

**UNITED NATIONS HUMAN RIGHTS COUNCIL**

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**On behalf of:**



**Legal Resources Centre from Moldova**

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[Moldova lacks effective safeguards and remedies against abusive expulsion – the case of extra-legal transfer of seven Turkish teachers](#)

On 6 September 2018, seven Turkish nationals legally working in Moldova for many years as teachers [have been forcibly transferred to Turkey](#). They have been arrested by the Moldovan intelligence service. In less than 3 hours from their arrest, they have been put on a charter plane and transported to a military base in Istanbul. Their families and the lawyers were not informed of the transfer. From [existing official information](#), five of them have already been convicted in Turkey to years of imprisonment due to their alleged links to the [Gülen movement](#).

On 11 June 2019, the European Court for Human Rights (ECtHR) decided in the case [Ozdil and others](#) that depriving the applicants of their liberty and their transfer from Moldova to Turkey circumvented all guarantees offered by international and domestic law. The applicants' deprivation of liberty had been neither lawful nor necessary within the meaning of Article 5 ECHR, and led to a radical disruption of their private and family life, which is not in accordance with the requirements of Article 8 ECHR.

The Turkish citizens were expelled by national authorities relying on the provisions of [Law no. 200/2010 of Status of Foreigners](#). This law failed to provide effective remedies and guarantees against abusive removal of undesirable foreigners. [Civil society organizations found](#) that current legal provisions allow the person to be removed from the country based on the information of the authorities responsible for state security, and even under the risk of being exposed to torture and denial of justice. On 13 November 2020, the Constitutional Court [declared unconstitutional](#) these provisions and settled out provisional rules until new amendments are made. At this stage, no public information on bill drafting is known.

On 15 July 2020, the former head of the Intelligence Service, Vasile 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. [Only he was found guilty](#) for Turkish teachers' expulsion. [According General Prosecutor's Office](#), on 9 September 2020 Mr. Botnari voluntarily paid EUR 125,000 lost by the Republic of Moldova to the ECtHR, as damage and paid MDL 380,000 for the charter that was leased to transportation of the Turkish teachers. It was not publicly known of the court judgement until 16 September 2020. On that date, as a result of rumours that appeared in press about the lenient sanctions imposed to Mr. Botnari, the first instance court has published the [extract from the judgement](#). It is not clear why the judgement was published 2 months later, and why the relatives of the victims were not involved in the trial.

**Recommendations:**

- The Moldovan legislation should be quickly amended in the spirit of the Constitutional Court judgment of 13 November 2020 - 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 person; introduction of the suspensive effect of the appeal against such decisions; 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 etc;

- 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 seven teachers to Turkey;
- Moldovan judges and other public official need to respect in practice International Human Rights Conventions, and Articles 5 and 8 of the ECHR in particular 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.

#### Wiretapping of phone communications – 98% authorization rate with limited safeguards

In 2012, Moldovan legislation was amended by the introduction of a separate section in the Criminal Procedural Code dedicated to special [investigative activity](#) and by adopting a new [Law on special investigation activity](#). The amendments were introduced after the European Court of Human Rights (ECtHR) issued on 14 September 2009, a [Iordachi and others vs. Moldova](#) judgement, where it found that the legislation on wiretapping failed to provide sufficient guarantees against arbitrariness and that the number of warranted wiretaps was excessively high (then approximately 3,000).

Although the new legislative provisions substantially limit the possibilities of unjustified tapping, several aspect still raise serious doubts as to the practical effects of the new safeguards. These aspects are the increasing number of phone tapping requests and a very high rate of approvals issued by the investigative judges; the manner how the judicial control after the interception takes place; information of people whose phone conversations were tapped; storage and destruction of the results of interceptions and parliamentary control that is behind closed doors.

The official [statistics](#) confirm that the situation has not improved at all ever since. In 2012, the courts examined 30% more motions than in 2009, in 2015, they examined 50% more motions than in 2012, and in 2018, they examined three times more motions than in 2009. In 2018, the total number of the granted motions reached 12,128 being the highest ever recorded, then slightly reduced in [2019](#) (8188) and in [2020](#) (5029). Despite the number of requests dropped recently, the rate of authorisations granted by investigative judges remained very high - about 98%. The statistics suggest that the authorization of phone tapping requests is almost automatic, irrespective of the content of the prosecutors' requests.

