Documentation of Torture: Providing Evidence towards Justice

European Network of Rehabilitation Centres for Survivors of Torture

Conference Report 2012

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Introduction

This conference on the theme of Documentation of Torture - Providing Evidence towards Justice was a conference of the European Network of Rehabilitation Centres for Survivors of Torture, organised by Memoria and the European Network. It took place in Chisinau, Moldova on 23 May 2012 and focussed on the mechanisms strengthening the medical and psychological examination and documentation of the effects of torture and other forms of ill-treatment to contribute to judicial processes in ensuring justice. The event was organized with the support of the OSCE Mission to Moldova and the "Strengthening the forensic examination of torture and other ill-treatment in Moldova" project, financed by the European Union an co-funded and implemented by the United Nations Development Programme.

The conference was attended by almost 150 participants from a range of agencies and government departments, including 25 international experts and 7 forensic experts from the Transdniestrian region.

Statement of the European Network

The European Network made a formal statement following the conference for dissemination in Moldova amongst all participants and key agencies. It stated that:

"The European Network commends all the participants for their efforts to promote dialogue towards justice for torture survivors and to improve the use of medical and psychological evidence in the assessment and documentation of torture.

The European Network is comprised of rehabilitation centres for torture survivors, centres which have been established for many years, some for more than 25 years. Many centres are independent voluntary agencies and some are State-funded services. Our specialist services are provided by physicians, psychologists, psychiatrists, social workers and other specialists, many of whom have conducted research and have extensive publications in the field of torture and in their own specialisms. Our work involves addressing the specific needs of vulnerable groups, especially victims of torture and asylum seekers with severe and complex medical, psychological and social needs. We also offer specialist training for health and forensic professionals, the judiciary, army, border control staff and others. We use our expertise to help improve the structures and practices of health and social systems, as well as provide expert medical and psychological professional reports to contribute to legal proceedings. We are also engaged in upholding human rights and engage in activities for the prevention of torture. This includes upholding the highest ethical standards by challenging ethical breaches by professional bodies and individual health professionals where their policies or practices condone, support or engage in torture practices.

Based on our collective professional experience over several decades of working with torture survivors in Europe and internationally, the European Network strongly endorses the very valuable, high quality professional work with torture survivors of RCTV Memoria in Moldova. As a professional Network we wish to highlight key points based on our collective knowledge, professional experience and expertise:

1. The environment within which torture and its effects are documented is critical. This requires a perception of competence and expertise by all concerned, the proper independence of that expertise and the finances to provide appropriate levels of competence.

2. Media bias, societal attitudes and prejudices are highly relevant and ill-treatment needs to be viewed against a backdrop which includes: the failure of some states to provide adequate healthcare to torture survivors; the lack of procedural guarantees; the denial that ill-treatment is taking place; poor conditions in prisons; and a failure to properly investigate abuses – all of which it is crucial to address through the documentation of torture and ill-treatment.

3. Clinical experts employed by the State need to be trained to recognize their competing responsibilities when acting under a dual obligation to their employer and the client/patient. This recognition is particularly important when the subject is detained.

4. Investigations of torture must be independent of the State (and of the representatives and servants of the state) and not subordinate to the State. Medical and psychological assessments of those who report torture must be independent, professional and thorough, whether they are conducted by State-employed or independent experts.

5. Experts should be appropriately competent to carry out thorough medical and/or psychological assessments and documentation of torture and all medical and psychological experts, whether State-employed or independent, and the expert reports they produce, should conform to the standards established in the UN Istanbul Protocol for the documentation of torture."

Summary of conference events

The programme details can be found in appendix 1. The conference was opened by **Ms Ludmila Popovici, Director of RCTV Memoria** (the host organisation), who welcomed delegates to the conference stating that the presence of delegates from so many members of the European Network and representatives of State institutions provided an opportunity to explore solutions to the issue of the documentation of torture in Moldova.

