

MOLDOVA

**Torture, discrimination and
impunity**

*Amnesty International
Submission to the UN Universal
Periodic Review, October 2011*

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the Universal Periodic Review of Moldova in October 2011, Amnesty International expresses concern that Moldova has not yet passed the draft Law on Preventing and Combating Discrimination, and that the Consultative Council, which operates as the National Preventative Mechanism in compliance with Moldova's obligations under the Optional Protocol to the Convention against Torture, lacks both financial resources and independence. Amnesty International also expresses concern at the situation of human rights on the ground. Torture and other ill-treatment in police custody remains routine, the state is failing to carry out prompt, thorough and independent investigations into allegations of torture and other ill-treatment, resulting in impunity for human rights violations, and there have been violations of the right to fair trial. Amnesty International is also concerned at incidents in recent years which demonstrate unwillingness on the part of authorities to protect sexual, religious and ethnic minorities from attacks by various groups in society.

NORMATIVE AND INSTITUTIONAL FRAMEWORK OF THE STATE

Moldova has made progress towards improving the protection of human rights by ratifying a number of international human rights conventions, and by making changes to some of its legislation to bring it closer in line with international human rights standards.

NATIONAL FRAMEWORK

An article criminalizing torture in line with the Convention against Torture was added to the Criminal Code in 2005. In 2008 a progressive new Law on Assemblies came into force. The law, drafted after extensive consultation with civil society, requires organizers of public events only to inform local authorities of the event, but no longer seek permission, and assemblies of fewer than 50 individuals can meet spontaneously without notification. In June 2008 a draft Law on Preventing and Combating Discrimination was circulated for consultation; it had been widely contributed to by civil society and is based on international standards; however to date it has not been passed.

RATIFICATION OF INTERNATIONAL INSTRUMENTS

In April 2008, the National Preventative Mechanism for monitoring places of detention, in compliance with Moldova's obligations under the Optional Protocol to the Convention against Torture, became operational. Amnesty International is concerned that the Consultative Council which operates as the National Preventative Mechanism within the Ombudsperson's office lacks both financial resources and independence.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

TORTURE AND ILL-TREATMENT IN POLICE CUSTODY

Despite some positive steps, Amnesty International's research indicates that torture and other ill-treatment in police custody remains routine in Moldova. The continuing failure by the authorities to carry out effective and impartial investigations into torture allegations maintains a climate of impunity.¹

The organization's concerns are corroborated by the findings of a number of other human rights mechanisms: In the report of its visit from 14 - 24 September 2007, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that the problem of ill-treatment by police was a significant and continuing problem and that one-third of the people interviewed by the Committee alleged that they had been ill-treated in detention.² Similarly, in the report on his visit to Moldova in July 2008, the UN Special Rapporteur on torture reported that ill-treatment in police custody was widespread and that he had received serious allegations of torture in some police stations.³

The actions by police officers during and after the demonstrations that followed the elections on 5 April 2009 revealed that recent legislative and organizational changes had had little influence on police practice, and that many of the existing safeguards against torture and ill-treatment were ineffective in practice. Hundreds of people were detained by police, including many peaceful protestors. Many of them alleged that they had been subjected to beatings and other forms of ill-treatment. There were reports of beatings using police batons and other objects; in one case a metal shoe-horn was used. Some reported that groups of detainees were made to walk down "corridors" of police officers who beat, punched and kicked them as they passed. A young man who had been detained in Ciocana police station reported that this was done because one detainee had complained to the judge about having been beaten by police. In some cases detainees, including one woman, reported that they were deliberately humiliated by being forced to strip naked and perform gymnastic exercises.

The UN Human Rights Advisor for Moldova confirmed that he saw evidence of "acts of cruel and unusual punishment" when he visited the pre-trial detention centre (SIZO) No. 13 in Chişinău on 11 April 2009. The Council of Europe's Commissioner for Human Rights also reported that when he visited detention centres following the events in April 2009, the majority of people interviewed by his delegation alleged that they had been ill-treated by police officers.⁴

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

Amnesty International is concerned that the state is failing to carry out prompt, thorough and independent investigations into allegations of torture and other ill-treatment.

Sergei Gurgurov was tortured in 2005, but it was only in July 2009, after the European Court of Human Rights had ruled against Moldova in the case, that the Prosecutor opened an investigation into his case. Until then the Prosecutor General's office had responded to all requests for a criminal investigation saying that Sergei Gurgurov's injuries were self-inflicted. On 16 June 2009, in the case of Gurgurov v. Moldova (Application no. 7045/08), the European Court of Human Rights ruled that Moldova had violated Article 3 of the European Convention on Human Rights and Fundamental Freedoms, because Sergei Gurgurov had been tortured by police officers and because the state had failed to conduct an effective investigation into the allegations of torture. The court also ruled that there had been violation of Article 13 on account of the lack of effective remedies in respect of the acts of torture. Sergei Gurgurov has received the compensation ordered by the European Court of Human Rights, but to date, according to the information available to Amnesty International, the perpetrators have still not been named in the context of the investigation.

