN Human Rights / www.un.md/publicdocget/41

high number of cases of arrest and imprisonment, as well as precarious detention conditions, remain a major problem.[23]

27. In his report of 2013,[24] the local Ombudsperson confirms that the situation did not change after 2013: inmates are kept in inhuman conditions both in police stations, and in the three prisons of the region (small spaces, cold concrete rooms, lack of ventilation and aeration, lack of toilets, insufficient lighting, overcrowding, poor nutrition, lack of medicines and inadequate medical care, lack of drinking water). Particularly precarious are the sanitary facilities; in almost all preventive detention facilities in Transnistria, detainees have to use buckets or bottles, instead of toilets, for their physiological needs, which is a violation of their human dignity. In this respect, the local ombudsman pointed out that, according to Order No. 65 of February 25, 2012, of the pretended Ministry of Home Affairs of the Transnistrian region, prison cells must have toilets only where this is provided for in the design-drawings of the isolation cell.
28. Promo-LEX beneficiaries *(people benefitting from Promo-LEX's legal assistance)* declared that the infrastructure of detention institutions in the Transnistrian region is characterised by small spaces, cold concrete rooms, lack of ventilation and fresh air, lack of toilets, insufficient light, overcrowding, poor nutrition, rusty water, moisture and mold, lack of medicines,[25] inadequate medical care, suspicious deaths, etc. *(to see below §34, 35).*
29. Detention of people with disabilities is one of the major problems. There is no information available on the number of persons with disabilities detained in the local prisons. Moreover, the access to prisons is highly restricted and it is very difficult to obtain relevant information and to monitor the observance of the detainees' rights, in particular of those with disabilities. They are held under the same conditions as other detainees, and they do not receive any special conditions or adjustments as provided by human rights standards.[26] Similarly, health care is poor and in some cases, it is completely absent. Detainees with locomotors disabilities have difficulties in moving, meeting human basic needs, accessing bathrooms and lacking special accommodations. These conditions clearly cause enormous physical and mental suffering.[27]
30. Water is unsanitary and contributes to diseases and poor dental health among prisoners. There is no access to qualified medical care. As a result, prisoners are often forced to turn to their families for assistance, who, in turn, seek help from private doctors, placing the burden of costs on relatives.[28]

---

[23] https://www.privesc.eu/arhiva/82606

[24] http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm

[25] Moldova, Republic of: Ill-treatment and denial of adequate medical care for Mr. Oleksandr Lypovchenko http://www.omct.org/urgent-campaigns/urgent-interventions/moldova/2014/05/d22676/ ; Moldova, Republic of: Lack of adequate medical care for Mr. Beşleaga Vitalii and Mr. Bevziuc Serghei, two prisoners held in Prison n°3, in Tiraspol http://www.omct.org/urgent-campaigns/urgent-interventions/moldova/2016/05/d23784/; Torture of suspects reveals dark heart of Transnistrian justice https://theblacksea.eu/index.php?idT=88&idC=88&idRec=1137&recType=story

[26] Report discriminatory ill-treatment in Moldova: https://promolex.md/wp-content/uploads/2017/03/Raport_rele-tratamente_2012.pdf page.75

[27] Page.13 https://promolex.md/wp-content/uploads/2016/09/Raport-CCPR-eng-1.pdf

[28] Human Rights in Moldova, Civil Rights Defenders / https://www.civilrightsdefenders.org/country-reports/human-rights-in-moldova/

31. At the same time, the local ombudsman draws attention upon the small number of skilled doctors in prisons, and upon the reduced quantity of medicines accessible. According to his report, 12 detainees passed away in 2014 (nine because of diseases and three committed suicide).[29]
32. Several victims have complained before national authorities, and also before the ECtHR[30] about the poor quality of healthcare in prisons, their prolonged detention, the use of expired drugs, and lack of necessary medical equipment. In their complaints, the beneficiaries of Promo-LEX Association also mentioned that they were held in inhuman conditions. The treatment of inmates suffering from tuberculosis is one of the most serious problems. One specialized physician is assigned to treat tuberculosis in all of the detention facilities in the region.[31] Aside the overloaded schedule, he lacks special medical equipment. Various programs of prevention and deterrence of tuberculosis were launched in the region, but these measures seem insufficient, and the number of people suffering from acute tuberculosis is growing.
33. The modest statistical data are available only in the report of the Transnistrian Ombudsman:[32]

    - According to the data of the Penalty Execution Service of the Transnistrian region, in 2011, 18 inmates died in prison: six of them died a violent death; five hanged themselves and one was killed; 12 died of illness (four of HIV/AIDS; seven of tuberculosis and one of cancer).

