

Moldovan Helsinki Committee for Human Rights

July, 2004

CRITIQUE PAPER:

**Violation of the right to liberty and
security of the person, right to fair trial, right to life,
right to no one be subjected to torture or inhuman or
degrading treatment and presumption of innocence**
**by delivering the citizens of the Republic of Moldova
to the unconstitutional authorities
of Transnistria (self proclaimed dneister republic)**

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About Moldovan Helsinki Committee for Human Rights

Moldovan Helsinki Committee for human rights is an independent, non-for-profit human rights organizations founded by a group of human rights activists in Tiraspol, Transnistria region of the Republic of Moldova in 1992 in the wake of dissolution of the Soviet Union.

Moldovan Helsinki Committee monitors the respect for human rights obligations undertaken by the Republic of Moldova before OSCE, United Nations, and the Council of Europe. It advocates for respect, protection and promotion of human rights values through providing independent expertise of human rights legal and practices compliance, public interest advocating and litigation, raising awareness of specific groups and general public of the serious human rights concerns guided by understanding of universal superior values of individual freedoms, social justice, equality and nondiscrimination. Moldovan Helsinki Committee is a full member of the International Helsinki Federation for Human Rights (Vienna).

Moldovan Helsinki Committee comprehensive subject based and overall reports on the respect of human rights in the Republic of Moldova are known as good and professionally prepared information, solicited and relied by many specialized entities, including those of the Council of Europe, as for instance, the Council of Europe High Commissioner for Human Rights (<http://www.commissioner.coe.int//documents/translanshighlights.doc>), European Committee on Prevention of Torture (<http://www.cpt.coe.int/fr/rapports/inf2000-20fr.htm>), PACE Monitoring Committee on the observance of obligations by the Republic of Moldova, US Department of State <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8304.htm>.

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Introduction¹

A person cannot stand secure in the Republic of Moldova, because at any moment he might find himself under the criminal investigation of Transnistrian authorities for motives invoked by them, and the Republic of Moldova does not assure his liberty and security, because it may deliver any person to the self-proclaimed dniester republic in order to be called for criminal responsibility or to be applied to an unconstitutional court decision.

Delivery to the self-proclaimed Dniester Republic is possible and shall be implemented by the Republic of Moldova, because, since 1999, there is an Agreement signed by the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs of Transnistria, and the delivery to the self-proclaimed dniester republic must take place (resulting from the provisions of the Agreement), because crime control is an important problem for the law enforcement agencies of the Republic of Moldova, as stated by the Board of the Department for Criminal Investigation within the Ministry of Internal Affairs of the Republic of Moldova.

As result of this statement of the Department, we have tried to analyze which are, instead, the proportions of human rights respect by the Republic of Moldova in case of delivering, according the Agreement², of a person from the Republic of Moldova to the unconstitutional regime from Transnistria in report with the goal of the Republic of Moldova to struggle with criminality.

After the discussions held with the Board of the Department for Criminal Investigation within the Ministry of Internal Affairs of the Republic of Moldova, analysis of the Agreement signed between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs of Transnistria, analysis of the cases documented by the Helsinki Committee, we have found that there were cases of delivery of citizens of the Republic of Moldova to the authorities of internal affairs of the self-proclaimed dniester republic for the execution of actions of criminal investigation, afterwards, they being referred to the so-called Transnistrian "justice" and even to execution of criminal punishment established by the court instance from Transnistria, because our state signed in 1999 an Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs from Transnistria. The issue on delivery, lack of person security in the Republic of Moldova will prevail as long as the Agreement is in force. But, the respective Agreement is grossly violating the citizens' rights and freedoms, as well as the stability of the Republic of Moldova.

¹ Information contained in this Critique paper reflects solely the position of the Moldovan Helsinki Committee for Human Rights, *Report editor*: Natalia Mardari

² Complete name - Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs of Transnistria (January 26, 1999).

1. Analysis of the violations of fundamental human rights and freedoms from the Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs of Transnistria (from 26 January 1999)

The Moldovan Helsinki Committee for Human Rights is worried about the fact that the Republic of Moldova does not guarantee efficiently to his citizens the right to liberty and safety of person, right to fair trial, right to life, right to no one be subjected to torture or inhuman or degrading treatment and presumption of innocence³, because in the Republic of Moldova it is applied by the constitutional bodies from the right bank of Dniester river – the Ministry of Internal Affairs of the Republic of Moldova and the General Prosecutor's Office of the Republic of Moldova an agreement.