In all the cases monitored by Amnesty International, police officers have continued to carry out their duties while under investigation for torture and other ill-treatment. In some cases, this has meant that victims and witnesses have been put under pressure by police officers to withdraw their testimony. Amnesty International is concerned that the failure to remove police officers from their active duties while under investigation contributes to impunity. The Criminal Procedural Code allows for defence lawyers to request that the prosecutor order the suspension of a suspect without pay, however, there is no provision in law for police officers to be suspended on full pay. Amnesty International considers that officers who have been found to have abused their position and committed acts of torture or other ill-treatment should, as a general rule, not be permitted to remain in office.

Furthermore, Amnesty International has come across cases in which police officers have evaded sanctions for torture. Viorica Plate was tortured by police officers in Chisinau in May 2007. Two of the three police officers who had participated in torturing her were charged, tried and upon conviction were sentenced to six years' imprisonment in November 2007. In February 2008, Viorica Plate informed Amnesty International that she and her lawyer had been harassed by the police officers who had tortured her. In March 2008 the Prosecutor General's office informed Amnesty International that the police officers could not be placed in custody because they had appealed against their convictions. In September 2008 the Supreme Court turned down their appeal, however, they remain at liberty and have yet to serve their sentences.

Amnesty International has been monitoring the trials and the effectiveness of investigations into allegations of torture and other ill-treatment that arose as a result of the events in Chişinău in April 2009. Almost two years later most of these trials are still on-going, and there has been a conviction in one case only. Members of the National Commission, set up in October 2009 to investigate and report on the events of 2009, stated in August 2010 that the Ministry of Internal Affairs had withheld video evidence of the events recorded by their operatives during the events. This came to light when the General Prosecutor's office showed a video of the events which they stated had been filmed by Ministry of Internal Affairs operatives and which had not previously been made available to the National Commission.

FAIR TRIALS

The right to a public hearing in criminal cases is guaranteed by Moldova's Constitution and the Criminal Procedural Code. The Criminal Procedural Code allows for this right to be restricted when morality, public order or national security is threatened or to protect minors or the private lives of the parties to a case. In practice, the right to a public hearing is often restricted for reasons that fall outside these categories, such as the lack of suitably equipped court buildings, or the preference of judges or prosecutors. In 2009, the OSCE Trial Monitoring Programme reported that: "Out of 2,395 hearings monitored by the Programme, proceedings were held in a courtroom in 36% of the hearings (860 hearings) and in the judge's office in 51% of the hearings (1,227 hearings). The remaining 13% of the hearings (308 hearings) includes hearings which were unofficially postponed after having been held in other places such as waiting rooms or in the corridors of the court, sometimes without the participation of the judge."⁵ Court hearings held in judges' offices are reportedly frequently interrupted when people come in to ask questions or when the phone rings. In many cases there is reportedly not enough room in the office for members of the public to attend. According to the OSCE report this practice had the effect of making people behave less professionally and made it impossible to allow for the proper physical separation between the various participants in the case. Amnesty International is concerned that this has a particularly negative effect in prosecutions related to trafficking in human beings, where witnesses are forced to sit in close proximity to those they are testifying against.

In the days immediately following 7 April 2009 judges reportedly authorised continued police custody in local police stations using template documents and thus depriving the detainees of a public hearing. In some cases the hearings were so informal that the detainees were unaware they were before a judge. Only one judge has been sanctioned through dismissal for committing these violations.

In the course of 2010, Amnesty International expressed concern about violations of the right to a fair trial in the self-proclaimed Transdniestrian Republic. Ernest Vardanean, a journalist working in Transdniestria, was sentenced to 15 years by a court in Tiraspol, Transdniestria, for "treason in the form of espionage". On 11 May 2010, before the trial began, a video was broadcast by Transdniestria's main television station, which showed Transdniestria's de facto Minister of State Security, stating that Ernest Vardanean was guilty of the offence he had been charged with. Ernest Vardanean also appears in the video apparently corroborating the claims of the Minister and expressing his regret over his "terrible error". The video subsequently became available on the internet. Ernest Vardanean had almost no contact with the outside world during the 42 days between his initial detention and the broadcasting of the video, and although he was given a state appointed lawyer he was not allowed to see the lawyer of his choice.