    - In 2011, 6 123 inmates sought healthcare services in prison medical facilities of Transnistria (in 2010, this figure amounted to 5 946), including 61 inmates with active tuberculosis and 173 with HIV/ AIDS. - According to the State Penalty Execution Service under the Ministry of Justice of the Transnistrian region (ГСИН МЮ ПМР), in 2012, 17 inmates died in these institutions, of whom four died a violent death, and 13 died of illness.
34. According to the report of the Transnistrian Ombudsman as of 01.01.2018[33], the number of convicted persons held in detention is 1802 (in 2016 was 1752), plus 458 people who are in pre-trial detention.
    - In 2017, the number of TB patients convicted was 66 compared to 56 in 2016 and 150 HIV-infected versus 110 in 2016. 11 deaths of convicts and detainees were recorded, including "cancer" - 3 people, tuberculosis - 2 people, acute cerebrovascular accident - 2 people,

[29] Local ombudsman's reports from 2011-2014
http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm

[30] ECtHR : http://www.echr.coe.int/Pages/home.aspx?p=home. Judgment Mozer v.Moldova and Russi from 23 February 2016 ; Judgment **Apcov v. Moldova and Russia from 30 May 2017 ; Comunicated cases to Moldova and Rusia: Dobrovițchi no.41660/10 ; Popovschii no.16281/11 ; Alexandr Ursu no.25197 ; Serghei Boltenco no. 28972/13 ; Untilov no. 80882/13 ; Babchin no. 55698/14 ; Rosip no. 8387/15 ; Elitov no. 64075/11 ; Pogorlețchi no.3020/13 ; Belozervo v. 3368/12 and many other.**

[31] There is an educational institution for juvenile convicts in Camenca; penitentiary colonies for male convicts in both Glinnoe (prison no. 1) and Tiraspol (prison no. 2); another penitentiary institution in Tiraspol (no. 3) which holds (in separate sections) male convicts; female convicts and detainees held on remand (Report on Human Rights in the Transnistrian Region of the Republic of Moldova By Thomas Hammarberg Senior Expert 14 February 2013.

[32]Transnistrian ombudsman's report 2011-2016
http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm

[33] http://ombudsmanpmr.org/doclady_upolnomochennogo.htm

brain drain - 2 people, acute pulmonary heart failure - 1 person, liver cirrhosis-1 person.

35. In all these cases, it was impossible to establish the real cause of death. In on of his reports, the local ombudsman expressed his concern that hundreds of sick inmates are kept in long-term care wards, where they do not receive necessary healthcare, are exposed to suffering, misery and, sometimes even death.[34]
36. Some of the victims affirm that sometimes, to hide the precise number of deaths in prisons, prison administration indicates, "released" instead of "died" in the personal files of the deceased. In other cases, it conceals the cause of death. The Criminal Penalty Execution Code does not provide for a way to establish prisoners' deaths, including the obligation to investigate the causes of deaths in prisons, as required by other national and international standards. The Execution Code obliges prison chiefs to notify a prosecutor only when a prisoner is killed during the application of special physical force methods and firearms by the guards. Deceased prisoners may not be subjected to a credible independent forensic examination. The family members of the victims complained of inefficient criminal investigations, concealment and cover-up of cases of death. It is virtually impossible to demonstrate the guilt of the prison administration and prison doctors *(e.g. the case of Drovorub v. Russia and Moldova ECtHR).*[35]
37. In 2016, the right not to be subjected to torture in the Transnistrian region did not register positive trends. Such a conclusion results from the lack of clear progress at local policy level in the field of torture prevention, complaints about the use of torture, the indifference of the Transnistrian ombudsperson.
38. In 2016, with the assistance provided by the UN, some dental offices from the regional penitentiaries were renovated,[36] however the general health care situation in the region is still precarious, especially regarding the treatment of persons with tuberculosis or HIV/AIDS. The regional penitentiaries also seriously lack staff. Only 70% of medical positions are filled in.

