



GUIDE

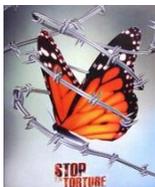
RECOMMENDATIONS FOR COMBATING TORTURE IN REPUBLIC OF MOLDOVA

The present Guide has been elaborated as part of the project “Strategic Litigation – Stop Torture in Moldova”

made by **Amnesty International Moldova**

and the project experts Natalia Molosag, Veronica Mihailov-Moraru

with the support of the **Open Society Foundations** (OSF)



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1. Foreword

Complaints investigated by the Prosecutor General's office, ombudsmen and other institutions, as well as many Moldova's lost cases at the European Court of Human Rights, show that acts of torture and ill-treatments are frequently committed, mainly in institutions run by the Ministry of Internal Affairs and the Department of Penitentiary Institutions. Although the Law prohibits torture and ill-treatment, only recently they have been qualified as grave violations, and punishments have been tightened up. Given these violations are systemic, and the state, in many cases, encourages impunity, the strategic litigation can be regarded as an efficient tool to lawyers. Consolidated reactions to incorrect actions or inaction could discourage illegal practices and enable individuals to seek remedies for human rights violations. Strategic litigation is a method that can bring about significant changes in the law, practice or public awareness via taking carefully-selected cases to court. **The objectives of strategic litigation are to instigate reform of national laws and policies which violate fundamental human rights; to ensure that laws are interpreted and enforced properly; identify gaps in the law.** If public is well informed, obviously, strategic litigation could have a broader impact on the case, on action or inaction of the institution involved at each stage of the case, on public opinion and on the practices and tactics of lawyers. Strategic litigation empowers marginalized groups to seek viable solutions.

The actions above-described do not guarantee the apriority success in each case. The lawyer, the victim and s/he relatives shall take certain responsibilities with regard to eventual abuses and after-effects. Media coverage of the case does not ensure the judges' awareness, vice versa, it can be interpreted as pressure on court.

This Guide is intended at supporting lawyers in adopting conjoint practices and policies when defending alleged torture victims. The book includes several chapters, with lawyers' practices, answers to many questions on alleged cases of torture, inhuman or degrading treatment and recommendations to Government to make necessary changes to legislation in force.

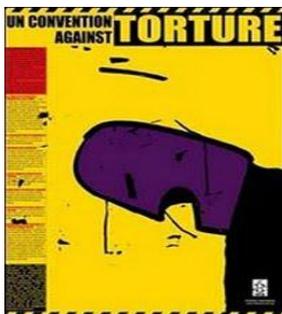
*Ion Guzun,
Member of National mechanism for Torture Prevention
February, 2013*

"The present Guide is a meritorious initiative to support the victims of torture and other forms of ill treatment, caused by law bodies. The publication focuses on main rights of victims and shows clearly what actions a victim of torture shall undertake.

The work also presents briefly main legal characteristics and standards to be respected in cases of torture, inhuman or degrading treatment. This Guide, although it is not a complete one, offers minimum necessary information to victims of torture, ensuring them that justice has its eyes on perpetrators of torture and other ill-treatment."

Ion Caraciuian, prosecutor, head of the Department for Combating Torture within Prosecutor General's Office.

II. Four strategic litigation cases studied by project experts



The public lawyers, Molosag Natalia and Veronica Mihailov-Moraru, being project experts, started 4 new strategic litigation cases to combat torture and ill-treatment as follows.

C.I. (acronym is used for security purposes) – minor, subjected to ill-treatment on 04.05.2012, while in police detention.

He consulted legal representative before lodging his complaint on ill-treatment while in police detention to the Military Prosecution. Military Prosecution refused to initiate a criminal investigation, so he lodged an appeal to higher level prosecutor, on the ground of art. 299¹ of Criminal Procedure Code.

