

# **JUSTICE NOT ATTAINED, FUTURE NOT ENSURED**

**REFLECTION ON THE TENTH ANNIVERSARY OF THE  
APRIL 2009 EVENTS IN MOLDOVA**

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# INTRODUCTION

In 2019, Moldova marks 10 years since the tragic events of 7 April 2009. On that day, hundreds of people were subjected to arrest and beating by police in the capital Chisinau, and one protester died from the injuries he received. The most fitting way for the country to mark this anniversary is to reflect on the legacy of these events. It is time to reflect on the steps taken to provide justice, truth and reparation for the victims and take stock of the changes put in place since to address past crimes and prevent their repetition. Sadly, there is little, if any, sense that victims have attained justice and those responsible have been held accountable. Some progress in addressing torture and other ill-treatment has to be recognised, but there are still serious structural issues that need to be urgently addressed.

## THE APRIL 2009 EVENTS AND THEIR LEGACY FOR COMBATING TORTURE: AN UNFINISHED BUSINESS

The day after the disputed parliamentary elections on 5 April 2009, in which the ruling Communist Party of Moldova was declared to have won a new majority, thousands of people gathered in protest in central Chisinau and other cities. On 6-8 April, tens of thousands of people marched through the streets and assembled in front of the Presidential Administration and the Parliament buildings. Some protesters used violence and tried to enter government buildings or set them on fire, which prompted a heavy-handed and indiscriminate response by police to what was still an overwhelmingly peaceful assembly. The protest carried on, and eventually led to a new parliamentary election and a series of consequential political changes, including a rapid political decline of the Communist Party of Moldova.

While the rallies continued, police arrested at least 600 people, amongst whom were minors. These individuals spent hours, sometimes days, in custody, and many of them alleged that they were subjected to beatings and other forms of ill-treatment during this time. Their ill-treatment varied, from severe beatings to humiliation of sexual nature, as the cases presented below demonstrate. Some detainees reported being forced to walk between two lines of police officers who punched and kicked them as they passed. At least one person died as a result of police beatings.

Various human rights monitors, Moldovan and international, documented numerous human rights violations committed by police during these events. The Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Moldova in July 2009 and reported that the delegation had heard “a remarkably large number of credible and consistent allegations of police ill-treatment in the context of the post-election events in April 2009.”<sup>1</sup> In November 2009 and in April 2012, Amnesty International published two documents on the April 2009 events, featuring seven cases. Only one of these resulted in a conviction of two police officers, both of them given non-custodial sentences.

The 6-8 April 2009 events were a watershed for Moldova in more than one way. They were significant in terms of defining the country’s subsequent political landscape, as well as prompting a wide range of reforms. Among these were legislative and practical measures taken to address the endemic issue of torture and other ill-treatment and end impunity for those suspected of criminal responsibility. The relevant legislation was overhauled, new regulations were adopted, new institutions were created.<sup>2</sup> Criminal investigations were conducted, and some compensations to victims of police abuses during the April 2009 events paid.

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<sup>1</sup> The full text of the report is available at <http://rm.coe.int/doc/09000016806975ac> (accessed on 1 April 2019).

<sup>2</sup> On 4 May 2010, the Section for Combatting Torture was created under the Prosecutor General’s Office for the purpose of investigation and prosecution of the relevant crime. In 2010-2014, amendments were introduced into the Criminal Code (Article 166-1) and the Criminal Procedure Code (Articles 60, 79 and 107) bringing them in line with the definition of torture in Article 1 of the UN Convention against Torture, introducing a certain minimal punishment for torture and other ill-treatment, and removing the statute of limitations for torture and other ill-treatment. On 3 April 2014, People’s Advocate (human rights ombudsman) was instituted by Law No. 52. On 24 October 2016, the Council for Prevention of Torture was created as the National Preventive Mechanism under the Optional Protocol to the Convention against Torture. In December 2016, the government adopted the Strategy on Developing the Penitentiary System for 2016-2020.

Nonetheless, the issue of torture and other ill-treatment, and impunity for the perpetrators, still remains as topical for Moldova as it was in 2009. On the one hand, the number of reported allegations of torture and other ill-treatment appears to have lessened, at least according to the official statistics.<sup>3</sup> The general public opinion is more alert and more responsive to reports of abuses by police than was the case before 2009. On the other hand, the measures put in place to address the issue of torture, bring perpetrators to justice and prevent it in the future are not comprehensive; allegations of torture are still being reported. There are both unresolved past problems and structural issues which the country needs to recognise, confront and effectively address. In particular:

Justice needs to be done and to be seen to be done. In all but two cases (both currently in court), to the best of Amnesty International's knowledge, legal remedies available at the national level to victims of the April 2009 events have been exhausted. And yet, in many – if not all – of these cases, the victims have been left without a sense of justice achieved and continue to feel that the perpetrators have been penalised lightly or not at all. This not only perpetuates the sense of impunity for those responsible but also undermines public trust in the existing system of criminal justice in Moldova.