This act is named AGREEMENT ON THE PRINCIPLES OF COOPERATION BETWEEN THE MINSITRY OF INTERNAL AFFAIRS OF THE REPUBLIC OF MOLDOVA AND THE LEADERSHIP OF THE INTERNAL AFFARS BODIES FROM TRANSNISTRIA, signed on January 26, 1999 (on behalf of the Republic of Moldova the act is signed by the ex-minister of Internal Affairs, Mr. Victor Catan, and on behalf the Leadership of the authorities of internal affairs from Transnistria by Mr. V. Kurisiko).

Although the Constitution of the Republic of Moldova, *de iure*, recognizes the unity of the state of the Republic of Moldova, *de facto*, the territory of Transnistria is not controlled⁴ by the Republic of Moldova from the right bank of Dniester river, that is why the analysis of this Agreement will be critical, resulting from the real existing situation, both - in the Republic of Moldova (rights bank of Dniester River), and Transnistria (left bank of Dniester River).

³ Rights foreseen by the following acts:

Articles 1, 4, 7, 8, 25, 21 and 54 of the Supreme Law of the Republic of Moldova – Constitution of the Republic of Moldova³ from 29 July 1994;

Articles 1, 3, 5 and 6 of the European Convention on Human Rights³, valid for the Republic of Moldova since 12 September 1997;

Article 9 of the Pact on Civil and Political Rights³, from 16 December 1966, ratified by the Government Decision No. 217-XII from 28 July 1990,;

Article 3 of the Universal Declaration of Human Rights³, adopted on 10 December 1948;

Article 11 of the Criminal Procedure Code of the Republic of Moldova, valid since June 12, 2003,

⁴ See the Decision of the European Court for Human Rights, July 08, 2004 on application Ilaşcu and others versus Moldova and Russian Federation

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=715130805&Notice=0&Noticemode=&RelatedMode=0>

<http://www.crisisweb.org/home/index.cfm?id=2811&f=1>,

http://www.crisisweb.org/library/documents/europe/moldova/157_moldova_regional_tensions_over_transdnistria.pdf - Report of the International Crisis Group „Moldova: regional tension over Transnistria”, 17 June 2004

The Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the authorities of internal affairs of Transnistria (of January 26, 1999) is not constitutional, because the agreements may be signed only between two or more states recognized on international level.

The Agreement signed between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of the internal affairs of Transnistria is also grossly violating Article 1 of the Constitution of the Republic of Moldova, because it was signed by the Republic of Moldova and the self-proclaimed dniester republic, which is not recognized by the international community. Thus, the Agreement signed in 1999 diminishes the stability of the Republic of Moldova. The state of the Republic of Moldova did not have to sign on the same footing an agreement with an unrecognized state.

The Agreement is not legal and is grossly violating the rights and freedoms of person, especially the right to liberty and security of person, right to fair trial. The Agreement does not guarantee the citizens of the Republic of Moldova the efficient respect by the Republic of Moldova of the fundamental rights and freedoms.

Persons should not be delivered for criminal punishment to the bodies of the self-proclaimed dniester republic, because the law enforcement agencies and the court instances of the self-proclaimed dniester republic are not considered to be constitutional in view of the Constitution of the Republic of Moldova and of the international documents on human rights, to which the Republic of Moldova is part.

The fact that the court instances from the self-proclaimed dniester republic are unconstitutional was recognized also by the Plenum of the Supreme Court of Justice in case of Ilașcu group, in its decision from February 03, 1994. Moreover, the court instances from Transnistria do not satisfy the conditions established in the provisions of Articles 5, 6 of the European Convention on Human Rights (valid for the Republic of Moldova from September 12, 1997), and mainly, do not show impartiality, independence, especially vis-a-vis the executive, as well it does not respect and apply the guarantees of judicial procedures.

Court instances from Transnistria operate on bases of the law on judicial organization from Transnistria, the way of appointing and dismissing is a direct function of the so-called president of Transnistria Igor Smirnov. Court instances are of two levels, and the applied legislation is adopted by the so called the parliament of the dniestr moldovian republic. On the whole, we believe that the judicial system raises questions on the independence vis-a-vis the executive, of the so-called president of Transnistria I. Smirnov, on the impartiality, respect of some procedural judicial guarantees according the international standards. The judicial system from Transnistria, its system of functioning, and the procedures do not reflect, in their essence, the judicial and law tradition of the Republic of Moldova from the right bank of the Dniester River.

