LCRM – Legal Resources Centre from Moldova

National legislation allows the abuse of foreigner's removal

mihaela cibotaru · Monday, July 27th, 2020

From 29 September to 1 October 2020, the Committee of Ministers of the Council of Europe will verify the measures taken by the Republic of Moldova to execute the case of *Ozdil and others* case. In this case, the European Court of Human Rights (ECtHR) found that the detention and "removal" of Turkish citizens from the territory of Moldova in Turkey was contrary to art. 5 and art. 8 of the European Convention on Human Rights (ECHR). Moldova violated all legal guarantees provided by international and national law when it "removed" the applicants.

On July 24, 2020, the Legal Resources Centre from Moldova (LRCM) and the Promo-LEX Association submitted to the Committee of Ministers a communication on existing guarantees and the impact of measures taken by the authorities to prevent such serious human rights violations. The LRCM and Promo-LEX found that the legislation in force does not provide effective guarantees and remedies against the abusive removal of foreigners declared undesirable. National security considerations cannot prevail over the legality and supremacy of the law. The authorities responsible for state security do not motivate the decision declaring a person undesirable, including in the trial, and do not inform the persons concerned. The examination of the appeal after the removal from the country lacks a possible decision in favor of the foreigner of any useful effect, because it does not have a suspensive effect.

Likewise, in the Republic of Moldova, when expulsion is made for reasons of national security or public order, the person may be removed to a state where his or her life will be endangered or subjected to torture, inhuman or degrading treatment. This exception is contrary to ECHR standards and ECtHR case law.

The NGOs 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.

The Communication in English is available here.

The communication was developed within the framework of the project "Promoting rule of law in Moldova through civil society oversight" implemented by the Legal Resources Centre from Moldova with the financial support of the U.S. Agency for International Development (USAID).

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In order to streamline the execution of the ECtHR judgments and prevent similar violations in the future, the non-profit organizations may send communications to the Committee of Ministers regarding measures taken by the state. Details on how to submit written communications are described in the handbook "Implementation of judgements of the European Court of Human Rights" developed by the European Implementation Network.

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