While a number of former police officers have been prosecuted, and some convicted, in connection with the April 2009 events, most, if not all, were of the junior level and did not include senior commanding police officers or politicians and state officials responsible for taking operational and political decisions at the time.

There is no independent and specialised agency for investigation of torture and other human rights violations by police, and no plans to create one. Without it, there is no certainty that past and ongoing allegations of torture and other ill-treatment will ever be effectively investigated and justice will be seen to be done.

Some of the victims of the April 2009 events continue to suffer psychological and physical effects of the abuse suffered. However, few, if any, have access to the necessary medical expertise and rehabilitation programmes. Apart from one exception provided by an NGO (Memoria, see details below), there is no system in place intended to provide rehabilitation to victims of torture, and no designated official route or procedure which the victims can follow to begin to deal with these issues.

Victims of human rights violations committed by police during the April 2009 events and other violations since have not received adequate and effective reparation. Apart from appropriate medical care and rehabilitation for the suffering incurred, this should include, but not be limited to, financial compensation, the truth about the facts of each case, and effective guarantees of non-repetition. Apart from financial compensation given in some cases (in many cases seen by victims themselves and by the human rights community in Moldova as negligible), none of these are currently available.

Some of the recent cases, including those described below, demonstrate that without addressing some of the underlying systemic issues, torture and other ill-treatment cannot be ruled out in Moldova, and in fact new cases continue to be reported in places of detention. There needs to be a prompt action to address, amongst other things, conditions of detention, lack of adequate and sufficient healthcare provisions in the penitentiary system, and absence of clear protocols for dealing with detainees who have specific mental and physical needs and health conditions.

While working on this publication, in February 2019 Amnesty International's representatives met with local human rights organisations, lawyers of victims of the April 2009 events, members of the office of the People's Advocate of Moldova (the Ombudsman's Office) as well as with officials from the Prosecutor General's Office and the National Penitentiary Administration. They reviewed legislation, official documents and reports produced by national and international monitoring mechanisms, and the relevant European Court of Human Rights' case law.

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<sup>3</sup> The Prosecutor General's Office publishes its general statistics every year, which appears to indicate a gradual decline. The latest report for 2018 statistics is available here, the relevant section on pages 82-87: [http://procuratura.md/file/2019-03-05\\_Raportul%20Public%20activitatea%20Procuraturii%20Generale%20anul%202018.pdf](http://procuratura.md/file/2019-03-05_Raportul%20Public%20activitatea%20Procuraturii%20Generale%20anul%202018.pdf) (accessed on 1 April 2019).

# VICTIMS OF POLICE VIOLENCE IN APRIL 2009: NO SENSE OF JUSTICE

Back in 2009, the Prosecutor General's Office (PGO) registered 108 complaints from alleged victims of police violence during the April protests – the figure to which its representative referred during a meeting with Amnesty International earlier this year. According to independent human rights monitors, between 600 and 700 individuals were arbitrarily detained in April 2009, and many of them subjected to torture and other ill-treatment. It is not known how many of these have filed, or have tried to file, official complaints. According to several lawyers (representing some of the victims of these abuses) interviewed by Amnesty International at the time and since, the process of registering a complaint was onerous and often required professional legal assistance.

In 2015, the PGO published a press-release in which it summarised the outcome of the 108 complaints. According to it, 71 separate criminal cases were opened leading to conviction of 29 police officers and, at the time, ongoing court hearings (including in courts of appeal) in relation to 27 police officers.<sup>4</sup> Since then, all relevant criminal proceedings have either been closed or concluded, and as of 31 December 2018, all court hearings brought to an end, except for one case still pending in the court of first instance, and one other in a court of appeal (due to the absence of those people who filed the complaints initially).<sup>5</sup> While no further comprehensive statistics are available to Amnesty International, including after the latest meeting on this subject with a PGO representative, according to publicly available information, among all those police officers convicted in connection with the April 2009 events, only one received a custodial sentence in connection with the death of a protester, and absconded before he could be remanded in custody, while all others received non-custodial sentences.

The relevant allegations were investigated as, and alleged perpetrators prosecuted under, the charges of torture (under the definition existing at the time), abuse of authority, exceeding official powers, professional negligence, and causing bodily harm.

However, many obstacles stood in the way of justice. Moldova's criminal justice system was ill-suited to deal with the aftermath of the April 2009 event. Numerous of its inherent hurdles contributed to impunity for the perpetrators, including its limited resources and insufficient expertise for documenting and investigating torture and other alleged crimes. Institutionally it was not – and is still not – set up to deal effectively and impartially with the human rights violations committed by police. There was not – and still is not – an independent agency tasked with investigation of allegations against, and prosecution of, law enforcement officials. This leads to an inherent conflict of interest whereby the system, which is designed to ensure cooperation between the police and the prosecution for the overall purpose of combating crime, cannot be expected to effectively investigate and prosecute its own members.