2.2. Overcrowded Penitentiary Facilities

39. An important phenomenon that can be considered one of the catalysts for torture and ill-treatment is the overcrowding of detention facilities. Analyzing the information published by the Transnistrian ombudsman for the reported periods with regards to the progress of the situation of persons deprived of liberty, we found that the number of prisoners is increasing, which causes the over crowdedness and worsens the conditions of detention.

[34] Transnistrian ombudsman's report 2011-2016 http://ombudsmanpmr.org/doclady_upolnomochennogo.htm
[35] Mortality in detention facilities. Torture
https://promolex.md/old/upload/ebulletin/ro/nr97_1422610935ro_.pdf
[36] UN press release, Web source :
http://md.one.un.org/content/unct/moldova/ro/home/presscenter.html?par_list_3_start=8&par_list_0_%20start=12&par_list_start=0&par_list_1_start=18

Table 1. Development of the Situation Regarding the Number of Imprisoned Persons[37]

PERIOD	NUMBER OF PRISONERS
Situation in 2010	1984
Situation in 2011	2071
Situation in 2012	2164
Situation in 2013	2137
Situation in 2014	2252
Situation in 2017	2252

Since 2013, data on the number of prisoners are not made public on the websites of the regional penitentiary administration.[38] In addition, the targeted institutions communicate on request that the Transnistrian region does not collect and store the statistical data on the number of prisoners, complaints and other information on the observance of the right not to be subjected to torture. Overcrowding is a "normal" phenomenon for the prisons in the region,[39] and the roughness of detention facilities permits qualifications as acts of torture and/or ill-treatment.

40. Current imprisonment rate in the Transnistrian region is higher than in Europe and at least the 6th highest in the entire world, if making abstraction of the fact that de facto administration is actually not recognized at an international level.[40] The high imprisonment rate can be explained by the fact that the de facto administration implements a penalty policy and legislation similar to the one of the Russian Federation, where the imprisonment rate is about 450 persons to 100,000 inhabitants.[41]
41. According to the newest information published by the local Ombudsman in the Transnistrian region, in 2016, the regional detention institutions detained about 2 000 people. Number of prisoners in pretrial detention centers is unknown.
42. In 2015, more than 1000 people were granted amnesty. Taking into account that there are about 400,000 citizens in the Transnistrian region, according to the last

[37] Transnistrian ombudsman's reports (2011-2014) http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm
[38] See the website of Государственная служба исполнения наказаний Министерства юстиции Приднестровской Молдавской Респу- блики, Web source: http://gsinpmr.org/page/polozhenie-o-gsin
[39]Report on Human Rights in the Transnistrian Region of the Republic of Moldova By Thomas Hammarberg Senior Expert, february 2013 http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf
[40] List of countries by incarceration rate, Web source: http://www.prisonstudies.org/highest-to-lowest/prison-population-total
[41] Report the right not to be subjected to torture and ill-treatment. Promo-LEX Association 2016 https://promolex.md/wp-content/uploads/2017/04/Raport-TORTURA-web-ENG_2017.pdf

estimation, the imprisonment rate is of approximately 500 persons per 100,000 citizens.[42]

43. In 2016, the Transnistrian ombudsman recognize that the phenomena of overcrowding and detention in inhuman condition still persist.[43]
44. The high imprisonment rate in the Transnistrian region can be explained first by the frequent use of pretrial detention, punitive legislation and practice.[44] According to the head of the Department of the enforcement of sentences from the Transnistrian region, N. Zubreiciuc, this issue could be solved if the courts of law were to apply alternative measures to arrest and detention.[45]

III. Torture Allegations - Lack of Investigation and Impunity (Article 12 and Article 13)

45. According to international law and the Committee Against Torture (CAT), the state's human rights obligations extend beyond that of its own officials and the state has a duty towards the action of non-state actors. The CAT has been clear in this regard: "The Committee has made clear that where State authorities or others acting in an official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission.[46]

3.1. The Lack of Complaint and Preventive Mechanisms

46. The UN Human Rights Committee (HRC) recognized the value of independent monitoring of places of detention in its General Comment 21 on the International Covenant on Civil and Political Rights (ICCPR) and urged states to report on the