Ms Elise Bittenbinder, Chair of the European Network (see appendix 2), welcomed delegates and explained that few areas demonstrate an interdisciplinary, cross-national and cross-political approach more than refugee and asylum policy; the voices from the health care system, providing assistance in the context of multiple cultures to ameliorate the after-effects of loss and gross human rights violations and the voices of domestic political agendas which compete with expectations that the right conditions will be developed for the integration of those who arrive in a new country. This tension led, in most western European countries, to a fruitful discourse between clinical and forensic psychologists or psychiatrists; experts on torture on the one side, and lawyers, judges and decision makers on the other. As a result we have seen legal regulations or court rulings that successfully incorporate expert medical or psychological evidence. There are a number of examples of the use of this knowledge as evidence of torture or ill-treatment across Europe. In Italy, for example, the Government has accepted a recommendation of the Committee for the Prevention of Torture (CPT) "that all

relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians."

In Moldova colleagues have themselves suffered harassment while trying to provide evidence for their clients. Moldova has seen dramatic changes and this conference may be contributing to a historical event; shaping the social tissue of this society by providing support for survivors of torture and human right abuses. Health professionals throughout Europe who work directly "in the field" contribute significantly to the protection of torture victims and an expanded role for rehabilitation centres in providing professional documentation and expert opinions to the judiciary and asylum authorities here in Moldova may also be possible.

Mr Dirk Schuebel, Head of EU Delegation and Mr. Jan Plesinger, the Deputy Head of the OSCE Mission to Moldova gave their keynote addresses. They were asked to address the theme of: "How to secure professional documentation of torture and appropriate professional assistance to victims of torture in CoE member states". Mr Schuebel reminded the conference of the importance of the issues to the EU which is committed to zero tolerance of torture. As a result there can be no statute of limitations on the crime of torture. The question of torture and impunity is high on the agenda for further discussions on human rights between Moldova and the EU in Autumn 2012.

Mr Plesinger stated that reliable forensic documentation is critical in this area of human rights. Technical skills, particularly in forensic psychology and psychiatry are lacking in Moldova and this has called into question the weight which has been applied to the evidence of experts in the domestic and international courts.

Ms Matilda Dimovska, UNDP Resident Representative a.i., reminded the meeting that in his 2009 Report on Moldova, Mr Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, had raised concerns about the medical and psychological documentation of torture.

Ms Helen de Rengervé, Head of the Brussels Liaison Office, International Rehabilitation Council for Torture Victims (IRCT), summarised their research project on using forensic evidence in the fight against torture.

Mr Andrei Pădure (Vice Director of the Centre for Forensic Medicine) and Mr Alexandru Postica (Attorney, Director of the Human Rights Programme, of the Promo Lex Association) then looked in more detail at the issue of "the Documentation of Torture for Justice in Moldova" (see appendix 3). Mr Pădure pointed out that projects to strengthen documentation of torture cases, including the acquisition of equipment and training, are being carried out. Mr Postica provided a detailed overview of Moldovan cases brought before the European Court of Human Rights (ECtHR). He described the outcomes of many cases as creating an obligation to establish that injuries did not occur during detention (a "rebuttable presumption"). In reaching their decisions the ECtHR had considered the roles of forensic medicine (looking at possible causes) and therapeutic medicine (looking at diagnosis and treatment).

An extensive question and answer session then followed considering the roles of forensic and therapeutic medicine in Moldova and whether those models compete with or complement one

another. Questions were asked about the use to which international standards such as the Istanbul Protocol might be put.

A session on "How to secure professional documentation of torture and appropriate professional assistance to victims of torture" followed with presentations from international experts from the European Network and other agencies. These included:

1. Psychological Documentation of torture and Psychological Reports: Ms Elise BITTENBINDER, Xenion and BAFF, Berlin, and Chair of the European Network (appendix 4).

2. Procedures and written instruments for early identification of vulnerable persons: Dr Lorenzo MOSCA, CIR, Italy (appendix 5).

3. "Documentation of torture for asylum seekers: 20 years of experience in Switzerland": Dr Laurent SUBILIA, Geneva (appendix 6).