In response to the 2009 events, in 2010 the Prosecutor General's Office created a new unit – the Section for Combatting Torture. This has been an important step in itself, and the Section has been central to dealing with a number of subsequent reported cases of torture and other ill-treatment (including the case of Andrei Braguta, see below). However, the creation of this unit within the PGO does not meet the criterium of independence.

All this, including the outcome of the 108 officially registered complaints about police abuses in April 2009, the fact that not a single police officer has served a custodial sentence, that some of those against whom criminal proceedings were opened and later closed were able to return to serve in the police force, and that those ultimately convicted did not include senior commanding police officers or other state officials responsible for taking the relevant operational decisions at the time, has contributed to a sense of deep injustice among the victims of police abuses. As time passed, many of the victims lost hope to attain justice in Moldova. Some have sought justice through the European Court of Human Rights (ECtHR). Some others decided to leave Moldova altogether and have moved abroad. Of those who submitted complaints to the ECtHR in connection with the April 2009 events (their total number of not known; some of these submissions have not yet been reviewed), the Court has delivered its decisions in seven cases – in all of them in favour of the applicants. The latest ECtHR decision on these cases was in *OR and LR v The Republic of Moldova* delivered on 30 October 2018. In at least nine further cases the Moldovan authorities

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<sup>4</sup> The press release, in Romanian, is available at <http://procuratura.md/md/news/1211/1/5688/> (accessed on 1 April 2019).

<sup>5</sup> Statistics provided by the Prosecutor's General Office to Amnesty International during a meeting on 6 February 2019.

reached out-of-court settlement (in eight of these offering financial compensation of between Euro 4,000 – 15,000 to the victims).<sup>6</sup>

One of the cases on which the ECtHR has delivered its decision is that of Oxana Radu and her sister.<sup>7</sup>

### **NO JUSTICE AT HOME, VICTIMS AWARDED COMPENSATION BY THE EUROPEAN COURT**

**Oxana Radu and her sister were arrested and taken to police station in April 2009. Two police officers were convicted in connection with their ill-treatment and given non-custodial sentences. The sisters pursued justice at the European Court of Human Rights which ruled in their favour and were awarded financial compensation years later.**

Oxana Radu was among a group of 36 young people who had come from the town of Cahul in the south of the country in two minibuses to witness the events. They were stopped as they were leaving Chisinau after midnight on 8 April, and then escorted to the General Police Commissariat. Oxana Radu, her sister and one other woman were taken directly into the police station. In her testimony, Oxana Radu told Amnesty International in 2009:

They led me to a room where there was a policeman and a policewoman. They forced me to strip naked and I covered myself with my arms because I was embarrassed, and they laughed at me and said: “You’re cold, we will warm you up.” They made me do squats. I don’t remember how many.<sup>8</sup>

She was then taken to a cell with four other women and her younger sister. They were reportedly left for two days without food or water, access to a lawyer or the possibility of contacting their families. Oxana Radu was accused of having shouted at a policeman and sentenced to five days’ administrative detention by a judge in the police station. She and two other women were taken to the police station in Drochia in the north of the country to serve their sentences. She was released at 2 am on 14 April.

On 15 July 2011, two of the three police officers whom Oxana Radu identified as those responsible for her and her sister’s ill-treatment, were convicted and given suspended sentences. It was not until December 2011 that Oxana Radu received a copy of the written court decision, which meant that during this time then she and her sister were unable to appeal the sentence, which they saw as too lenient. Until the appeal was heard and the verdict was confirmed and became final, the police officers concerned continued working at the same police station.<sup>9</sup>

Having exhausted available national remedies, the sisters chose to seek justice at the European Court of Human Rights (ECHR). On 30 October 2018, the ECtHR took a decision and ruled in their favour and awarded Oxana Radu and her sister a financial compensation.<sup>10</sup>

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<sup>6</sup> See media report at: <https://www.zdg.md/editia-print/investigatii/milioanele-organelor-de-drept/comment-page-1> (accessed on 1 April 2019).

<sup>7</sup> Oxana Radu has been interviewed by Amnesty International for its previous reports on the April 2009 events; the organisation has not been in touch with her sister, hence not using her name (full names are not used in the ECtHR decision).

<sup>8</sup> Amnesty International, *Unfinished Business: Combating Torture and Ill-treatment in Moldova*, EUR 59/001/2012, page 9, available at <https://www.amnesty.org/download/Documents/24000/eur590012012en.pdf>.

<sup>9</sup> Amnesty International, “Justice at home for victims of torture and ill-treatment in Moldova”, 7 April 2014, EUR 59/001/2014, available at <https://www.amnesty.org/download/Documents/8000/eur590012014en.pdf>.