FREEDOM OF ASSEMBLY, EXPRESSION AND ASSOCIATION

Amnesty International has documented several incidents when police officers failed to uphold the right to freedom of expression, association and assembly. On 28 April 2010, the Chişinău Court of Appeal ruled that a pro-equality march planned by LGBT rights activists for 2 May in the city centre should be relocated to an unfrequented area in the city, due to "security and public morality concerns". The

organization, Information Centre GenderDoc-M, had informed Chişinău City Hall in March of its intention to hold a demonstration in the Grand National Assembly Square in the city centre, anticipating approximately 50 participants. The activists refused to hold the march in the authorized location in protest against the decision to relocate them. Chişinău city authorities had applied for the march to be banned in response to numerous petitions from a range of religious and other anti-LGBT rights groups. The counter-demonstration organized by those groups was allowed to take place in the city centre on the same day.

DISCRIMINATION

There have been numerous incidents in recent years which demonstrate a disturbing unwillingness on the part of authorities to protect sexual, religious and ethnic minorities from attacks by various groups in society. The European Commission against Racism and Intolerance has noted the frequency of intolerant remarks concerning several minority groups by representatives of the media, the general public and politicians and drawn attention to reports “that the Moldovan Orthodox Church has not always played the role it should in promoting tolerance among its followers.”⁶

On 8 May 2008, the Chişinău Mayor’s Office banned a demonstration by LGBT activists on the basis that he would not be able to guarantee their protection from counter demonstrators. When the activists tried to hold their demonstration on 11 May 2008, they were surrounded by approximately 300 aggressive counter-demonstrators, who prevented them from leaving their bus. Onlookers reported that there were very few police officers present at the scene, and despite the rising tension the police took no action to protect the LGBT activists, who were forced to leave the area.

In December 2009 a group of approximately 50 orthodox Christians removed the Jewish community’s public Hanukkah menorah in the centre of Chisinau and replaced it with a wooden cross. No police intervened as the large metal menorah was torn down, taken apart and placed upside down on the base of a statue of a 15th century Moldovan ruler.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Moldova:

Torture and other ill-treatment

- To investigate all allegations of torture and other ill-treatment promptly, thoroughly and impartially, and to bring anyone reasonably identified as responsible to justice;
- To suspend any police officer or law enforcement official who is under investigation for having committed acts of torture or other ill-treatment, on full pay for the duration of the investigation;
- To ensure that anyone found to be a victim of such violations receives reparations, including fair and adequate compensation and full rehabilitation.

Fair trials

- To ensure that court hearings are public and that information about the dates and times of such hearings is publicly available.

Freedom of assembly

- To uphold the positive obligation of the state to secure the effective enjoyment of the right to peaceful assembly without interference by a third party;
- To ensure that law enforcement officers are fully informed about the right to freedom of peaceful assembly and that they uphold the Law on Assemblies;
- To ensure that all instances of the failure by the police to protect peaceful protestors are thoroughly and impartially investigated.

Discrimination

- To ensure the adoption of the Law on Combating and Preventing Discrimination as soon as possible;
- To ensure that future public events by the LGBT community are permitted and adequately policed, in accordance with Moldova's obligations under international human rights law.

ENDNOTES

¹ *Moldova, Police torture and ill-treatment: 'It's just normal'*, AI Index: EUR 59/002/2007), available at: <http://www.amnesty.org/en/library/info/EUR59/002/2007/en>.

² *Report to the Government of Moldova relating to a visit to Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, December 2008, available at: <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>.

³ *Report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mission to the Republic of Moldova* (4-11 July 2008), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf?OpenElement>.

⁴ *Report by Thomas Hammerberg Commissioner for Human Rights of the Council of Europe Following his visit to Moldova - 25 to 28 April 2009*, Strasbourg, 17 July 2009, CommDH(2009)27.

⁵ OSCE Trial Monitoring Programme report, p.21.

⁶ European Commission against Racism and Intolerance, *Third report on Moldova*, Strasbourg, 29 April 2008, p.24.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Moldova: Police torture and other ill-treatment: It's still 'Just Normal' in Moldova, 30 November 2007, AI Index: EUR 59/009/2009

Moldova: LGBT rights must be respected after pro-equality march is banned, 28 April 2010, AI Index: PRE01/141/2010

Moldova: Ernest Vardanyan must be given a fair trial, 23 June 2010, AI Index: EUR 59/001/2010

Amnesty International Urges President to Approve Moldova's Ratification of the Rome Statute of the International Criminal Court, 17 September 2010, AI Index: EUR 59/002/2010

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/moldova>

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