4. The role of medical documentation of torture from a legal perspective: Dr Lutz OETTE, REDRESS, UK (appendix 7).

5. Overview of medical certification of torture at European centers based on a questionnaire: Dr Camelia DORU, ICAR Foundation, Romania (appendix 8).

The final session on "Documentation of torture – providing evidence for justice: How to use the accumulated expertise at rehabilitation centres more effectively" followed. This session took place in workshops. Constructive ideas for the future of the documentation of torture were then presented to the conference in plenary. They may be summarised as follows:

- The environment within which torture is documented is critical. This requires the perception of competence and expertise by all concerned, the proper independence of that expertise and the finances to provide appropriate levels of competence.
- Media bias, societal attitudes and prejudices are highly relevant and ill-treatment needs to be viewed against a backdrop of failures by some states to, for example, provide healthcare, leading to a general sense that the state does not serve society. Law enforcement officers are vilified and as a result they are not protected and become de-motivated. However, these are macro-political issues which cannot be properly addressed by this conference, but a lack of procedural guarantees, the denial that ill-treatment is taking place; poor conditions in prisons and a failure to properly investigate were all recognized as problems which can be addressed through the documentation of torture and ill-treatment.
- In many newly emerging states there is a period of transition and it will inevitably take time to adjust to the implications of a fully democratized society which acknowledges basic individual human rights. Such transformational processes need to be acknowledged.
- In order to provide procedural guarantees the Rule of Law must apply and the independence of the law courts, investigation procedures and experts should be recognized and protected in law. Rotating experts working for State institutions is likely to improve their expertise and also avoid the risk of corruption. Experts employed by the State need to be trained to recognize their competing responsibilities when acting under a dual obligation (to their employer and the detainee). The Rule of

Law means, in the context of documentation, that judges should establish the remit of the investigation, not the State. Investigations must be independent of the State (and of the representatives and servants of the state) and not subordinate to the State. Investigators need to be adequately resourced; cuts in services impede investigations.

- Information about the documentation of torture and ill-treatment must be widely disseminated and, in particular, the Istanbul Protocol must be distributed and acted upon (for which judges need special training). Pathology must not be forgotten and the Minnesota Protocol (a model protocol for a legal investigation of extra-legal, arbitrary and summary executions) may assist in this matter.
- Prisons and other places of detention should be routinely inspected and independent and verifiable data applying epidemiological methodology verified and widely published. Such reports should address specific issues through qualitative as well and quantitative data; general statements are insufficient.
- It was agreed that a special expertise is necessary in order to document torture and ill-treatment. Tried and tested methods of forensic medicine can be relied upon to some extent and do form the basis for much of the Istanbul Protocol. In Moldova some improvements in forensic investigation have already been made. However evidence – physical and psychological – must be systematically gathered and documented. There is therefore a need for training in best practice – especially in psychological assessments. The relevant expertise of psychologists and psychiatrists is acknowledged and they must be used according to the skills required in documenting all aspects of torture and ill-treatment. There is, in turn, a need to attract and involve more psychologists into this work in both State and NGO health services. The private sector may also play a part, though all parties must maintain established standards, as specified in the Istanbul Protocol. Disputes over qualifications must be avoided and necessary skills acquired and training received should be recognized by the institutions of the State (such as the Supreme Court of Justice and the Ministry of Justice as well as the relevant medical/clinical institutions and/or associations.
- Lawyers should be able to appoint their own expert; a plurality of institutions will provide lawyers and their clients with a choice which will result in a greater sense of trust in the outcome of any investigation.

Further points of relevance which were noted at the conference were also mentioned in the statement made by the European Network. These include:

- In his 2009 report the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, found that "the large majority of complaints are not properly investigated and rejected quasi-automatically. Equally, the fact that ex-officio investigations do not function in practice is a major concern. Judges, prosecutors or penitentiary personnel hardly ever initiate investigations, even if there is medical or other evidence that torture was committed."