<sup>10</sup> Interview with Vlad Gribincea, lawyer of Oxana Radu, 5 February 2019.

# FINANCIAL COMPENSATION FOR THE VICTIMS OF POLICE VIOLENCE

All victims of police violence should receive adequate and effective reparation, including financial compensation, from the state. The authorities in Moldova have recognised, and partly acted under, this obligation. Back in October 2010, the Ministry of Finances allocated MDL 222,700 (just under US\$ 20,000 at the time) for compensations and related expenses for the victims of police abuse as well as police officers who had incurred injuries during the April 2009 events. As the then-Minister of Finances Veaceslav Negruta explained, these would be disbursed according to forthcoming court decisions.<sup>11</sup> Notably, according to the Minister, there were 467 individuals on the list of civilians regarded as victims, alongside 271 police officers. It is unclear how many ultimately received financial compensation. According to the Minister, the compensations were to take the form of one-off payments of MDL 5,000 (US\$ 430), and it is Amnesty International's understanding that some victims have indeed received financial compensation of this or commensurable amount, but it is unclear how many. A handful of individuals (at least eight, as of April 2014) received considerably higher compensations commensurate with those awarded by the ECtHR as out-of-court settlement in connection with their complaints to the European Court (see above),<sup>12</sup> and this number is unlikely to be higher or considerably higher by the time of writing.

However, apart from financial compensation, which should be adequate in all cases, victims of police abuses should receive adequate and effective reparation, which also should include appropriate medical care and rehabilitation for the suffering incurred, amongst other things.

# LACK OF EFFECTIVE REHABILITATION FOR VICTIMS OF TORTURE

For many respondents interviewed by Amnesty International, the tenth anniversary of the April 2009 protests is a reminder that the scale and seriousness of police abuses suffered by peaceful demonstrators has not been matched by the scope of the investigation and prosecutions that followed, and by the penalties imposed on those few former police officials who have been prosecuted and convicted of the relevant offences. This has left the victims with a feeling that justice is unattainable, and a sense of helplessness in the face of impunity enjoyed by those responsible.

For some of the victims of torture and other ill-treatment at the hands of the police, however, the legacy of April 2009 does not end with a sense of injustice – specifically for those who have suffered lasting health problems, physical or mental, or both. The longer these problems remain untreated, the worse they get in many cases. According to Ludmila Popovici, the Director of the Centre for Rehabilitation of Torture Victims "Memoria", who is dealing with these issues professionally, psychological trauma suffered by victims of torture in particular can have long-lasting consequences that may worsen over time without specialist treatment and rehabilitation. Individuals living with such trauma are at risk of isolation, social stigma and depression, which in turn affects their professional and family life, and their relationship with the rest of society.<sup>13</sup> However, in reality little if any help is available to them.

Notably, back in 2010 the Ministry of Finances earmarked MDL 144,000 (US\$ 12,500) for "sanatorium and rehabilitation services" as part of its above-mentioned MDL 222,700 rehabilitation envelope.<sup>14</sup> While this appeared as an inadequately small amount, it is also unclear whether and how this amount was spent and how many individuals, if any, have benefitted from it.

It is not clear, even for people who, on a daily basis, deal professionally with victims of torture and other ill-treatment in Moldova, where and how victims can receive effective rehabilitation for the injuries suffered from the state. Amnesty International's impression (formed while conducting research for this publication

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<sup>11</sup> See media report at: <http://apropomagazin.md/2010/10/07/indemnizatii-pentru-cei-care-au-avut-de-suferit-pe-7-aprilie-2009/> (accessed on 1 April 2019).

<sup>12</sup> See media report at: <https://www.zdg.md/editia-print/investigatii/milioanele-organelor-de-drept/comment-page-1> (accessed on 1 April 2019).

<sup>13</sup> Amnesty International interview with Ludmila Popovici, head of Memoria centre, 5 February 2019.

<sup>14</sup> See media report at: <http://apropomagazin.md/2010/10/07/indemnizatii-pentru-cei-care-au-avut-de-suferit-pe-7-aprilie-2009/> (accessed on 1 April 2019).

and confirmed by the individuals it interviewed) is that currently there is no system of rehabilitation, no relevant mechanism and no relevant procedures available in Moldova, and no plans for these to be introduced. The organisation is only aware of one rehabilitation programme available to victims of torture in Moldova, and this is via a dedicated NGO, Memoria Centre for Rehabilitation of Torture Victims.

### **VICTIM OF TORTURE RELYING ON HELP FROM AN NGO FOR THE INJURIES INFLECTED BY POLICE A DECADE AGO**

Ion (name changed)<sup>15</sup> was subjected to severe beating by police during the April 2009 events. He has never been offered rehabilitation by the state for the health damage suffered and has continuously had to rely on help provided by an NGO.