On 31.05.2012 Prosecutor from Military Prosecution Office decided not to initiate criminal investigation. A copy of the complaint was lodged to the Department for Combating and Preventing Torture within the Prosecutor General's office. As the results of initial investigation raised reasonable doubt, on the 29 June 2012, the Prime Deputy General Prosecutor, canceled the nominated decision and opened an investigation into the case, on the ground of art. 309¹alin. 3 p. a) and c) of the Criminal Code. The criminal file was sent to the Cahul Military Prosecutor for the initiation of criminal investigation. As result, on 19.09.2012, the prosecutor of the Cahul Military Prosecutor's Office asked for the authorization to convey the prisoner C.I. from one penitentiary to another, for an efficient criminal investigation. On 04.10.2012, in the court seating, in the presence of lawyer and prosecutor, the investigative judge of the Cahul Court authorized the conveying of the prisoner.

On 29.10.2012, C.I. was recognized as injured party. He was subsequently examined in the presence of a legal representative and a lawyer. On 14.11.2012, the investigative judge ordered the extension of the term of imprisonment.

N. A. is in detention, from July 2011 to present. Inhuman and degrading conditions of detention caused him grave health problems for N.A. "suspected for bone tuberculosis diagnosis".

In August 2012 N.A. was examined in the Penitentiary medical department, and was diagnosed with "bilateral coxarthrosis with cystic changes". Because of unsatisfactory medical conditions in Penitentiary Hospital, the lawyer required specialized treatment in a hospital run by the Ministry of Health of RM.

While in detention, N.A. is continuously subjected to inhuman and degrading treatment. Penitentiary administration has been ignoring his complaints. On 26 October 2012, Prosecutor of Chisinau Prosecutor Central `s Office refused to initiate criminal investigation. The decision was motivated inadequately. Next, a complaint alleging inhuman and degrading conditions of detention in penitentiary will be lodged; higher level prosecutor will accept or refuse the initiation of criminal investigation into alleged inhuman and degrading conditions of detention in penitentiary; the investigative judge shall pronounce his verdict on the quality of investigations into the allegations of torture and other ill treatment.

S. R. was arrested and brought to Ceadir-Lunga police station on 03.12.2011. He was suspected of committing a robbery. S.R. was held in preventive detention for 5 months. Then, he was subjected to forced psychiatric expertise and forced treatment in the Psychiatric Republican Hospital, until 20.11.2012. His mother lodged a complaint of torture, degrading treatment and inhuman and degrading conditions of detention. She informed that her son was threatened and slapped by police officers of Ceadir-Lunga commissariat, while in detention, and was subjected to physical and psychical treatments. At the request of his mother, a lawyer lodged a complaint of alleged torture. The Ciadir-Lunga Prosecutor`s Office rejected the complaint and didn`t initiate criminal investigation, on the account of lack of criminal component. The case was taken over by Amnesty International Moldova, who lodged a new complaint to a higher level body, alleging insufficient primary investigations. The complaint was admitted and prosecutor ordered a new investigation into the case, but without initiating, officially, the criminal investigation. The lawyer required new procedural actions, but the Ciadir-Lunga Prosecutor`s Office rejected the request again, alleging, again, the lack of criminal component. The lawyer contested the refusal before Prosecutor General`s Office, and before the investigative judge of Ceadir-Lunga Prosecutor`s Office. The lawyer required information about developments in the case and required the initiation of criminal investigation into the allegations of torture, on the account of some additional arguments. The investigations of the Ciadir-Lunga Prosecutor`s Office were conducted within a report, out of the provided criminal-procedure framework. Many persons were questioned, but were not admitted as witnesses, and respectively, were prevented from criminal liability. Thus, his right to a fair trial was violated.

After many court proceedings, the Ciadir-Lunga Prosecutor`s Office rejected the request to cancel the refuse to initiate criminal investigations into the allegations of torture. The request was lodged according to art. 313, of the Criminal Procedure Code, on 12.11.2012.

CONCLUSION: At the national level, all the legal ways for the notification of legal bodies on allegations of torture and ill treatment have been used up. Within 6 months the case regarding the violation of art.3 (prohibiting torture) and art.5 (on the right to freedom and security of the person) will be brought to ECHR, in order to recognize the young man`s right to an efficient and balanced state investigation , to physical and psychical integrity and to moral and material compensations.