- Mr Vitalie Colibaba (a patient of the Memoria Centre) gave evidence to Mr Nowak in 2009 and, in 2008, Mr Colibaba had succeeded in his complaint to the European Court of Human Rights (final judgment 23 January 2008) under Article 3 of the Convention that he had been ill-treated by the police during his detention and that he had not been provided with food and water between 25 and 27 April 2006.

- Another patient of Memoria, Mr. Sergiu Gurgurov, also gave detailed evidence of his torture in 2005 including: suspension, 'the elephant' (applying a gas mask which is then periodically blocked) and 'telephono' (beating to the ears causing deafness) and repeated beatings. As a consequence he suffered a serious trauma of the spinal bone and his legs were partly paralyzed. He received treatment at Memoria. The prosecutor's office explained that the different medical analyses did not unanimously prove that the injuries stem from torture. No criminal investigation and prosecution procedure were launched against the police officers responsible for the torture. Persons who were detained in the same cells in the police commissariat who saw him shortly after he was tortured refused to give testimony out of fear. Following Mr. Nowak's visit the European Court of Human Rights ruled (final judgment 16 June 2009) that, in failing to properly investigate the matter "Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation." The Court concludes that it could not been satisfied by the Moldovan Government that Mr. Gurgurov's injuries were caused by anything other than ill-treatment while in police custody and as such Article 3 had been breached.

- The Nowak report found that in most cases of allegations of abuse in Moldova, no forensic examinations are carried out. The report recommended that examination by an independent forensic expert should be carried out in respect of all allegations of ill-treatment. The report found that of the examinations that are done, record the injuries (with a tendency to understate them), but do not assess how they were caused. The report noted that the State Forensic Institute is underequipped and recommended that the institute should be equipped accordingly. The report further recommended that forensic experts inside and outside the Forensic Institute should be trained, including on their role in torture prevention.

- In his 2009 report, Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe noted that "The violent events of April 2009 were a shock to many Moldovans and have been the subject of conflicting interpretations. Nevertheless, the Commissioner's diverse interlocutors were unanimous in their acknowledgement that this period will be viewed as a difficult chapter for the Republic and one which constituted a setback to certain fundamental values and rights. Establishing the facts would be one contribution to healing the severe trauma experienced by the Moldovan people as a consequence of the April 2009 events in Chisinau. The Commissioner recommended that thorough and comprehensive inquiries be carried out into those events. Apart from clarifying the issues relating to the elections themselves, it is essential that the developments during the demonstrations, including the violent acts and the failed riot control measures be investigated. There needs to be a prompt follow-up to the human rights violations, in particular the numerous instances of ill-treatment by the police. The inquiries must be independent, impartial, transparent and perceived as credible by the people of Moldova."

- In the case of Taraburca v Moldova in the European Court of Human Rights (final judgment 6 December 2011), another case of ill-treatment during the events of April 2009, it was held that "…the fact that part of the inquiry was carried out by the authority which employed most of those accused of ill-treatment or of condoning it and the failure to react to clear signs of ill-treatment on the applicant's face, the failure to attempt obtaining evidence through identifying co-detainees or carrying out an identity parade, are incompatible with the procedural requirements of Article 3 of the Convention ". The European Network has been advised that, following this judgment, the General Prosecutor's office have re-opened 15 cases previously closed for lack of evidence.

- In April 2012 Amnesty International;reported (Unfinished Business: Combatting Torture and Ill-treatment in Moldova) that, "[t]he continuing impunity for the violations that were perpetrated during the April 2009 events demonstrates that recent changes to legislation and practice have not gone far enough to eradicate torture and other ill-treatment."

- IRCT's FEAT Project The project is primarily funded by the EC and implemented in partnership with the Forensic Department at the Medical Faculty, Copenhagen University as well as IRCT member centres in Ecuador, Georgia, Lebanon and the Philippines. The objective is to fight impunity by focusing on medical examination and forensic evidence that can be used in the prosecution of alleged torture cases in national and regional courts and human rights institutions.