Ion, a 22-year-old law student at the time, joined the protest in Chisinau in April 2009 and was one of those arrested by police in the street, and subjected to severe beating once inside the central police station. As a result, he suffered a broken arm and multiple other physical injuries. Ion filed an official complaint about his ill-treatment, but it was only several years later that a single police officer whom he was able to identify as one of those responsible for his torture and other ill-treatment, was convicted in the court of first instance, given a suspended (non-custodial) sentence, and barred from police force. The former officer appealed the sentence and was acquitted in a subsequent trial. According to information available to Amnesty International, the officer was admitted back to the police force.

During the ten years that followed his beating, Ion has suffered continuous health problems, and has contacted the Memoria Centre for Rehabilitation of Torture Victims for support. He has received 84 professional consultations at the Centre which provided Ion with specialist advice on how to deal with recurrent headaches caused by poor blood circulation as a result of his severe beating by police in 2009.

The Centre for Rehabilitation of Torture Victims "Memoria", mentioned above, is an NGO and the only organisation of its kind in Moldova. Hundreds of people have sought its help and advice since 2009, many of them victims of the April events. The number of those requiring help (among them victims of domestic violence and others) exceeds the Centre's capacity. According to the Centre's internal statistics, more than 85% of the victims have suffered head injuries, and a majority of torture victims receiving help there suffer post-traumatic stress disorder (PTSD).<sup>16</sup>

A non-governmental initiative, the Centre has been set up to provide specialised support to victims of torture. Operating at its capacity, the Centre is limited by its budget and entirely dependent on the grants it receives from the United Nations Fund for Rehabilitation of Torture Victims and a handful of other donors, but none from the Moldovan state. The Centre is open to everyone, but its work is not advertised, and those who approach it for help are not referred via the national healthcare system. Most find out about it from others. Beyond it, there are no organisations in Moldova specialising in rehabilitation of victims of torture, and there is no state mechanism for referring victims of torture to the relevant specialists.

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<sup>15</sup> The individual's name has been changed to conceal his identity but is known to Amnesty International.

<sup>16</sup> Amnesty International interview with Ludmila Popovici, head of "Memoria", 5 February 2019.

# CONDITIONS OF DETENTION AND INADEQUATE MEDICAL CARE PROVISION

Among the issues related to torture and other ill-treatment in Moldova that remain unaddressed, many are systemic in nature. Among these are conditions of detention in the penitentiary system, and they include, amongst other things, inadequacy of its healthcare provisions and procedures.

Conditions of detention in Moldova's penitentiary institutions, and specifically failure to provide adequate and necessary healthcare, has long been the subject of criticism from national and international human rights monitors.<sup>17</sup> In its latest report of 2017, the UN Committee against Torture expressed concerns about the state of medical care provided to detainees in Moldova's penitentiary system. The Committee recommended that the government of Moldova should, amongst other things, "[i]ntensify its efforts to improve health care in penitentiary facilities, including by hiring adequate numbers of qualified medical staff and providing them with training on the Istanbul Protocol" and "[e]stablish and ensure the implementation of rules to facilitate requests from inmates for private medical assistance and referrals to outside specialist services and to accommodate the needs of inmates with disabilities in the penitentiary environment"; the Committee also called on the authorities of Moldova to "[t]ransfer responsibility for penitentiary medical units from the Department of Penitentiary Institutions to the Ministry of Health, Labour and Social Protection", as well as address overcrowding and otherwise improve material conditions in penitentiary institutions.<sup>18</sup>

The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Moldova most recently in June 2018, and published its report on 13 December 2018.<sup>19</sup> In it, the issues of conditions of detention and healthcare in penitentiary institutions also were central, alongside the issues of inter-prisoner violence and intimidation and discipline and security of inmates.

The same issues, and conditions of detention and inadequacy of the healthcare provisions in Moldova's penitentiary institutions, amounting to cruel, inhuman and degrading treatment, have been the subject of concern by Amnesty International in recent years. These issues, and the human cost associated with the failure to address them, have been vividly illustrated by the following cases.

## **ANDREI BRAGUTA: FROM A TRAFFIC OFFENSE TO DEATH IN CUSTODY**

**Andrei Braguta was arrested by police on 15 August 2017 for a road traffic offense and remanded in custody. He was viciously beaten by fellow detainees with acquiescence of the penitentiary administration and subjected to other inhuman and degrading treatment and punishment. He died on 26 August of an acute respiratory infection. It transpired that he had had a mental condition which the authorities disregarded, and which may account for his challenging behaviour in detention.**

On 15 August 2017, police in Chisinau arrested 28-year old Andrei Braguta for road traffic offence when he allegedly refused to stop and tried to drive away. During the following 72 hours, a maximum time allowed by national law to detain a person without a judicial review, he was held in police custody and moved between several detention facilities in the capital Chisinau. Extracts from video footage captured on police cameras were later leaked to the media (and are currently publicly available).<sup>20</sup> They show him challenging police officers and others around him, behaving increasingly erratically and aggressively, and at one point physically assaulting an officer. It has since been publicly revealed that he had

<sup>17</sup> See, for instance, Amnesty International Moldova's press release of 8 September 2016, available at <https://amnesty.md/ro/media/penitenciarul-13-inchisoarea-contrastelor/>.

