

BRIEF CONCEPT OF THE CHAMBER FOR HUMAN RIGHTS IN TRANSNISTRIA

I. Rationale for the need to arrange a Chamber for Human Rights in Transnistria

The Chamber for Human Rights in Transnistria is an international judicial body designed to consider violations of human rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms that have been committed on the territory of Transnistria.

The Constitution of Transnistria established that the universally recognized principles and norms of international law are an integral part of the legal system. The Transnistrian Parliament recognized in 1992 the European Convention for the Protection of Human Rights and Fundamental Freedoms as valid within Transnistria. Thus, the Transnistrian authorities unilaterally assumed obligations for its implementation.

The Constitution of Moldova, while the international community considers the territory of Transnistria as a part of Moldova, also implies integration with international law. The Moldovan Parliament ratified in 1997 the European Convention. Thus, the Moldovan authorities assumed obligations for its implementation.

However, none of them provided the Transnistrian residents with an effective means of protecting their rights and freedoms, as required by the Convention.

The ineffectiveness of the remedies provided by the Transnistrian authorities is evidenced as follows:

1. Several judicial cases considered in Transnistria from 2017 to 2021 indicate that the actions of Transnistrian judicial system can hardly be explained by anything other than dependence on the executive authorities. (Overview of the human rights status in Transnistria in 2017-2021 drafted by the Apriori Information and Legal Centre). This aspect excludes the possibility of being an effective means of protection.
2. The UN Special Rapporteurs pointed several times in their reports to systemic problems in the area of human rights in Transnistria, including the justice system. However, most of their recommendations were never implemented. This is indirectly confirmed, among other things, by the recently launched Framework for Human Rights in Transnistria supported by the UN, which is designed to implement the recommendations of experts over the past 15 years.
3. The European Court of Human Rights stressed that the Transnistrian judiciary “has never been part of a system reflecting a judicial tradition considered to be compatible with the principles of the Convention” (Judgment ECHR, 23 February 2016, *Mozer v. Russia*, No. 11138/10, § 148)”, that is, it does not meet the criteria for effective justice enshrined in the Convention.

The ineffectiveness of the means of protection provided by the authorities of the Republic of Moldova is evidenced as follows:

1. (a) It is impossible to appeal to the Prosecutor's Office or to the courts of the Republic of Moldova regarding the actions (resolutions) of the Transnistrian authorities, because the Moldovan authorities deny their existence, therefore, the Transnistrian authorities do not receive the status of defendant.

(b) It does not make sense to appeal to the Prosecutor's Office or to the courts of the Republic of Moldova, referring to the laws of Moldova, because they de facto do not regulate disputed legal relations on the territory of Transnistria.

(c) Resolutions of the Prosecutor's Office and/or courts of the Republic of Moldova are not enforceable on the territory of Transnistria.

Thus, such remedies as appeals to the Prosecutor's Office and the courts of the Republic of Moldova are not determined "in practice and at the legislative level" (Kudla v. Poland, [CG] 2000-XI, 35 EHRR 198, §157), and therefore, cannot be effective means of protecting the rights and freedoms of Transdniestrian residents.

Moreover, the current situation constitutes discrimination based on location (Thlimmenos v. Greece [GC], No 34369/97, EHRR-2000, § 44), since the legislation of the Republic of Moldova provides for the same rules for people with a significantly different legal status (residents on the right bank and residents on the left bank), ignoring these circumstances.

2. The courts of Moldova cannot initially be perceived as impartial in disputes related to the Transdniestrian authorities, since they refer to the authorities of the opposite side to the conflict.

