

To the Department for Execution of Judgments of the  
European Court of Human Rights,  
Committee of Ministers of the Council of Europe  
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Chişinău, 24 July 2020

## COMMUNICATION

in accordance with Rule 9.2 of the Rules for the supervision of the execution of judgments

### **OZDIL AND OTHERS v. MOLDOVA**

This submission is presented by the Legal Resources Centre from Moldova (LRCM)<sup>1</sup> and the Promo-LEX Association<sup>2</sup> in the context of consideration of execution by the Republic of Moldova of the [Ozdil and others case](#) at 1383rd CM/DH meeting. It is the first time the Committee of Ministers is discussing this case.

The *Ozdil and others* concerns the extra-legal transfer to Turkey in September 2018 of five applicants, Turkish citizens who were residing in Moldova with their families for long periods and were working as teachers in secondary schools. The Court found that the applicants' deprivation of liberty had been neither lawful nor necessary within the meaning of Article 5 § 1 (f), nor devoid of arbitrariness. Depriving the applicants of their liberty and their transfer circumvented all guarantees offered by international and domestic law. The Court also found that the applicants' forcible transfer led to a radical disruption of their private and family lives and that they did not enjoy the minimum degree of protection against arbitrariness (review by an independent body and adversarial proceedings), which is not in accordance with the requirements of Article 8.

On 12 March 2020, the Government of the Republic of Moldova submitted [an Action plan](#) for the execution of this judgment. It mentions that the Government is planning reviewing its secondary legislation, that periodical human rights trainings for public servants are conducted and that no other person was transferred from Moldova to another country in a similar fashion. The Government is of the opinion that this case is unique and that there is no indication that such situations might arise again.

The LRCM and Promo-LEX submission covers the general measures aimed at preventing similar violations.

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<sup>1</sup> The [Legal Resources Centre from Moldova](#) (LRCM) is a non-profit organization that contributes to strengthening democracy and the rule of law in the Republic of Moldova with emphasis on justice and human rights. We are independent and politically non-affiliated. We published two comprehensive reports on the execution of ECtHR judgments by the Republic of Moldova, for [1997 - 2012](#) and [2013 - 2014](#).

<sup>2</sup> [Promo-LEX Association](#) is a non-governmental, not-for-profit and politically independent human rights and advocacy organization established in 2002. Promo-LEX's Mission is to advance democracy in the Republic of Moldova through promoting and defending human rights and strengthening civil society

## BEYOND UNFAIRNESS OF STATE ACTIONS

The news about *Ozdil and others* case spread all-over Europe. It raised significant and legitimate concerns among international community. On 6 September 2018, seven Turkish national that worked for many years as teachers in Moldova have been forcibly transferred by Moldova to Turkey, despite the imminent risk of unfair trial and torture. The Turkish nationals have been arrested in the morning of 6 September 2018 by the Moldovan intelligence service. A charter plane was waiting for them on the Chisinau airport. In less than 3 hours from their arrest, they have been put on this plane and transported to a military base in Istanbul, where they have been put into custody by the Turkish authorities. Their families and the lawyers were not informed of the transfer. They found out of it several days later, after being called by the Turkish authorities. Four out of seven Turkish teachers have already been convicted in Turkey to years of imprisonment for being 'Gülenists'.

[Civil society organizations](#) called on Prosecutor General to launch a criminal investigation for abuse of power. They also called Parliament to organize public hearings and publish all relevant information about this operation.<sup>3</sup> The investigation was not launched and the information about the operation was classified.

The transfer operation was politically motivated. It was well-known that the Turkish President is hunting 'Gülenists' all-over the region. It appears that it was a „gift” of the Moldovan side. In October 2018, 6 weeks after the transfer of the teachers, the Turkish President visited Moldova with an official 2-day visit. He joined the Moldovan President at the inauguration of the renovated building of the Moldovan Presidency. The costs for renovation were mainly covered by the Turkish authorities.

In June 2019 the Democratic Party, that led the country since 2016, lost the power. On 31 July 2019, the Parliament's Security Committee [organized a hearing about the transfer of the 7 teachers](#). The MPs were unable to get conclusive answers from the leadership of the Security and Intelligence Service (SIS) and of the Asylum Agency (BMA). Shortly after, a criminal investigation into to transfer was launched against the leadership of SIS and BMA.

On 5 February 2020, [prosecutor's office informed](#) that the operation was carried out by SIS arbitrarily and the BMA not involved in it. The General Prosecution Office did not establish any connection between the transfer and the Moldovan leadership from 2018. According to prosecutors, contrary to the law, the SIS conducted the operation without being requested by the BMA. The operation was ordered and coordinated directly by ex- director of SIS, Vasile Botnari. He was criminally charged and his case was sent to court. Mr. Botnari is the only person accused. The charges against the former SIS deputy directors and BMA director were withdrawn, was they acted under the instructions of Mr. Botnari. The progress of the case is unknown because it is tried in closed hearing.