<sup>18</sup> Full text of the report is available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MDA/CO/3&Lang=En) (accessed on 1 April 2019).

<sup>19</sup> Full text of the report is available at: <https://rm.coe.int/16809022b9>. The government of the Republic of Moldova provided its response on 21 March 2019, available here: <https://rm.coe.int/1680939ad8> (both accessed on 1 April 2019).

<sup>20</sup> For instance, available here: <https://ru.crimemoldova.com/news/rassledovaniya/rentgenografiya-gniloy-sistemy-ili-poslednie-dni-zhizni-andreya-bragutsy/> (accessed on 22 March 2019).

suffered from a mental health condition. Andrei Braguta father claims that he had informed the police of this as soon as he learnt of his son's arrest; irrespective of this, there were sufficient and increasingly apparent (including from the said available video) signs of his mental disability. When Andrei Braguta was brought before a judge on 18 August, he had visible injuries, but the judge failed to take any action or raise questions about the state of his health, instead promptly sanctioning his remand. Andrei Braguta was subsequently repeatedly transferred between several places of detention but continuously remained in police custody. He died on 26 August in the medical ward of the Penitentiary Institution #16, of which his family were only informed on 28 August. An acute respiratory infection was cited as the cause of death. The case caused a public outcry in Moldova and subsequent scrutiny by media. An investigation and report by the Ombudsman<sup>21</sup> shed light on the events and circumstances that preceded, and almost certainly caused, Andrei Braguta's death. It transpired that he was beaten up by fellow inmates at the Penitentiary Institution #16, and that while this was happening members of the prison administration were fully aware of it and took no action. In October 2017, video footage captured by CCTV cameras at the institution was leaked, showing in chilling detail Andrei Braguta being viscerously beaten and prison guards passively observing from the corridor.<sup>22</sup> It also transpired that he was later placed in solitary confinement in conditions that amounted to inhuman and degrading treatment and punishment. A physically healthy young man when taken into custody, he died two weeks later.

By December 2018, Andrei Braguta's four cellmates and three police officers had been charged in connection with his death; in separate criminal proceedings, two medics were under investigation for failing to provide him with the necessary medical help; and there was a third related criminal case in which 13 members of the penitentiary administration were standing trial for subjecting him to inhuman and degrading treatment.<sup>23</sup> An official from the Prosecutor General's Office confirmed to Amnesty International in February 2019 that 20 individuals were being prosecuted in connection with Andrei Braguta's as part of a total of four separate criminal cases.<sup>24</sup>

### **SERGHEI COSOVAN: REMANDED DESPITE GRAVE ILLNESS AND DENIED ESSENTIAL MEDICAL TREATMENT**

Serghei Cosovan, director of Curcubeu market in Chisinau and local councillor in the village of Codru, was arrested on 26 September 2017 on suspicion of fraud, forgery and abuse of office. His pre-trial detention was repeatedly extended, before he was convicted and sentenced to seven years in prison. During this time, his lawyers repeatedly attempted to challenge his detention on the basis of his state of health. In one instance this was successful, and the judge ruled to place him under house arrest. Yet, Serghei Cosovan was immediately re-arrested by police under a

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<sup>21</sup> Full text of the report is available at: <http://ombudsman.md/wp-content/uploads/2019/03/raportspecial.pdf> (accessed on 1 April 2019).

<sup>22</sup> Video footage available here: <http://newsmaker.md/rus/novosti/delo-o-smerti-andreya-breguttsy-peredali-v-sud-obnarodovano-video-ego-zhestokogo-iz-34249> (accessed on 1 April 2019).

<sup>23</sup> See <http://newsmaker.md/rus/novosti/eto-naglyadnoe-posobie-o-tom-kak-lyudi-zverski-unichtozhayut-sebe-podobnyh-cto-ra-40547> (accessed on 1 April 2019).

<sup>24</sup> Amnesty International interview with Ion Caracuian, head of the Section for Combating Torture at the Prosecutor General's Office, 5 February 2019.

separate new set of criminal charges and sent back to detention.<sup>25</sup> He is currently serving a seven-year sentence in prison.