The legislation from Transnistria does not have an international examination on its concordance with international standards of human rights, and the Republic of Moldova does not assure the extension of the laws adopted by the Parliament of the Republic of Moldova and of the international treaties on human rights to which it is part also on the territory of the so-called dniester republic.

By delivering the citizens of the Republic of Moldova to the authorities formed of separatist and unconstitutional regime from Transnistria, the Republic of Moldova cannot control efficiently the respect of the way of applying criminal legal procedure norms, because Transnistrian territory is not control by the Republic of Moldova⁵.

The Agreement signed by the Republic of Moldova violates the right to liberty and security of person, because the Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of internal affairs of Transnistria establishes that the Republic of Moldova (Ministry of Internal Affairs of the Republic of Moldova and the Leadership of internal affairs of Transnistria) is to deliver persons that are on their territory and who are to be called for criminal responsibility or are to be applied court decision.

Extract from Article 3 of the Agreement:

„ The authorities of internal affairs of the Parties undertake to offer on reciprocity bases multiaspectual practical assistance in what regards:

...

(f) solution under law conditions of the matters on delivery by the parties of persons who are on their territory and who are to be called for criminal responsibility or to be applied for court decision”

We have to mention that the legislation of the Republic of Moldova does not contain an actual processual legislation that would establish the conditions of delivery or what does the delivery mean, which are the guarantees offered in case of delivery. But it is sorrowful and dangerous the fact that the delivery of the citizens by the Republic of Moldova to the unconstitutional bodies of Transnistria took place. Some of these cases are exposed in the second part of this document.

Further, according the Agreement, the citizens of the Republic of Moldova who were issued a court decision on the territory of the self-proclaimed dniester republic, that is, by the unconstitutional court instances from this territory, have to execute the criminal decision in the penitentiary institutions from the respective territory. By delivering the citizens from the right bank of the Dniester River to the unconstitutional legislative bodies of Transnistria, internal bodies of the Republic of Moldova jeopardize person's life and

⁵ For more details, please see also Report on Moldova from the collection of Country Reports on Human Rights Practices, released by the Bureau of Democracy, Human Rights, and Labor February 25, 2004 of the Department of State, USA -- <http://www.state.gov/g/drl/rls/hrrpt/2003/27854.htm>

or Report by Mr Alvaro Gil Robles, Commissioner for Human Rights on his visit to Moldova on 16 to 20 October 2000, for the Committee of Ministers and the Parliamentary Assembly,

see at:

[http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/CommDH\(2000\)4_E.asp#TopOfPage](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/CommDH(2000)4_E.asp#TopOfPage)

there is the danger of their torture, because in the case judged by the High Chamber of the European Court for Human Rights (Strasbourg) *I. Ilaşcu and others versus the Republic of Moldova and Russian Federation* (application No. 48787/99), by the decision from July 8, 2004, the European Court established the in the self-proclaimed dniester republic existence of inhuman and degrading treatment, as well as of torture (Article 3 of ECHR). Last, but not least, right to liberty and security of person is not guaranteed to a person, as well as the right to a fair trial.

On the whole, „person’s (persons’) delivery” is a notion actually never met in the legislation of the Republic of Moldova, except the criticized Agreement. However, this is not in conformity with the procedure on the method of concluding, applying, ratifying and denunciation of international treaties, conventions and agreements⁶.

Moreover, delivery of a person, citizen of the Republic of Moldova, to an unrecognized state is an impermissible thing.

The Agreement violates the principle of presumption of innocence⁷, because the Article 3, letter (b) states that, „the bodies of internal affairs of the **Parties** undertake to offer, on mutual bases, practical multiaspectual assistance in what regards:

(b) pursuit of **criminals** hiding from investigation, court hearing ...”

We have to explain that during the period of investigation and judicial examination any person accused of committing a crime is presumed innocent and cannot be blamed „criminal”⁸ as long as his guiltiness is proved in a public judicial process within which he will be assured all the guaranties necessary for his defense and until it is recognized by a final sentencing court.