## LACK OF PROCEDURAL GUARANTEES AGAINST EXPULSION

According to art. 55 para. 3 of the Law of Status of Foreigners (Law no. 200/2010), if national security considerations are advanced for declaring a foreigner undesirable in Moldova, “the decision should not state the reasons supporting it”. Art. 56 para. 2 of the same law also provides that this data or information may not be in any way, directly or indirectly, communicated to the foreigner declared undesirable, including within the examination by the court of the legality of the decision. It follows that, even if the authorities have information likely to endanger national security or public order, they will neither be written in the decision, nor communicated to the person concerned. Neither the judged eventually dealing with the complaint against this measure is entitled to reveal the consideration of national security supporting the decision. De facto, the last prohibition obliges the judge to accept any conclusions invoked by the authorities. On the other hand, the decision declaring a person undesirable is an administrative act. It is for the administrative body to prove in court the legality of its acts. The

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<sup>3</sup> The appeal of Civil society organizations urge authorities to hold responsible those guilty of de facto extradition of Turkish citizens [http://crim.org/wp-content/uploads/2019/09/2018-10-17\\_apel\\_cetateni\\_turci\\_final-ENG.pdf](http://crim.org/wp-content/uploads/2019/09/2018-10-17_apel_cetateni_turci_final-ENG.pdf)

legal prohibition to discuss the facts underlying the decision reverses the burden of proof, putting on the foreigner and impossible task - to prove the illegality of the administrative act without knowing what are the considerations underlying in it. This system is clearly inconsistent with the standard set forth in para. 68 of the *Ozdil and others* judgement. The legislation should be improved accordingly.

The authorities can always come up with a summary of the considerations underlying their decision. However, the failure to communicate any information is impossible to justify. The authorities responsible for state security cannot benefit of unlimited discretion and trust. Relying on current legal provisions, the person is removed from the country based on the information of the authorities responsible for state security, without any effective guarantees against abuse. This fact was clearly proven in 2018 when Turkish teachers were forcible sent to Turkey.

Suspensive effect of the appeal against the decision concerning the removal of a foreigner from the country is the most efficient immediate safeguard against abuse. According to art. 57 para. 2 of Law no. 200/2010, the decision declaring a foreigner as undesirable can be appealed in 5 days. The appeal does not suspend the decision, but the court may order a suspension pending the examination to prevent the imminent harm. It is hard to understand why the appeal against a decision declaring a person undesirable does not suspend the decision, bearing in mind that the examination of the action after the removal from the country deprives the eventual judgement in favour of the foreigner of any useful effect. The appeal against the decision ordering the extradition suspends the extradition (art. 63 para. 8 of Law no. 371/2006 on international legal assistance in criminal matters), just like the appeal against the decision ordering the expulsion (see art. 54 para. 2 of the Law no. 200/2010).

The Moldovan Government mentioned in its Action plan that a process of amendment of the Governmental decisions regulating this field is in progress. This is not sufficient, because a governmental act cannot deprive of its effect the provision of the above problematic provisions of the of Law no. 200/2010.

## **RISK OF BEING EXPOSED TO TORTURE AND DENIAL OF JUSTICE**

The Court's standard resulting from *Soering* class jurisprudence is that a foreigner should not be expelled to a state if there are justified concerns that his/her life would be under threat there or that he/she will be subjected to torture, inhuman, degrading treatment or denial of justice. This standard is also reflected in art. 63 para. 1 of Law 200/2010. However, para. (4) makes an exception to this rule for the decision based on national security or public order. This exception is contrary to ECtHR standards and should be removed.

The procedure of removal from Moldova of a foreigner declared undesirable is not clear. The legislation does not provide for the right of the foreigners to choose the country where they will be sent (subject that they are admitted) or provide other criteria on how this country is identified. Existence of such provisions would have barred the transfer of the 7 teachers to Turkey.

## **EDUCATION AND TRAINING**

The Moldovan judges benefitted of numerous training in the field of ECHR and international human rights law. We admit that their level of proficiency in the area of combatting unlawful arrests and ill-treatment is generally adequate. In this context, it is hard for us to explain why, with this level of knowledge, they refused to examine on the merits the action against the BMA decisions declaring the applicants as undesirable.

## RECOMMENDATIONS

We call the Committee of Ministers to recommend the Moldovan authorities to take all measures to ensure that:

- a. Moldovan judges and other public employees respect in practice Articles 5 and 8 of the Convention when deciding on the desirability of the foreigners in Moldova. The judges, prosecutors and other civil servants shall be trained how to respect the right of foreigners when dealing with the decisions concerning their removal from Moldova;
- b. Law 200/2010 is amended to provide effective remedies and guarantees against abusive removal from Moldova of undesirable foreigners (introduction of the obligation to substantiate any decision declaring a person undesirable in Moldova and communication of these reasons to the foreigner concerned (amendment of art. 55 para. 3 and 56 para. 2); introduction of the suspensive effect of the appeal against such decisions (amendment of art. 57 para. 2); introduction of the absolute ban on transfer of a foreigner to regions where he/she risks torture, inhuman or degrading treatment or denial of justice (amendment of art. 60 para.4 and 63 para. 4); introduction of the right of the persons declared undesirable in Moldova to choose the country of removal);
- c. adequate sanctions to prevent similar incidents are promptly applied to all persons involved in the transfer of the 7 teachers to Turkey.

In light of the deficiencies highlighted above, we call the Committee of Ministers to keep the supervision of the execution of the *Ozdil and others* case under the enhanced procedure.