At the time of his arrest, Serghei Cosovan had a pre-existing cirrhosis condition, which worsened in detention and led to repeated internal bleeding. During the first months of his detention Serghei Cosovan had to be transported by ambulance at least three times to an external medical facility for emergency surgery. Following each surgery, the medical professionals that performed it recommended that Serghei Cosovan not be in detention, be admitted to a specialised hospital, and be constantly monitored by specialists as his cirrhosis had entered its final stage and was life-threatening.

Serghei Cosovan's lawyers repeatedly requested that he be placed in an external medical facility for urgent medical treatment, to comply with the medical advice and in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). They cited the relevant national law and regulations that are applicable to prisoners with severe health problems. The authorities consistently refused to grant this request.<sup>26</sup>

On 24 April 2018, a court in Chisinau ordered that Serghei Cosovan be put under house arrest, underscoring the seriousness of his health condition and the urgent medical treatment required. However, as Serghei Cosovan was leaving the detention centre, officers from the Police Department of Chisinau Municipality rearrested him, informed him that he was being investigated under new fraud allegations, and detained him for 72 hours. On 27 April, a court remanded Serghei Cosovan in custody again. This decision was upheld on appeal on 18 May. On 6 July 2018 a court in Chisinau sentenced him to seven years in jail. This decision was confirmed during an appeal hearing on 30 November 2018. Currently, Serghei Cosovan is being investigated under further allegations of fraud. At the time of writing, Serghei Cosovan remains at the medical ward of the Penitentiary Institution #16, disregarding his grievous health condition.

He is not allowed to receive treatment at an external medical facility, including by means of regular visits. One of the reasons given by the authorities for refusing him such treatment is a financial one. Serghei Cosovan has offered to pay privately for his own treatment (which is permitted by Moldovan law) and also to cover the cost of his transportation including the cost of police convoy, but was refused the relevant permission. The latter would require at least two officers and a vehicle, but the penitentiary administration is not prepared to make them available.<sup>27</sup>

According to Serghei Cosovan's lawyers, he cannot receive adequate and necessary medical treatment at the Penitentiary Institution #16, which is neither staffed nor equipped adequately for this. There is no qualified hepatologist, and while Serghei Cosovan requires certain regular medication he is given some unlabelled pills and has no idea what medication he is being given.<sup>28</sup>

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<sup>25</sup> For details, see <https://www.amnesty.org/download/Documents/EUR5988372018ENGLISH.pdf> (accessed on 1 April 2019).

<sup>26</sup> See <https://promolex.md/13813-persoanele-arestate-preventiv-sunt-discriminate-in-realizarea-dreptului-sau-la-ingrijiri-medicale/?lang=en> (accessed on 1 April 2019).

<sup>27</sup> In Moldova, there are only about 300 guards tasked with overseeing more than 12,500 detainees (both sentenced and in pre-trial detention). There is also no 24-hour surveillance available due to the shortage of staff, according to interviews Amnesty International had with representatives of the People's Advocate of Moldova and the National Penitentiary Administration in February 2019 in Chisinau.

<sup>28</sup> Amnesty International interview with Natalia Hryplivii, lawyer of Serghei Cosovan, on 4 February 2019 in Chisinau, Moldova.

For all the differences between the cases of Andrei Braguta and Serghei Cosovan, they have much in common. In both cases, individuals with specific health conditions were taken into custody; in neither case the penitentiary system has been adequately staffed and equipped to deal with these conditions. Furthermore, while preparing this publication, Amnesty International has tried to ascertain whether staff at penitentiary institutions is instructed, whether by internal regulations or otherwise, on how to deal with situations when they are responsible for overseeing such individuals in their custody. The organisation believes the answer is no, and the same view is firmly held by lawyers who have represented Andrei Braguta and Serghei Cosovan.<sup>29</sup>

It is quite symptomatic of the system that medical personnel of the entire penitentiary system of Moldova are under the jurisdiction of the Ministry of Justice, and not of the Ministry of Health, Labour and Social Protection – as repeatedly noted by international monitors, including the UN Committee against Torture and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This is not merely a question of from whom they take their instructions and, accordingly whether there is an inherent conflict of interest between the duties of a medical professional (to act in their patient's best interest) and those of a member of prison administration also bound by the relevant corporate loyalty. Neither medical personnel nor medical facilities and equipment under the jurisdiction of the Ministry of Justice are subject to the licencing requirements, standards and regulations that the Ministry of Health applies outside. This problem has been recognised, and to address it, the Ministry of Justice has adopted a national Prison System Development Programme for 2016-2020, which envisages so-called accreditation of its medical facilities and personnel. The accreditation consists of three stages: reaching certain sanitary standards (first of all, repair and refurbishment of the relevant buildings and facilities), training and certification of medical personnel, and acquisition of the necessary equipment. The implementation of this program has, however, been delayed due to the late allocation of the necessary funding and is not expected to be completed by the end of 2020.<sup>30</sup>

As Moldova marks the tenth anniversary of the April 2009 events, and while it is committed to addressing the issue of torture and other ill-treatment, it has to take bold steps to attain justice for victims in specific cases, past and ongoing, including by providing them with reparation and bringing all those responsible to justice, and to address some of the systemic issues that are holding it back. Without this, there is no guarantee that the country's future will be torture-free.