On 10 June 2020, five applicants lodged another application with the ECtHR, claiming the violation of article 8 and article 18 of ECHR. According to a [journalistic investigation](#)

published on 14 June 2019 by RISE Moldova, in the years 2016-2018, the Moldovan authorities carried out a real campaign to surveill the opponents of the government. They were spied, their conversations were tapped and video cameras were installed in the homes of some of them. In total, at least 51 people, opposition journalists and civil society representatives were phone tapped. No person was officially informed of the wiretappings, although the law requires that the tapped persons should be informed.

### **Recommendations:**

- To the Parliament, to strengthen the national legal framework to provide sufficient guarantees against arbitrary phone tapping, including the right of the person, who does not have procedural quality in the criminal case in which he is tapped, to have access to the criminal case after its completion;
- Introduce a single and credible system of evidence of wiretapping and an adequate mechanism to monitor the compliance with wiretapping legislation.
- To the Parliament and SCJ, to introduce an independent system of periodic evaluation of the application in practice of the legislation of wiretapping;
- To the Prosecutor General, to ensure that the officials that were involved in abusive wiretapping are applied sufficient deterrent sanctions.

### [The rate of accepted pre-trial arrest requests reached historical maximums – 93%](#)

The [Sarban vs. Moldova](#) ECtHR judgement (2005) was the first Moldovan judgment finding that the remand decision was not motivated sufficiently. It was delivered almost 16 years ago. Since then, poor motivation of remand judgements is still a serious problem in Moldova, despite the improvement of the legislation in 2016. This is confirmed not only on the national level, but also by the Council of Europe, [which confirmed in a report](#) that the 2016 amendments did not lead to a substantive improvement of the practice of judges and prosecutors related to remand.

The high rate of accepted pre-trial arrest generally does not reside in the legislation, but in the deficient judicial practice. The judicial practice is influenced by the insufficient independence of judges, prosecutorial bias of many investigative judges and by the widespread phenomenon of application of arrest in the past.

A small reduction of the number of arrest requests was attested in [2018](#) (2412) and in [2019](#) (1993). This however should be treated with cautiousness, as it was not determined by a substantive change of the judicial practice or attitude, but rather is a result of the [Law no. 179 from 26 July 2018](#). The new law provided that the arrest could only be applied to persons accused of crimes sanctioned with more than 3 years of imprisonment (before the amendment, the threshold was 1 year). In other words, prosecutors have no right anymore to request arrest in certain categories of offenses. The moderated reduction in 2019 compared to 2018 is explained by the removal from power of the autocratic regime in Moldova in June 2019. Thus, according to official [statistics](#), 1,073 (55%) of the 1,993 remand requests submitted in 2019 were made in the first half of 2019, when Moldova was governed by an oligarchic regime.

Despite the reduction of the number of the arrested persons, it does not appear that the judges examine more thoroughly the remand requests. On the contrary, the rate of accepted arrest requests increased to historical maximums – 93.5%. Such high figures themselves raise serious questions as to the efficiency of the judicial control over the arrest procedures. This data confirms that no substantive change in the applicability of arrest took place in Moldova in the recent years.

The [Moldovan legislation](#) grants the right to claim damages for the breach of Article 5 of the ECHR only upon acquittal. The [ECtHR already found](#) this situation to be contrary to this Article. The Governmental Agent commented that it is possible to claim such a compensation by invoking directly Article 5 para. 5 of the ECHR. He also admitted that there is no such a judicial practice yet. The lack of practice is not surprising, bearing in mind that a person is remanded pursuant a court decision, which is presumed to be legal as long as it is not overturned. Without a quashing of that decision, the compensation is impossible to obtain even in theory, as the establishment of the illegality is a *sine qua non* condition for the right to compensation.

Even assuming that such a right exists, it has been established by the ECtHR in more than 10 judgements that the compensations awarded by the Moldovan judges for the breach of the ECHR were manifestly insufficient. The practice of awarding nominal compensations for the breach of human rights is still wide spread in Moldova. The existence of this serious [problem was admitted](#) by the Governmental Agent himself in 2018.

### **Recommendations:**

- Moldovan judges and prosecutors should apply in practice the guarantees of Article 5 of the ECHR, in particular the verification of the reasonable suspicion of the crime and examination of all the relevant evidence brought before them;
- Alternatives to remand need to be effectively used in practice;
- Any person detained in breach of Article 5 should be entitled to compensation, irrespective of the verdict on the merits of the charges brought against him/her.

### [Torture and conditions of detention – more than 100 ECtHR cases with found violations and counting](#)

The Republic of Moldova is frequently condemned at the European Court of Human Rights (ECtHR) for violating Article 3 of the European Convention on Human Rights (ECHR) (prohibition of torture, inhuman or degrading treatment). [By 1 June 2021](#), the ECtHR found 149 violations of Article 3 ECHR by the Republic of Moldova. The majority of violations relate to ill-treatment and inadequate investigation of ill-treatment by the state representatives (67), but also to poor conditions of detention (46).