S. A. was arrested for theft and robbery, in Chisinau, in November 2011. On arrest, he was threatened by a policeman of Buiucani police section, was beat and forced to admit the incriminated offences. He was detained for more than 5 months. The report on his arrest is signed by a lawyer from the office. Hence, the young man says he did not benefited of confidential legal consultation and was not assisted correctly by the defender. While in police detention, he asked for medical aid, but was refused. Later he was acquitted of many alleged crimes.

Upon the consent of the young man`s mother, the case was taken over by the Amnesty International Moldova lawyers, who lodged a complaint of torture to the Buiucani Prosecutor`s Office of Chisinau, which refused to initiate criminal investigation on the account of the lack of criminal component. Later, the refusal was contested before the higher level body and was admitted and new investigation into torture and other ill treatment was initiated.

Still, it seemed the law bodies avoided initiating criminal investigation and conducting all necessary procedural actions, a fact that can be regarded as a systemic problem, as far as torture is concerned. The investigators are busy, as a matter of fact, with other kind of cases. Thus, the injured party remains underprivileged. To the best interest of the client, there were lodged interpellations to check the developments in the case, from arrest to court decision. The goal of this action was to monitor the reaction of the state bodies to a request of detainee for medical aid.

The interpellations either had no answer, or the answer was worded ambiguously and was not accompanied by any additional medical acts. Further, mandatory procedural actions were required, but, surprisingly, the victim refused to send the perpetrators of torture and ill treatment to court. In a private discussion, the client and his mother admitted they were visited by the policemen suspected of torture and the young man was threatened with a new arrest, if he insisted on accusations. Such circumstances made the client afraid of consequences, confused and isolated. The events took place short after he was freed and this influenced his psychologically, this influence having a long term effect. Despite conciliation of Amnesty International Moldova experts, of psychologist, of protection according to art.5 of the Law on protection of witnesses the person didn`t want to continue actions against his torturers.

CONCLUSION: The case proved that, as for the victims of torture, their personal security is prior to their wish to continue the initiated criminal procedure and the Law on protection of witnesses does not offer sufficient guarantees to them.

III. Recommendations and practical advice to non-professionals, victims of torture and inhuman or degrading treatment or punishment.



-ANY PERSON CAN BECOME VICTIM OF TORTURE-

At the national level, article 166¹ of Criminal Code of the Republic of Moldova, amended by Law nr. 252 dated 08.11.2012, in force as of 21.12.2012, stipulates torture and defines inhuman and degrading treatment:

(1) Any act by which severe pain or suffering, whether physical or mental, which represents inhuman and degrading treatment, is intentionally inflicted on a person by a public official or by a person, who, de facto, exercises the attributions of a public authority, or by any other person acting in an official capacity, with the consent or acquiescence of such a person,

- shall be punished by imprisonment for 16 to 20 years or by a fine in the amount of 800 to 1000 conventional units, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for 3 to 5 years.

(2) Actions provided for in p. (1):

(a) committed, deliberately, against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap or another factor;

(b) committed against two or more persons;

(c) committed with the use of a weapon or special instruments or another object used as a weapon;

(d) committed by a public authority or by a person acting in an official capacity

(e) who, by imprudence, caused severe or medium bodily injury or damage to health of the victim;

(f) who, by imprudence, caused death of the victim or made him/her commit suicide.

shall be punished by imprisonment for 3 to 8 years or by a fine in the amount of 800 to 1000 conventional units, in both cases with the deprivation of the right to hold certain positions or to practice certain activities for 5 to 10 years.

(3) Torture, meaning any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

- shall be punished by imprisonment for 6 to 10 years with the deprivation of the right to hold certain positions or to practice certain activities for 8 to 12 years.

(4) Actions provided for in p. (3):

a) committed deliberately against a person known to be a juvenile or against a pregnant woman or by taking advantage of the victim's known or obvious helpless condition caused by advanced age, disease, physical or mental handicap or another factor;

b) committed against two or more persons;

c) committed with the use of a weapon or special instruments or another object used as a weapon;

d) committed by a public authority or by a person acting in an official capacity;

e) who, by imprudence, caused severe or medium bodily injury or damage to health of the victim;

f) who, by imprudence, caused death of the victim or made him/her commit suicide.