[42] List of countries by incarceration rate, Web source: http://www.prisonstudies.org/highest-to-lowest/prison-population-total
[43] Transnistrian ombudsman's reports (2016) page.84 http://www.ombudsmanpmr.org/doclady_upolnomochennogo.htm
[44] Promo-LEX Association report the right to freedom and security in the Republic of Moldova/Retrospective pf 2016. page.24 https://promolex.md/wp-content/uploads/2017/04/Raport-LIBERATE-si-SIGURANTA-engleza-WEB.pdf
[45] Report of the head of the punishment serving department from the region – N. Zubreiciuc / Available on http://ovrpress.narod.ru/new_news/2015/kollegija.html
[46] Committee Against Torture, General Comment 2, CAT/C/GC/2, para 18.

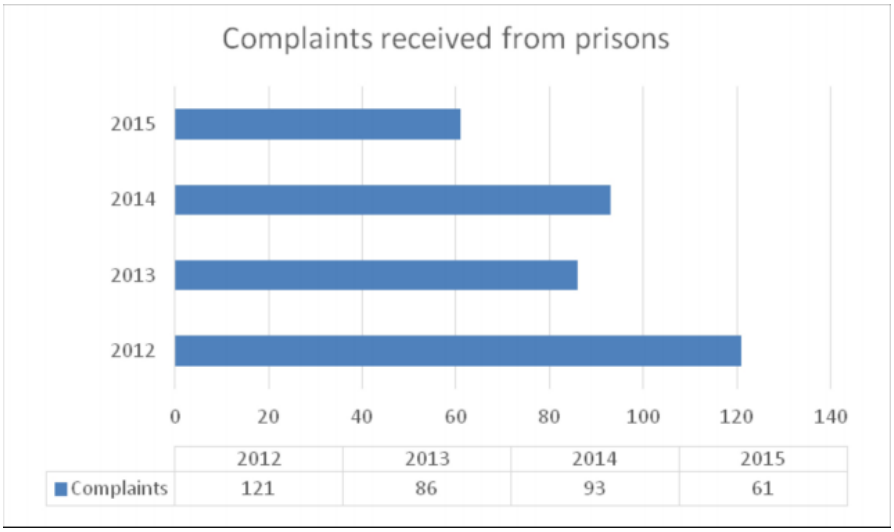
concrete measures taken *"by the competent authorities to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. States parties should include in their reports information concerning the system for supervising penitentiary establishments, the specific measures to prevent torture and cruel, inhuman or degrading treatment, and how impartial supervision is ensured."*[47]

47. Temporary detention centres and prisons run by local authorities are not accessible to NGOs and official representatives in the Transnistrian region. Access to the prisons and visiting rights can only be authorised by a decision of the administration in Tiraspol.
48. Unfortunately, nobody investigates the acts of torture and ill-treatment. In the Transnistrian region, torture is not duly criminalized according to the Convention Against Torture. Article 21 of the de facto Transnistrian constitution establishes that no one shall be "subjected to torture, to cruel, inhuman or degrading treatment or to medical experiments". However, the de facto Criminal Code of Transnistria does not criminalize acts of torture. Thus, there is no mechanism to investigate the acts of torture as such.
49. Until October 2012, the Transnistrian Penal Code did not define torture or ill-treatment. Victims were unable to report any act of torture committed by local authorities, particularly the local militia. Thus, although Article 21 of the Constitution condemns torture, according to the Transnistrian ombudsman, Vassily Kalko[48] the fact that no article of the penal code defines or punishes such acts means that it is treated as a "subjective notion". The only articles Mr Kalko could conceivably refer to was that relating to the abuse of power, or article 114 (inflicting physical or psychological suffering).
50. In October 2012, article 114 of the Penal Code was amended with the introduction of a note defining torture as an act causing physical and mental suffering so as to obtain by force statements or actions against a person's will and with the aim of punishing or inflicting punishment on someone. However, this definition is more restrictive than the definition recognized in international law and the Convention Against Torture. Furthermore, there is no punishment applicable to cases of torture, nor a mechanism by which complaints may be lodged or torture prevented.
51. The use of torture by the police representatives or other force structures is widely tolerated when they want to obtain testimonies. Therefore, people from the Transnistrian region very rarely notify or complain about torture.
52. After certain institutional modifications made in 2014, the prosecutors and the Transnistrian Ombudsperson can register victims' complaints, which are examined by the investigation committee of the Ombudsperson thereafter. However, the Ombudsperson typically fails to take any actions. Accordingly, the trust in the relevant mechanisms is also very low. Due to the lack of elements of the offence, the local investigation bodies do not initiate proceedings and the mechanism of appeal against allegations of torture stays inefficient. According to

