

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, 05 February 2021

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)¹ and the Promo-LEX Association² in the context of consideration of execution by the Republic of Moldova of the [Ozdil and others case](#) at 1398th CM/DH meeting (9 -11 March 2021).

The *Ozdil and others* concerns the arbitrary detention and extra-legal transfer from Moldova of five applicants, Turkish citizens, deprived by all guarantees offered by international and domestic law and which accordingly breached Article 5 § 1 (f) and Article 8 of ECHR. Lastly, this case was discussed at the 1383rd CM/DH meeting (29 September -1 October 2020). The key recommendations made to the Moldovan authorities at that meeting are resumed as it follow:

- to inform about evolutions of criminal proceedings against the former director of the Security and Intelligence Service (SIS) and of the applicants' situation in Turkey;
- to clarify the national legislative basis and exact procedures for access by judges, and lawyers to confidential secret service documents;
- to provide information on the outcome of the investigation initiated by the Parliamentary Committee on National Security, Defense and Public Order (hereinafter „Parliamentary Committee”) into the events of the case, and about adequacy of the existing oversight and accountability mechanism over the actions and powers of the SIS;

On 16 November 2020, the Government of the Republic of Moldova submitted [a Revised action plan](#) for the execution of this judgment. It mentions that amendments to the secondary legislation have been approved and that, even if the Parliamentary Committee meetings on the events were held in private and the information presented was classified, the MPs were satisfied with indictment of the former head of SIS.

¹ 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](#).

² [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

On 2 February 2021, the Government of the Republic of Moldova submitted [an Updated Action plan](#). It refers to the applicants' situation in Turkey (most of them are already sentenced for years of imprisonment). It doesn't mention if Moldovan authorities claimed for the possibility of a transfer of the persons concerned to the Republic of Moldova under the Convention on the Transfer of Sentenced Persons, ratified by the two States, and if such an option is considered by the Moldovan authorities.

On 24 July 2020, the LRCM and Promo-LEX [made first submission](#) on this case. Current submission covers both the individual and the general measures, and informs about evolutions of judicial proceedings against the former SIS director and need to improve national legislation on the status of foreigners after Constitutional Court judgment.

JUDICIAL PROCEEDINGS AGAINST FORMER SIS DIRECTOR

On 5 February 2020, [prosecutor's office issued a press-release](#) that the operation for transfer of the applicants to Turkey was carried out by SIS arbitrarily and the Asylum Agency (BMA) was not involved in it. The General Prosecution Office did not establish any connection between the transfer and the leadership of Moldova 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. His deputies and the Director of the BMA were also charged. The charges against the former SIS deputy directors and BMA director were later withdrawn by the prosecutors, as they acted under the instructions of Mr. Botnari.

The case against Mr. Botnari was sent to court. The trial took place behind the closed doors and the judgement was not published on the court portal, were all the judgements are generally published. Mr. Botnari pleaded guilty and the case was examined under simplified procedure. The relatives of the victims were not involved in the trial, although they have been previously recognized as victims of the crime. The prosecutor requested Mr Botnari to be sanctioned to 3 years of imprisonment (the penalty provided by law is a fine up to MDL 117,500 or imprisonment for 2 to 7 years and the ban to hold public office from 5 to 10 years). On 15 July 2020, Mr. Botnari was convicted for abuse of office (Art. 327 para. 2 b) of the Criminal code) and fined to MDL 88,000 (approx. EUR 4,200), as well as deprived of the right to hold public positions for a period of 5 years. It was not publicly unknown of the court judgement until 16 September 2020. On that date, as a result of rumours the appeared in press about the lenient sanctions imposed to Mr. Botnari, the first instance court (Chisinau district court) has published [the extract from the judgement](#). It is not clear why the sentence was published 2 months later, and why the relatives of the victims were not being involved in the trial. The victims were also not informed of the court judgement.

Also, [according to the press-release issued by the prosecutor's office](#), on 13 July 2020 (two days before the conviction), Mr. Botnari, voluntarily, has paid to the State budget the equivalent EUR 125,000 - as damage ordered by the ECtHR against the state. The also repaid the state MDL 348,432 (approx. EUR 16,500) as cost of the charter flight that brought the applicants to Turkey. It is not known how Mr. Botnari gathered these financial means, because in the period 2008-2019 he worked in the public sector and his official income obtained by him in this period was lower than the amounts repaid to the state.

The Moldovan Government in their action plan mentioned that „an appeal was lodged against the first instance sentence”. It must be clear that the prosecutor in the case did not challenge the first instance court judgement. It was Mrs Galina Tüfekçi, the wife of one of the applicants, who lodged the appeal. It shows that public authorities lack proactive approach, they are reluctant to adequate and effective punish the main persons involved in the violation of applicants rights. This fault is also confirmed by the lenient sanction applied by the first instance court, which imposed the minimal ban on holding public office and not the biggest fine. In the light of the seriousness of the violations found by the Court, such sanctions cannot have sufficient deterrent effect. The first hearing of the appeal court took place 27

November 2020. On the same day, Mrs. Galina Tüfekçi and her lawyer asked the court to grant access to the case file's materials. The court refused invoking state secret and instructed her to seek for approval of the agency on charge of state secret (SIS). The next hearing is scheduled for 19 February 2021. The Mrs. Galina Tüfekçi followed the instruction of the court. She did not obtain the approval of the SIS yet and is unlikely that she will obtain it.

LACK OF LEGAL GUARANTEES AGAINST EXPULSION FOUND BY THE CONSTITUTIONAL COURT

On 13 November 2020, the Constitutional Court of the Republic of Moldova declared unconstitutional several provisions of Law no. 200 of 16 July 2010 on the status of foreigners³, which refer to the impossibility of the foreigner declared as an undesirable person on grounds of national security to know the reasons of that decision (Article 55 § 3 and Article 56 § 2), and the provisions which allow the removal of the foreigner on grounds of national security or public order to a destination where he/she can be subjected to torture, inhuman or degrading treatment (Article 60 § 4 and Article 63 § 4). Also, the Constitutional Court declared unconstitutional Article 225 § 3 of the Administrative Code insofar as it limits the competence of the judicial courts to control the proportionality of individual and normative administrative acts which contain state secret. The Constitutional Court called the Parliament to amend the law accordingly and decided that, until the relevant amendments are made, the decision on declaring the foreigner as an undesirable person on grounds of national security will contain a summary of the reasons for it, in order to offer an effective right to a court.

The Moldovan Government mentioned in their Action plans that a process of amendment of the Governmental decisions / the secondary legislation regulating this field is adopted. This is not sufficient, because a governmental act cannot deprive of its effect the above provisions of the Law no. 200/2010. We are not aware of any bill drafted to comply with the judgement of the Constitutional Court.

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. The Moldovan legislation should be quickly amended in the spirit of the Constitutional Court judgment of 13 November 2020;
- c. adequate and effective sanctions to prevent similar incidents are promptly applied, in a public trial and with involvement of the relatives of the applicants that request it, to the key 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.

³ Constitutional Court judgment no. 27 of 13 November 2020 (available in Romanian)
<https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=748&l=ro#top>