- shall be punished by imprisonment for 8 to 15 years with the deprivation of the right to hold certain positions or to practice certain activities for 10 to 15 years.

It is worth mentioning, the European Court for Human Rights defined three categories of treatment:

TORTURE:

Willfully caused inhuman treatment, causing very severe and cruel pain. (*i.e. the case S. Gurgurov vs Republica Moldova, the state paid moral reparation amounted to 45000 Eur*).

INHUMAN TREATMENT:

Any action causing intense mental and physical pain.

DEGRADING TREATMENT:

Acts which humiliate, degrade or otherwise violate the dignity of a person to such a degree "as to be generally recognized as an outrage upon personal dignity grossly humiliates the victim before others or drives the detainee to act against his/her will or conscience any action causing pain, suffering and feeling of inferiority to a person, which humiliate, degrade or otherwise violate the dignity of a person to such a degree as to break his or her moral and physical resistance.

Torture is defined in art. 1 of the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as of 10.12.1984, which Moldova ratified through the Decision of Parliament of RM nr.473-XIII of 31.05.1995, as:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

According to art.58 of the Criminal Procedure Code, victim of torture is any person who, by a crime, was caused moral, physical or pecuniary damages, by the state agents.

Acts of torture and other ill treatment can be committed:

- While a person is arrested at home, in the street, by police officers. Further the person can be taken or not to the police station.
- During procedural investigation.
- On the way to detention place.
- While in detention, while interviewed.
- In medical institution and in courts.
- While questioned about committed crime.
- While in penitentiary or in preventive detention.

In each case, victims have the right to:

1. Inform a relative or another person of his/her arrest or caused damage.
2. Ask information of the reason of his/her arrest and require the transcript in respect of his/her arrest. Victim shall be informed of his/her right to speak or keep quiet and shall speak only in the presence of a lawyer.
3. Be assisted by a private lawyer or a lawyer appointed by the National Council of Legal Assistance Guaranteed by the State, within three hours from his arrest.
4. Ask for confidential consultations with lawyer. Inform promptly the lawyer of eventual ill treatments he had been subjected to by police officers. Speak about facts, no matter of time required.
5. Ask to be examined by a private doctor or by a doctor from a certain medical institution, who would examine his additionally, in case he/she is dissatisfied with primary medical assistance. In case a victim is inflicted whether physical or mental pain, when not in detention, he/she shall urgently go to a doctor or a medical institution to be examined and to have his injuries recorded.

6. Lodge complaints of torture or other ill treatment to police station, Prosecutor General's Office or Ombudsmen. The complaint shall be handed personally by victim or by his/her lawyer. At least two copies shall be made. The complaint shall be registered with the chancellery of the Commissariat or of the Prosecutor General's Office. The registration number shall be written on the second copy as well. In case the complaint is posted, it shall be a certified mail, to have evidence that it was actually sent.

7. Require information on how the case progresses and about developments in the case,

8. Submit evidence, witness` declarations or documents to help support the complaint. As well, victims shall be examined by a psychologist, to prove that psychological torture was inflicted on him.

9. Ask for state protection, in case he/she is threatened and his/her life and health are compromised.

10. Request a copy of all the decisions in respect of his/her complaint, request restitutions of damages.

11. lodge a new complaint to the higher level prosecutor, within 15 days, requiring re-examination, if the prosecutor rejected the complaint.

12. In case the higher level prosecutor refuses to examine the complaint, he/she shall lodge a complaint to the investigative judge, within 10 days from receiving the refusal, on the ground of art. 313 of the Criminal Procedural Code, asking for cancellation of the refusal of the criminal investigative body to examine the complaint.

13. Upon the initiation of criminal investigation, s/he shall be recognized as aggrieved party, having procedural rights in criminal proceeding for allegations of torture. Thus, as aggrieved party, the alleged torture victim shall cooperate with prosecutor, shall be informed adequately of any decision, of all case developments, and shall require being present at court proceedings, shall require

punishment of perpetrators of torture and other ill treatment, shall pursue a civil action for moral and material damages.