[47] HRC General Comment 21, para. 6
[48] Interview during the FIDH mission https://www.fidh.org/IMG/pdf/moldova_transnistria_report.pdf page.35

the investigation committee, during 3 years since this institution was established, not one criminal case was initiated with regards to torture.

53. In its reports, the Ombudsperson tries to justify the omissions of *de facto* administration by the lack of financial means in the budget of the separatist administration.



54. It is also worth to mention the people's distrust of the local justice and the general absence of rule of law, which is a significant feature of the Transnistrian region. In 2016, the ECtHR pronounced the judgement in the Mozer vs. the Republic of Moldova and the Russia case.[49] In the said judgement, the Court underlined that contrary to the law adopted by the constitutional authorities, which was subject to expert review and monitored by several international bodies, the so-called legislation that applies to the Transnistrian region has never been subject to a review. Thus, arrest and sentencing decisions taken by the so-called Courts on the basis of some local acts cannot be regarded as adopted under a judicial tradition compatible with international human rights standards. At the same time, the Court came to a conclusion that the „courts" and other „MRT" authorities do not have the right to order arrest or detention of persons, since they are the part of a system which operates „under constitution and legislation', which do not reflect a judicial tradition compatible with the ECHR in order to allow the persons to benefit from its guarantees.
55. Moreover, there is no efficient preventive mechanism. An advisory group – "the consultative council" – consisting of representatives of the civil society in the region was created in 2014, apart from the monitoring mechanism of the local Ombudsperson. However the advisory group does not have due access to the detention facilities.
56. In June 2016, after the expiring of the mandate of the local Ombudsman the Regulation about the consultative council, lost its force and the council was dissolved.

[49]ECtHR, Case of Moser v. Moldova and Russia, application No 11138/10 of 23 February 2016

57. On 27 April 2017, the civil society organization Media Center sent a letter to the new appointed Transnistrian Ombudsman with a proposal to organize a meeting to resume the work of the Consultative Council in the Transnistrian region. This proposal was rejected, in which the Ombudsman referred to the fact that he saw no reason to organize a joint meeting.[50]

IV. Torture and Ill-treatment in Psychiatric Establishments

58. As early as 5 august 2011, the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, established that the isolation of persons with disabilities, no matter for how long, may lead to a serious violation of fundamental rights and freedoms.[51]
59. Following the visit to Moldova in 2015, the United Nations Special Rapporteur on the rights of persons with disabilities analysed aspects regarding the deprivation of liberty of persons with disabilities.[52]
60. The Special Rapporteur met directly with a number of institutions from Moldova, inclusively the Transnistria region, where the Special Rapporteur visited the Vyhvatintsi psychiatric hospital, a residential institution in Tiraspol and a rehabilitation center for children with disabilities.
61. The Special Rapporteur noted that, while the de facto authorities have not yet committed to the implementation of the Convention on the Rights of Persons with Disabilities, they have a responsibility to promote the rights and well-being of all persons with disabilities of the region. The Special Rapporteur formulated important recommendation in this regard.
62. Unfortunately, we have not seen any information as a result of visiting the Vyhvatintsi psychiatric hospital, where the situation regarding the torture and and other cruel, inhuman and degrading treatment or punishment is a big issue.
63. Currently, there are approximately 22,000 people with intellectual disabilities or drug addictions in the Transnistrian region. The main health care facility providing health care services to persons with mental disabilities is the Psychiatry Hospital of Vihvatinti, Transnistrian region. The capacity of the health care institution is of 200 persons. [53]
64. During a journalistic investigation performed by the Media Center, many situations that can be qualified as ill-treatment were found.[54] Journalists found some facts related to the use of forced medical treatment, bad conditions such as