- The Istanbul Protocol The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, is the first set of international guidelines for documentation of torture and its consequences. It became an official United Nations document in 1999. The Istanbul Protocol is intended to serve as a set of international guidelines for the assessment of persons who allege torture and ill treatment, for investigating cases of alleged torture, and for reporting such findings to the judiciary and any other investigative body.

Appendix 1: Programme for the European Network conference 2012

"Documentation of torture – providing evidence for justice"
Wednesday, 23rd May 2012

8.30 - 9.00 Registration and coffee

9.00 – 9.15

Welcome by Ludmila POPOVICI, RCTV Memoria
Introduction to the Conference: "Documentation of torture – providing evidence for Justice", Elise BITTENBINDER, Chair of European Network

9.15 – 10.00 Opening session

Dirk SHUEBEL, Head of EU Delegation in Moldova
Jan PLESINGER, Deputy Head of OSCE Mission in Moldova
Matilda Dimovska, UNDP Resident Representative a.i.
Helene de RENGRAVE, Head of Office, IRCT, Bruxelles
Oleg EFRIM, Minister of Justice

Session 1: torture in Moldova and Responses. Moderator: Ludmila Popovici

Keynote address: "How to secure professional documentation of torture and appropriate professional assistance to victims of torture in CoE member states".

10.00 – 10.20 Documentation of torture for justice in Moldova
Ion CUVSINOV, Representative of the Center for Forensic medicine

10.20-10.40 Effective use of evidence in the representation of cases of torture, inhuman and degrading treatment at ECHR. Retrospective of the Moldovan cases. Alexandru Postica, Attorney lawyer, Director of the Human Rights Program of the Public Association "Promo-Lex"

10.40-11.00 Questions

11.00 – 11.20 Break

Session 2: How to secure professional documentation of torture and appropriate assistance to victims of torture. Moderators: David Rhys Jones, Eleonore Morel

11.20 - 11.40
Procedures and written instruments for early identification of vulnerable persons.
Lorenzo MOSCA, CIR, Italy

11.40 – 12.00 Documentation for legal action: Psychological documentation of torture as evidence. Elise BITTENBINDER, Xenion, Baff, Psychosocial Centre for Political Refugees, Berlin

12.00- 12.20
Documentation of torture for asylum seekers:" Documentation of torture for asylum seekers: 20 years of experience in Switzerland", Laurent SUBILIA, Geneva

12.20-13.00 Discussions

13.00 - 14.00 Lunch

14.00 -14.30 Overview of medical certification of torture at European centers based on a questionnaire: MD, Camelia DORU, ICAR Foundation, Romania

14.30 - 15.00 The role of medical documentation of torture from a legal perspective Lutz OETTE, REDRESS, UK

15.00 -15.20 Discussions

15.20-15.40 Break

Session 3: Documentation of torture – providing evidence for justice: How to use the accumulated expertise at rehabilitation centres more effectively

15.40 – 17.00 Small groups, Documentation of torture- providing evidence for justice: How to use the accumulated expertise at rehabilitation centers more effectively? Coordinators: Nimisha PATEL, Elise BITTENBINDER, Camelia DORU, Pim SCHOLTE

Plenary

17.00 -18.00 Plenary session. Group presentations (recommendations)/posters with key points: ways forward. Evaluation and closing Conference

18.00 – 19.00 Fourchette (Time for networking/informal presentations or discussions)

Appendix 2: Ms Elise Bittenbinder, Chair of the European Network: Introduction to conference theme

For the last ten years, the European Network has brought together health professionals to function as a "hothouse" on current issues. Health and human right professionals – who see and hear daily evidence of torture and ill-treatment – are in shortcomings in the health and social system of European societies. By doing so, they and the centres in which they work play an important role in helping to shape the characteristics of a human rights parameter within the health system - they act as a kind of litmus paper for the quality of society in which we live.