As a rule, in a criminal case, the prosecutor shall actively collaborate with victim and, on the ground of art. 53 of the Criminal Proceeding Code, he/she shall monitor strictly that the rights of aggrieved party are respected.

Any victim of torture and other ill treatments from Moldova, can address public and non public institutions and associations from Moldova to get information and conciliation. Here is a list of the most representative institutions in the field of human rights protection:

- BAA"Public Lawyers", for free legal consultations, 1 A. Russo str. Floor 3 office 37/39, working days 10.00-12.00.
- National Council of State Guaranteed Legal Assistance, 1 A. Russo str. Floor 3 office 35-36 for employing state lawyers.
- Center for rehabilitation of victims of torture 'Memoria' for medical and psychological conciliation, 44 Ismail str, Chisinau, MD-2001, Republic of Moldova.
- Amnesty International Moldova, documentation of cases of torture and ill treatment, including defending prisoners of conscience. Chişinău, 2/1 Teatrului str., floor 2, tel.(022) 83-58-08.
- Center for Human Rights (Ombudsmen). 16 SfatulŢării str. Chişinău, Moldova MD-2012.tel: (022)23-48-00.
- Prosecutor General`s Office, Hot Line: 0-22-27-94-57 or 0-22-27-30-27.
- Ministry of Interior Affairs, Hot Line: 0-22-57-72-38.
- National Mechanism for Preventing Torture, Hot Line: 0-8001 2222.

IV. Recommendations and practical advice to the professionals combating torture and ill treatment



For defense-lawyers:

Upon taking over an alleged case of torture and other ill-treatment, lawyers shall approach the victims with sensitivity and professionalism, because s/he role in finding the truth in decisive.

Lawyers shall be extremely diligent and respect ethical standards. They shall:

1. Provide legal advice to client for good consideration. Speak in a language and in a manner the victim understands, be good listeners when victim relates his/her story; inform him/her about rights and actions s/he can and must undertake; offer both moral guidance and guidance.
2. Interview thoroughly the victim of torture and other ill-treatment about the torture location, methods of torture, consequences; record the evidence.
3. Ask for medical examination of victim even if signs of corporal injury are not obvious. Any refuse of Penitentiary or criminal investigation bodies to provide medical aid shall be recorded.
4. Contact the relatives of the victim and inform them of what happened.
5. On the basis of art. 262, 274 of Criminal Procedure Code, lodge a complaint of torture and other ill treatments. The complaint shall contain all details regarding the moment s/he got arrested and taken into custody, location, time, and the place of detention, number of persons who inflicted torture on him/her, their features, and methods of torture.

6. Require information on how the case progresses and about developments in the case.
7. require collection of evidence, witness testimonies, documents and expertise to prove that the victim was inflicted ill treatment.
8. solicit victim protection measures.
9. ask the opinion of a psychologist while evaluating the impact of torture, ill treatment on victim.
10. inform public opinion on the acts of torture, with the victim`s consent and evaluating media communication risks.
11. lodge complaints to higher level body, against illegal actions of criminal investigation body while investigating allegations of torture and ill treatments.
12. lodge repeated complaints, on the ground of art. 313 of Criminal Procedure Code, to the first level judge for a new re-examination, in case of a repeated refuse of hierarchically superior body to examine the previously lodged complaint. The complaints filed to the investigative judge shall contain evidence regarding superficial investigations, failed acts, violated rights, grounded on national and international legal regulations.
13. ensure appropriate emotional and psychological support for victim, for a consolidated stand before judge.

Upon the initiation of Criminal Investigation the lawyer shall get actively involved in procedural actions and shall file requests for:

- hearing the victim additionally, when s/he remembers relevant information;
- hearing witnesses who may know circumstances related to inflicted torture;
- presentation for identification;
- confrontation between injured and suspect or accused;
- verification of declarations of injured party at the location where torture was inflicted;
- legal expertise;
- attaching relevant documents or objects to materials of criminal case;
- suspension of police officers while under investigation for torture and other ill treatment.