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<sup>29</sup> For instance, see interview with Vadim Vieru, a lawyer from the Promo-Lex NGO who is representing the father of Andrei Braguta, available at <http://www.ipn.md/en/special/89753> (accessed on 1 April 2019).

<sup>30</sup> Amnesty International interview with Vladimir Cojocaru, Head of the Institutional Management Department of the National Penitentiary Administration, 5 February 2019, Chisinau.

# RECOMMENDATIONS

## TO THE GOVERNMENT OF THE REPUBLIC OF MOLDOVA

- Acknowledge, publicly and at the highest level, the existence of public concern about impunity for those suspected of criminal responsibility for the human rights violations committed during the April 2009 events, and particularly acknowledge that the very substantive reasons behind this concern, and express a clear and firm commitment to addressing these reasons without delay.
- Provide all victims of human rights violations committed during the April 2009 events with adequate and effective reparation, including but not limited to compensation for the suffering incurred, rehabilitation and the truth about the facts of each case.
- In compliance with these commitments, and in response to the view shared by victims of human rights violations committed during the April 2009 events, as well as in response to ECtHR decisions taken in seven cases relating to these events which underline delayed, superficial and ineffective investigation and the “leniency in treating police officers accused of a very serious crime”,<sup>31</sup> devise and implement a clear and transparent mechanism to review effectiveness of the relevant national investigations. Where the investigation is deemed ineffective and having led to impunity for those suspected of criminal responsibility, their superiors, including commanding police officers and other state officials and/or politicians allegedly responsible for, acquiescing to or complicit in the relevant violations, victims should be given access to effective legal remedies (including new trials where appropriate) beyond those offered by the ECtHR and effective reparation.
- Create a fully independent agency specifically for the investigation of allegations of torture and other human rights violations committed by police and other law enforcement officers; make all necessary legislative, financial and other provisions to provide it with adequate and necessary powers and resources, and authorise and enable it to promptly, impartially and effectively investigate all past and ongoing allegations of torture and other ill-treatment brought before it by the victims of such violations.
- Publicly, and at the highest level, commit to providing adequate and effective reparation, including adequate financial compensation, to all victims of the April 2009 events. Designate the necessary financial resources, and put in place a clear and transparent mechanism, for equitable disbursement of the relevant compensations.
- As part of reparation commitments, beyond financial compensations to victims, establish a fully government-funded national program for rehabilitation of victims of torture and other ill-treatment, and make all necessary legislative and other provisions to ensure its effectiveness. The programme should comprehensively address the injuries and damage suffered by the victims, including their ensuing physical and psychological health needs.
- Step up efforts to bring conditions of detention in line with Moldova’s human rights commitments and international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). And in particular,
- As a matter of urgent priority, make all necessary provisions to provide adequate and sufficient healthcare provisions in the penitentiary system including, if necessary, by means of enabling inmates’ necessary treatment at external (non-penitentiary) medical institutions.
- Transfer all medical personnel, facilities and equipment under the jurisdiction of the Ministry of Health and ensure that they are subject to the same standards and licencing requirements as those applicable outside of the penitentiary system.
- Review, and where non-existent introduce, clear instructions and protocols for the police and administration of all penitentiary institutions for dealing with individuals remanded in custody who are known to have, display, or can be reasonably suspected of having, mental and physical needs and health conditions that require specialist intervention; and ensure that the necessary specialist intervention can be promptly accessed when required.

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<sup>31</sup> See for instance *O.R. and L.R. v. the Republic of Moldova*, and particularly paras 66, 79 and 81 (citation from para. 79), available at <https://www.bailii.org/eu/cases/ECHR/2018/897.html> (accessed on 1 April 2019).



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[info@amnesty.org](mailto:info@amnesty.org)



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# JUSTICE NOT ATTAINED, FUTURE NOT ENSURED

## REFLECTION ON THE TENTH ANNIVERSARY OF THE APRIL 2009 EVENTS IN MOLDOVA

In 2019, Moldova marks 10 years since the tragic events of 7 April 2009. On that day, hundreds of people were subjected to arrest and beating by police in the capital Chisinau, and one protester died from the injuries he received.

The most fitting way for the country to mark this anniversary is to reflect on the legacy of these events. It is time to reflect on the steps taken to provide justice, truth and reparation for the victims and take stock of the changes put in place since to address past crimes and prevent their repetition. Sadly, there is little, if any, sense that victims have attained justice and those responsible have been held accountable. Some progress in addressing torture and other ill-treatment has to be recognised, but there are still serious structural issues that need to be urgently addressed.