The Agreement also comes in contradiction with Article 54 of the Constitution of the Republic of Moldova, because it limits the rights and freedoms of the citizens of the

⁶ See the Law of the Republic of Moldova on the way of concluding, applying, ratifying and denunciation of international treaties, conventions and agreements, No.1137-XII of 04.08.92, Monitor No.8 of 30.08.1992

⁷ Article 8. Presumption of innocence (extract from the Criminal Procedure Code)

(1) The person accused of committing an offence is presumed innocent as long as his guiltiness is proved under the provision of the Criminal Procedure Code, in a public judicial process, within which he will be assured all the guarantees necessary for his defense, and it will not be established by a court decision of final condemnation.

(2) Nobody is obliged to prove his innocence.

(3) Conclusions on guiltiness of committing an offence cannot be established on suppositions. All the doubts in proving the accusation that cannot be removed, under the conditions of the present Code, are interpreted in favor of the suspected, accused, defendant.

Article 21 of the Constitution of the Republic of Moldova and Article 6 of the European Convention on Human Rights (see the footnote on p. 2)

⁸ As it is stated under Article 3 letter b of the Agreement

Republic of Moldova. From the above made analysis, it has been noticed that the Agreement limits the right to liberty and security of a person, right to fair trial, presumption of innocence.

The restriction or limitation in the exercise of some rights or liberties may be limited only by the law. Or, the mentioned Agreement is not a law, because according the Law on the method of publication and inuring official acts No. 173-XIII of July 06, 1994 does not have the quality of a law. Moreover, the Agreement was not even published. A law adopted by the Parliament of the Republic of Moldova is to be promulgated and published in the Official Gazette (Monitorul Oficial) in order to have juridical effects and to come into force.

Article 4 of the Agreement foresees that each party undertakes to initiate criminal prosecution of its citizens if there are enough evidence on committing on the territory of the initiating Party of some actions contrary with the law, which according to the legislation of both Parties, are punishable, being lead by their own norms of the processual criminal and material law. Thus, this Article of the Agreement comes in contradiction with the provision of the Constitution, because the Ministry of Internal Affairs of the Republic of Moldova, by this Agreement, recognizes different legislations, ununiform appliance of a unique legislation, that is, of the Republic of Moldova. The state of the Republic of Moldova is proclaimed to be a unitary state on which territory it is applied only one legislation.

By making this Agreement, the Ministry of Internal Affairs of the Republic of Moldova has abusively exercised the functions and competences of the Ministry of Justice, Ministry of Finances etc. The Agreement brings settlements not only in the field of law, but also in the economical, political, financial and social fields. (Articles 3, 4, 5, 11)

The Agreement violates the rights and freedoms of the citizens of the Republic of Moldova, because the deliveries of persons for trails in Transnistrian region, and subsequent sentencing decision, pronounced in Transnistria (even in the absence of the accused) actually leads to the appearance of penal antecedents reported to the Ministry of Internal Affairs of the Republic of Moldova, and this, at its turn, accumulates, process and keeps them in their data base on crimes and persons who committed crimes. Thus, a person citizen of the Republic of Moldova, judged in his absence by the unconstitutional bodies from Transnistria will have criminal antecedents included in his criminal record.⁹ The criminal antecedents initiated by Transnistria bring prejudices to free movement and social integration of a person.

⁹ Case Țigui Mifai Spiridon (year 1982)

2. Cases documented by the Committee as being those that denote violation of the fundamental rights and freedoms of person in case of delivery, prosecution and judge of his criminal case by the unconstitutional bodies from Transnistria