- more rapid procedural actions.

Upon the suspension of criminal investigation, the lawyer shall:

- request copies of the order on suspension of the criminal investigation and the criminal file;
- check if evidence was collected and identified efficiently;
- appeal the order on suspension of criminal investigation to higher level bodies;
- require the resumption of the criminal investigation.

During examination of case in court, the lawyer shall:

- require audio and video aids in court;
- develop the defense strategy and the list of materials and evidence;
- make out the civil action to reclaim moral and material damage.

Recommendations for Prosecutors:

Prosecutors shall:

- 1) investigate promptly alleged cases of torture and inhuman and degrading treatment;
- 2) collect promptly evidence and witnesses' depositions on ill treatments;
- 3) insure security and integrity of injured party as not to be further influenced or threatened by the accused, suspected, defendant;
- 4) guarantee adequate psychological and pedagogical assistance in cases where minors are involved;
- 5) work efficiently with lawyers of injured party to find the truth;
- 6) reverse the burden of proof.

V. Recommendations to assist Moldovan Government in combating torture, inhuman or degrading treatment

It's worth mentioning, since April 2009 to now, a series of amendments have been operated to national procedural criminal legislation, to solve systemic problems that hampered investigations into torture and other ill treatment allegations.

Criminal Code and Criminal Procedure Code, were amended by Law nr.252 from 08.11.2012 „For modification and completing of legislative acts” in force as of 21.12.2012 in Official Monitor, No.263-269.

Additional recommendations:

- organize awareness campaigns on combating torture and its forms, inform victims of their rights.
- to upgrade Criminal Procedure Code to ensure punishment of investigators who exceed, or with no reason exceeding the term for investigation torture allegations.
- to establish a fully-resourced independent agency to investigate all allegations of torture and ill-treatment.
- make necessary changes to the Criminal Procedure Code to ensure compulsory information of criminal investigation parties of the decision to initiate or not- initiate a criminal investigation. The note shall be accompanied by a copy of decision and invoked reasons.
- make necessary changes to the Criminal Procedure Code and the *Law on Protection of Witnesses* to ensure an efficient protection system at all investigation stages.
- review the Amnesty Report 2007 and make necessary changes to art. 200 of Criminal Procedure Code of RM, in line with European standards, to ensure that any police officer who is under investigation

for having committed acts of torture, can be suspended on full pay for the duration of investigation.

- to upgrade procedure terms provided in art. 244-247 of Criminal Procedure Code of RM.

- exclude the inefficient and useless “obligatory legal contestation”, from art.298-299 of the Criminal Procedure Code of RM, so that each person could address directly the Investigative Judge, in case prosecutor rejects the request. This recommendation was endorsed by representatives of Prosecutor General’s Office.

- make necessary changes to art. 20 of the Law on Public Prosecutor’s Office, to delimitate clearly specific prosecutors` duties, or to transfer competences to a third institution.

- make necessary changes to the Law on Public Prosecutor’s Office, to perform requests or motions in a criminal proceeding, in line with art. 244-247 of the Criminal Procedure Code of RM, within reasonable timeframes.

- to attract teams of doctors, psychologists, victim assistants etc., to assist prosecutors in combating torture and other ill-treatments.

VI. Conclusions

"The phenomenon of torture and ill-treatment can be reduced only in case when victim, prosecutor and lawyer will work together. In this respect, the guide includes case-studies and practical recommendations, so that victim can realize his/her role and importance in combating torture and also can check if both lawyer and prosecutor act to his/her best interest.

It is worth mentioning the recommendations to Government, resulting from lawyers` experience, are aimed at amending legal framework and getting additional guarantees for victims of torture and those suspected of committing such acts.

Before the Government implements the recommendations, both lawyers and prosecutors need be aware of gaps in legislation and pay maximum effort to implement the recommendations individually.

The Guide offers solutions and directions for both victims of torture and ill treatments and lawyers and prosecutors. The work is recommended for isolators, detention places and also for lawyers` and prosecutors` libraries."

Victor Pantiru, defense lawyer, BAA "Pantiru and partners"