The situation to alleviate these findings are somewhat unsuccessful, and there is a high risks that the violation „trend” will continue due to several components: overcrowding of

prison facilities, poor investigation of complaints concerning torture and inhuman or degrading treatment, and last but not least, detention conditions, among others.

Overcrowding raises serious concerns. Despite of all the efforts to humanize the criminal legislation, regarding the decrease in sentences, the rate of the population imprisoned in the Republic of Moldova in 2020 constituted 166,5 prisoners to 100,000 inhabitants, which largely exceeds the European average (about 63 prisoners to 100,000 inhabitants).<sup>1</sup>

Investigation of torture allegation is another issue of concern. According to [official statistics](#) from 2021, criminal investigations were initiated in relation to torture and ill-treatment only in one out of five registered complaints (113 out of 633 recorded complaints). Moreover, in over 82% of complaints, criminal investigations were not initiated, there was no qualitative analysis of the complaints and the circumstances which led citizens to file such complaints. Furthermore, only 22 cases (4%) of the total number of the received complaints have been submitted to the courts. These statistics show the level of inadequacy of the investigation of ill-treatment conducted by the state representatives of the Republic of Moldova.

Detention conditions in Moldova's prisons, in particular in Penitentiary No. 13, is another important issue. They fail to meet the minimum standards for preventing and combating torture and inhuman or degrading treatment. A new penitentiary to replace Penitentiary No. 13 was programmed to be built until 2021, but construction work has not even begun. Moldova's prisons are in a disastrous state and overcrowded, in part due to the excessive use of pre-trial detention. In addition, the Moldovan prison system is run by a powerful criminal sub-culture which is tolerated by the prison authorities. Recently, the UK refused to extradite Moldovan citizens because of poor detention conditions and violence between detainees. [The UK courts have found that the Moldovan authorities](#) are not honouring their promises to place the extradited persons in decent conditions of detention and without the risk of them being subjected violence in the prison system. An important example is the case of [Andrei Brăguță](#), a 32-year-old man who died while in state custody in August 2017 following a road traffic incident. The subject has been intensely publicized after outrageous footage emerged of Andrei Brăguță being mercilessly beaten by fellow inmates, while guards in solitary confinement appear to be doing nothing to stop him. Another example is [the Corsacov group of cases](#) that mainly concern ill-treatment and torture inflicted on the applicants while in police custody and the authorities' failure to carry out effective investigations in this respect.

Since 2019, a new [national remedy](#) for improper detention conditions came into effect. Under this remedy, prisoners and ex-prisoners who are or were kept in conditions that did not comply with Article 3 of the ECHR are entitled to a reduction of prison term or, if this is not possible, to a pecuniary compensation. As stated in the [Annual Activity Report of the National Administration of Penitentiaries for 2019](#), until 31 January 2020, the penitentiary system registered 5,180 complaints of detention in poor conditions. During

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<sup>1</sup> <https://www.coe.int/en/web/prison/space>. Data retrieved by Promo-LEX association.



2019, courts examined 2,402 applications, of which 1,503 applications were examined and 899 applications were rejected. As a result of the admitted requests, the term of detention of 1,410 detainees was reduced by a total of 436,000 days, while more than MDL 1.6 million (EUR 75.000) were granted as compensations and 137 detainees were released from prisons. Among those released were former Prime Minister [Vlad FILAT](#) (convicted for corruption-related cases), former K1 fighter Ion ȘOLTOIANU (convicted of murder, illegal possession of weapons and blackmail) and Alexandru COVALI (convicted for human trafficking). This has generated heated public discussions about the reasonableness of the existence of such a mechanism.

**Recommendations:**

- To the Parliament and the Government, to ensure genuine implementation of all international recommendations and commitments undertaken to prevent torture, inhuman or degrading treatment, including the UN CAT recommendations (2018) and the UPR recommendations made in the previous cycle (2016);
- To the Ministry of Justice and National Prison Administration, to ensure that the prison population is decreased, while a revision of the criminal sanctions with imprisonment from the Criminal Code is implemented;
- To the Ministry of Justice, the Parliament and the Supreme Court of Justice to draft and adopt measures of alternatives measures to detention, and ensure their application by national courts at a larger scale;
- To the Government, to ensure urgent construction of a new penitentiary in Chisinau municipality, which is of paramount importance to avoid inhuman conditions and overcrowding in the Penitentiary no. 13.

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