

People under Provisional Arrest – Discriminated in the Exercise of Their Right to Medical Care

On October 10, 2018, the [Council for Preventing and Eliminating Discrimination and Ensuring Equality \(CPEDEE\)](#) acknowledged that, with respect to the possibility of using the protection measures applicable to the convicted people suffering from severe diseases, there was a sharp difference in treatment of persons under provisional arrest compared to the treatment received by convicted persons.

In July 2018, Promo-LEX Association has submitted to the CPEDEE an inquiry concerning the case of Cosovan Serghei. The Association asked the Council to acknowledge the discriminatory nature of the treatment received by Mr. Cosovan, which is motivated by the consideration that since he is being held under provisional arrest, the protection mechanism applicable to the convicted persons suffering from severe diseases, similar to the one specified in Article 95 of the Criminal Code (Exemption from the Execution of Punishment for Seriously Ill Persons) and in Order of the Ministry of Justice no. 331 of September 6, 2006 on the approval of the Regulation on the exempt of seriously ill convicts from punishment, [could not be applied to him](#). By submitting its recommendations to the Ministry of Justice and National Administration of Penitentiaries, the Association has also requested for general measures to be carried out in order to create a mechanism aimed at addressing the previously mentioned systemic challenge.

The Council decided that the established facts pertaining to the **Cosovan Serghei's case constitute an example of**

discrimination on grounds of procedural status (provisional arrest) and has set forth to the Ministry of Justice and National Administration of Penitentiaries the following recommendations:

- In Cosovan Serghei's case, to ensure immediately the exercise of his right to proper medical care, including right to palliative care, which is unavailable within the penitentiary system
- To put in place without delay a mechanism for exemption from execution of preventive measures in the form of provisional arrest and enforcement of the sentence, to be applicable to all detainees, regardless of their procedural status and the moment of contracting the health issue.

The Council has drawn attention to the fact that the situation of persons under provisional arrest and of convicted inmates is similar: people from both concerned groups are deprived of freedom and are in Ministry of Justice custody. In this context, the Council made reference to the [ECHR's jurisprudence](#), which ruled that: non-provision of health protection measures to a person suffering from a severe disease for the sole reason of him/her being held under provisional arrest and that these procedures are applied only to convicted persons, constitutes a case of discriminatory treatment because the people held under provisional arrest and the convicted inmates are held in similar conditions. **The CPEDEE acknowledged that there are no objective and reasonable impediments for the Ministry of Justice not to supplement and/or to amend its Order so as to put in place a similar mechanism that could also be applied to seriously ill patients under provisional arrest.**

A mechanism similar to that recommended by the CPEDEE in its decision issued on October 10, 2018, was implemented in the Russian Federation after [two much publicized cases of death](#): Sergey Magnitsky's case from 2009, who was held under

provisional arrest, and the death of Vera Trifonova, the Kit-Elit-Nedvizhimost CEO. These two cases drew attention to certain systemic challenges: defective medical care within the penitentiary system and differentiated treatment of people under provisional arrest compared to the treatment received by convicted inmates, with regard to the possibility of using the protection measures applicable to the convicted persons suffering from severe diseases.

Consequently, the systemic challenges identified in the provision of medical services within the penitentiaries of the Republic of Moldova, as well as the high number of deaths, impose urgently the need to develop a protection mechanism similar to the one applied to convicted persons. Thus, in accordance with Article 176 of the Criminal Procedure Code of the Republic of Moldova, during the execution of a preventive measure, such as provisional arrest, the Court must assess and give reasons whether the preventive measure is proportional to individual circumstances of the criminal case, including the person's 'health'. Despite this, the persons with serious health issues, who pose no real danger to the general public, are detained and unable to receive specialized medical care. This state of affairs, **leads either to the detainees' death or worsening of their health. Consequently, when an authority insists on application of provisional arrest, it would be fairer if some clear criteria for the application, substitution, revocation or termination of provisional arrest for seriously ill patients were set.**

According to the 2017 Annual Report Review of the Penitentiary System, drafted by the Ministry of Justice of Moldova, 42 deaths were recorded within the penitentiary system. These deaths were largely due to medical reasons. According to the authorities, [the largest number of deaths – circa 80-90% – was recorded in Pruncul Penitentiary no.16, i.e. an institution specialized in provision of medical services.](#)

According to Article 66 of the Law no. 198 of December 21,

2012 on the Council's Work on Preventing and Eliminating Discrimination and Ensuring Equality, the Council's decision shall be an official act which entails a legally enforceable obligation for the subjects mentioned therein, provided that such a decision becomes final.

On September 26, 2017, Serghei Cosovan, aged 46 and suffering from end-stage decompensated hepatic cirrhosis, was arrested and incarcerated at the Penitentiary no.13. As a result of long detention, lack of qualified medical care and onset of life-threatening complications, Cosovan Serghei was transferred to Pruncul Penitentiary no.16, where he has been held till the present moment. Due to complications and worsening of this health, in October 2018, he was diagnosed with having [accentuated degree of disability](#), which is characterized by accentuated functional deficiencies caused by ailments he is suffering from.

In March 2018, Promo-LEX Association has urgently referred the matter to the European Court of Human Rights, which within 9 days began examining the case. The comments on this case were sent to the ECHR in July 2018, signaling the final stages of a case examination. In order to ensure the provision of quality medical services, apart from individual measures, it was also requested to draw up general measures for the Government of the Republic of Moldova with regard to transfer of the responsibility for the detained people's health to the Ministry of Health, Labor and Social Protection. Regarding this particular case, the *European Prison Litigation Network* requested to act as a third party putting forward its arguments for the need of equivalence of medical care provided to detainees with that available within the public health system.

For more information on Serghei Cosovan's case, please check the following links:

1. Criminal Justice System of Moldova Endangers Human Lives

<https://promolex.md/12884-sistemul-de-justitie-penala-din-moldova-pune-in-pericol-vieti-umane/?lang=ro>

2. (Video) The case of Cosovan: Released from the penitentiary to be detained in the police isolator <https://promolex.md/12194-video-cazul-cosovan-eliberat-din-penitenciari-ca-sa-fie-retinut-in-izolatorul-de-politie/?lang=ro>
3. People's Advocate, Mihail Cotorobai shares the concerns of international bodies, civil society and relatives in the case Serghei Cosovan <http://ombudsman.md/ro/content/avocatul-poporului-mihail-cotorobai-impartasese-ingrijorarile-organismelor-internationale>
4. 'Braguta Case-2'. Why a Seriously Ill Patient Has Been held Under Provisional Arrest for More than Half a Year? <http://newsmaker.md/rom/noutati/cazul-braguta-2-de-ce-un-om-grav-bolnav-este-tinut-in-arest-preventiv-mai-mult-de-37403>

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