[50] The answer of the new local Ombudsman of "MRT" from May 29, 2017.
[51] 2 See the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/63/175 (p.55 – 56) and CPT standards, p.58-64
[52] The report of the Special Rapporteur on the rights of persons with disabilities concerning her mission in the Republic of Moldova of 2 February 2016, http://md.one.un.org/content/dam/unct/moldova/docs/pub/A%20HRC%2031%2062%20Add.2%20ro.pdf
[53] Promo-LEX Association Report the rights not to be subjected to torture and ill-treatment, page.46 https://promolex.md/wp-content/uploads/2017/04/Raport-TORTURA-web-ENG_2017.pdf
[54] Психиатрическая больница. Жизнь на дне, Web source: http://mediacenter.md/prava_celoveka/1042-psihiatricheskaya-bolnicazhizn-na-dne.html

persistent smell of urine, lack of bedding, lack of ensuring patient hygiene, lack of reasonable accommodation for some categories of patients, low temperatures in winter, lack of medicines and lack of health workers.[55]

65. The Local Ombudsperson also performed several monitoring visits. Previously, the UN Senior Expert Thomas Hammarberg made some similar findings in the Report on Human Rights in Transnistrian region.[56]
66. In 2015, one member of the advisory group of the Local Ombudsperson (consisting of representatives of the civil society) visited the Psychiatric Hospital in the village of Vihvatinti, where serious violations of persons' rights held in this institution were found.[57]
67. In August 2015, it was also confirmed that forced labor was applied in these institutions. The deputy head physician of the Psychiatric Hospital in the village of Vihvatinti, used unpaid work of patients who were on treatment in the neurological department in personal farming?.[58]

RECOMMENDATIONS TO THE COMMITTEE AGAINST TORTURE AND THE RUSSIAN GOVERNMENT:

Recommendation 1: We recommend the Committee Against Torture to recognize the Russian Federation's positive human rights obligations in the Transnistrian region, in accordance with the findings of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the ECtHR, the ICJ, the ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts and the jurisprudence of the UN human rights treaty bodies.

Recommendation 2: We recommend the Russian government to recognize its obligation under articles 2 and 16 of the Convention to take steps to prevent torture and other ill-treatment in the Transnistrian region in which Russia exercises *de facto* effective control.

Recommendation 3: We recommend the Russian government to provide civil remedies and rehabilitation for victims of torture and ill-treatment in Transnistrian region and to ensure that victims obtain redress in its legal system.

Recommendation 4: We recommend the Russian government to use their influence over the *de facto* administration to stop the massive violations of human rights and

[55] Психиатрическая больница. Жизнь на дне, Web source: http://mediacenter.md/prava_celoveka/1042-psihiatricheskaya-bolnicazhizn-na-dne.html

[56] Report on Human Rights in Transnistrian region, the UN High expert Thomas Hammarberg, page.33, Web source: http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf

[57] The information about the violation you can see at this Web ressources : http://mediacenter.md/prava_celoveka/703-psihiatricheskaya-bolnica-s-vyhvatincy-doklad-o-situacii.html

[58] За злоупотребление полномочиями осужден заместитель главного врача психбольницы в селе Выхватинцы http://vestipmr.info/articles/2015/08/11/za-zloupotreblenie-polnomochiyami-osuzhden-zamestitel

to call upon them to implement the recommendations made by the United Nations Senior Expert on Human Rights in Transnistria.[59]

Recommendation 5: We recommend the Russian government to use their influence over the *de facto* administration and to call upon them to collect disaggregated, statistical data regarding the observance of the right not to be subjected to torture, and statistical data regarding the health in the penitentiary systems.

Recommendation 6: We recommend the Russian government to call upon international actors and the participants of the 5+2 talks[60] for the settlement of the Transnistrian conflict and to insist on including the issue of the rights of persons deprived of liberty in the context of psychiatric care on the Agenda, in particular in the Vhvatintsi hospital.

[59] Available at: http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf

[60] Since 2005, formal negotiations to reach a settlement on the Transnistrian conflict take place in a format known as the "5+2". Chaired by OSCE, it includes the Moldovan de jure authorities and de facto Transnistrian administration, Russia and Ukraine as mediators, and the EU and US as observers. The negotiation process was interrupted for almost six years, resuming in 2011. The negotiation process has failed to bring about any significant progress in the human rights situation in the Transnistrian region or to improve access of human rights defenders to monitor the region