<p>Chelsa case,</p> <p>participant at the war for independence and integrity of the Republic of Moldova from 1992.</p>	<p>Was delivered by the authorities of the Republic of Moldova to the unconstitutional bodies from Transnistria.</p>	<p>Was delivered to the unconstitutional bodies from Transnistria by the Ciocana Police Station, Chişinău.</p> <p>The policeman that delivered Mr. Chelsa to the Transnistria militia was subdued only to one disciplinary sanction.</p>	<p>Mr.Chelsa was judged in Transnistria and executed criminal punishment.</p>
<p>Ştefan Bogdan (inhabitant of Chişinău city).</p> <p>In the Republic of Moldova he has the statute of refugee, veteran of the war for the independence and integrity of the Republic of Moldova from 1992.</p> <p><i>Application handed at the Committee on 28.05.04</i></p>	<p>In 1996 while traveling to the Crasnaia Gorca village, Grigoriopol district he was captured by the Transnistrian militia and security, then judged by the court instance from Grigoriopol according to Article 218 Criminal Code (edition 1961). He was tortured by the investigation bodies from Tiraspol.</p>	<p>„The Supreme Court of Justice of the Republic of Moldova cancelled the court decision from Grigoriopol as being illegal, thus he was freed at the intervention of the General Prosecutor’s Office (Mr. Postovan).”</p> <p>But in 1999 he was retained by a police officer of Ciocana sector to be delivered to the unconstitutional bodies from Transnistria. From the explanations offered at the Ciocana Police Station, he was informed he was prosecuted by the militia from Grigoriopol. He was not delivered to the Transnistrian militia, being saved by another policeman, a former acquaintance who recognized him at the</p>	<p>He was not been familiarized with the documents on the request for delivery, transfer or extradition.</p>

		Police Station.	
<p>Țugui Mihai Resident of Bender town.</p> <p>Was in audience at the Helsinki Committee.</p> <p>Țugui Spiridon is the father of Țugui Mihai.</p> <p>The Committee has submitted petitions at the General Prosecutor's Office and the Ministry of Internal Affairs on his case. The Committee possesses official answers from the Ministry of Internal Affairs.</p>	<p>He is charged in Transnistria of committing robbery, was condemned (Article 121 p.2 Criminal Code MSSR) to 8 years of deprivation of liberty.</p> <p>In the Republic of Moldova, the Hîncești Police Station initiated an investigation on the same crime, the criminal case was closed.</p>	<p>Was judged in Transnistria.</p> <p>➤ Criminal antecedents have been included in his criminal record even if the criminal file on the same crime was closed, in last instance, by the Hîncești Police Station.</p> <p>➤ Because of the criminal antecedents, he cannot make himself a passport.</p> <p>He submitted a petition at the General Prosecutor's Office to request the criminal file from Transnistria and to carry out the criminal actions by the Moldovan authorities. The Transnistrian bodies did not transmit the file.</p>	<p>The seized problem in the situation presented by Țugui Mihail is that even if a person is judged by the unconstitutional bodies of the self-proclaimed dneister republic, the Ministry of Internal Affairs of the Republic of Moldova includes the criminal punishment in the criminal record of the person.</p>

3. RECOMMENDATIONS

- According to Article 14 of the Agreement, the Ministry of Internal Affairs must **DENOUNCE URGENTLY** the Agreement on the principles of cooperation between the Ministry of Internal Affairs of the Republic of Moldova and the Leadership of internal affairs of Transnistria (from January 26, 1999) which is unconstitutional from the moment of its signing and grossly violating the rights and freedoms of person;
- The General Prosecutor's Office must involve more actively by offering specialized assistance to the Ministry of Internal Affairs in the process of denouncing the Agreement;
- The Ministry of Internal Affairs of the Republic of Moldova must strictly respect the provisions of the Constitution, laws of the Republic of Moldova and to assure the respect the right to liberty and security of person and not to deliver to Transnistria citizens of the Republic of Moldova who are under the danger to be have their rights grossly violated;
- The Ministry of Internal Affairs of the Republic of Moldova must withdraw all the documents under the procedure of criminal persecution actions initiated at the request of Transnistria, under the Agreement;
- The Ministry of Internal Affairs, in collaboration with the General Prosecutor's Office in case of request from Transnistria to carry out some actions of criminal and administrative prosecution, must recall the respective files for the realization of the necessary procedural actions, as well as for submitting the files to the court instances from the right bank of Dniester River in order to assure efficient respect of human rights;
- The Center for Human Rights must undertake an active position in protection of fundamental rights and freedoms of the citizens of the Republic of Moldova and to seize the Ministry of Internal Affairs of the Republic of Moldova, the General Prosecutor's Office on the problems from the human rights field generated by the appliance by the Ministry of Internal Affairs of the mentioned Agreement;
- The General Prosecutor's Office must control the respect by the criminal prosecution bodies, especially by the Department of Criminal Investigation within the Ministry of Internal Affairs, of the laws of the Republic of Moldova and of the treaties on human rights to which the Republic of Moldova is part;