The ineffectiveness of the remedies provided by the Convention (ECtHR) is evidenced as follows:

Transdniestrian residents received a chance to restore their rights by applying to the European Court of Human Rights before. Now they lose this opportunity as well. In the vast majority of cases, the ECtHR recognized the Russian Federation as responsible for violations of human rights and freedoms on the territory of Transdnistria "due to the full financial and other support of Transdnistria" (Mozer v. Moldova and Russia" [GC], No. 11138/10, §110). From September 16, 2022, Russia completely ceases to obey the judgments of the European Court and a "vacuum in the system of human rights protection" will finally form in Transdnistria ("Cyprus v. Turkey", No. 25781/94, 10.05.2001, §78).

All this promote developing a separate independent and impartial judicial body, which judgments would be valid within Transdnistria and contribute to the effective restoration of rights and freedoms, thereby helping to overcome the existing "vacuum in the human rights protection system".

II. Purposes of Arranging the Chamber for Human Rights in Transdnistria

By resolving the above issues, the Chamber is called upon to achieve the following goals:

- resolutions of the Chamber as a recognized international court will provide international guarantees in fundamental rights, which will lead to increased stability and certainty in the political, economic and social areas.
- restoring justice in terms of laying responsibility for the violation of human rights in Transdnistria directly on the subject who violated them, ensuring the implementation of the obligations assumed by Transdnistria under the Convention;
- ensuring the possibility for the Transdnistrian authorities to defend their resolutions in an international judicial body.

The Apriori Information and Legal Centre attempted to review the judgment of the Transdnistrian court in the case of Kravchishin ("Cravcisin v. the Republic of Moldova and Russia, No. 43176/13, 28.09.2021). The TMR Supreme Court refused to review the judgment of the Transdnistrian court (contrary to its own legislation), satisfying the remedial action order of the TMR Prosecutor A. Guretsky. One of the arguments by A. Guretsky: "the content of the documents submitted by the applicant notice that the European Court of Human Rights considered the application of L.S. Kravchishin and S.M. Kravchishin v. the Republic of Moldova and Russia, official representatives of the designated states took part in the case. At the same time, the Transdnistrian Moldavian Republic was not a party to the case." The TMR Supreme Court agreed with this argument.

International experience in human rights protection confirms the viability of the proposed Chamber. In particular, the Dayton Accords established the mission of the Human Rights Chamber in Bosnia and Herzegovina, which, over the 5 years of operation, "reduced the rhetoric of human rights to specific procedures", "set standards for bodies responsible for the development and adoption of laws" and "gave hope and confidence in the rule of law for the population" (James Newton, international lawyer at the Human Rights Chamber of Bosnia and Herzegovina).

III. Key Theses on Arranging and Functioning of the Chamber for Human Rights in Transdniestria

Composition. It is assumed that the Chamber will include 8 international judges appointed for a certain period (CoE/UN) and one judge from Transdniestria. In each case, Transdniestria will be represented by an Authorized Representative.

Competence. The Chamber is empowered to consider alleged or apparent violations of the rights and freedoms provided for by the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols hereto.

It is possible and desirable upon reaching an agreement with the Government of the Republic of Moldova: consideration of disputes between Transdniestria and Moldova related to the violation of the rights of Transdniestrian residents by the Moldovan authorities (similar to consideration of disputes by the ECtHR).

Applicants. The Chamber will consider allegations of human rights violations from individuals, groups of individuals or public organizations claiming that their rights have been violated by the Transdniestrian authorities.

Procedure. The procedures of the Chamber will be modelled after the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Rules of the European Court of Human Rights.

If the Chamber finds a violation, it may, in its written resolution, request that steps be taken by the Transdniestrian authorities to remedy the violation (e.g. termination of detention and/or financial compensation).

Execution of resolutions. The resolutions of the Chamber will be final and binding. Transdniestria will be obliged to fully comply with them.

Upon reaching an agreement with the Government of the Republic of Moldova, it will also be obliged to fully comply with the resolutions of the Chamber.

Chamber and ECtHR. Since the Chamber will be an international judicial body, appeal to the European Court of Human Rights is not allowed. The chamber is the final instance replacing the ECtHR for individuals from Transdniestria.