There is no longer any controversy over the fact that survivors of torture and vulnerable refugees who succeed in entering Europe need assistance and treatment to ameliorate the after-effects of loss and gross human rights violations. Specialised rehabilitation or treatment centres are providing care, treatment and rehabilitation facilities in a wide variety of ways. They have also promoted a professional discourse on the psychological and physical after-effects of trauma and man-made disasters. As a result, we have come a long way: assessment and documentation manuals are available and different treatment models have been established for working with torture survivors. But, in spite of that, domestic political agendas are not always compatible with the conditions which caregivers and health professionals need in order to be able to provide effective support to their clients.

So in the last 10 years, the centres have taken on an active role in providing clinical expertise, offering evidence of possible maltreatment which might support survivors' claims for justice, rehabilitation, redress - or simply for their claim to asylum in many European countries.

The subject of our conference this year is "Documentation of torture – providing evidence for justice." It focusses on the role the rehabilitation centres play or could play in documenting torture – mainly by providing expert reports or acting as expert witnesses in courts.

While controversial, this has been a major preoccupation in many European countries and a lot has been achieved in the last ten years. Important achievements like the Istanbul Protocol – but also national standards or guidelines[1] [2] [3]for medical or psychological professional reports – are helpful tools that have been developed and used in training health and legal professionals.

We can also point to crucial court rulings in some EU countries requiring asylum authorities to take account of expert clinical reports given by clinicians from our specialist centres in their decisions.

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1 For example, Standards for the Assessment of Psychologically Traumatised Persons (SBPM, 2003) in cooperation with the medical and psychotherapeutic associations in
International Training Manual on Psychological Evidence of Torture, Baykal T et al, 2004, Human Rights Foundation of Turkey (HRFT)
Care Full. Medico-legal reports and the Istanbul Protocol in asylum procedures (Bruin, Reneman, Bloemen 2006).

Protection of the right of clients and advocating for their rights

Few areas demonstrate an interdisciplinary and cross-national and cross-political approach more strongly than that of refugee and asylum policy. It is a meeting ground where many clear and distinctive voices are heard – international law in the form of human rights and refugee legal instruments; domestic law in the form of immigration and asylum law; the voices from the health care system, providing assistance in the context of multiple cultures to ameliorate the after-effects of loss and gross human rights violations; and the voices from politics, where domestic political agendas may compete with expectations that the right conditions will be developed for the integration of those who arrive in a new country.

This tension led in most western European countries to a fruitful discourse between clinical and forensic psychologists or psychiatrists who were experts on torture on the one side and lawyers, judges and decision makers on the other. Subsequently we have seen legal regulations or court rulings that incorporate expert medical or psychological evidence. During this conference we will hear more about some examples of how this knowledge is used as legal evidence across Europe. In Italy, for example, the Government has accepted a recommendation of the Committee for the Prevention of Torture "that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians."

In Germany the centers, together with the psychotherapeutic and the medical associations, have established guidelines for the qualification of experts as well as for the qualification of medico-legal reports. The Federal Constitutional Court ruled for the first time on 9 September 2007 supporting the use of expert reports and pointing out the qualitative factors for giving evidence and the minimum criteria for expert/professional reports.

The experience of our Polish colleagues also show that we need to strengthen the use by practitioners of psychological reports for strategic litigation – in their case they had not only to justify their professional mandate but also explain the "*link between the PTSD and the point in time when trauma appeared"* in a response to the Polish Government at the Human Rights Court in Strasbourg.

Necessity for justice in the healing process

A number of European countries have experienced totalitarian regimes. within their recent history. Their societies have been traumatised, and they now have to find ways of restoring social calm and healing the scars. A common problem for these countries has been the huge number of victims, the large number of perpetrators and the inability of the judicial systems to cope with these challenges. The documentation of individual cases is part of the healing work contributed by the centres. But they have also to raise public awareness in a way that will ensure the protection of the survivors as well as that of their own team members.

These specialist centres have a unique position, in that they have been trusted with the survivors' history. They help recover and preserve society's collective memory of gross human rights violations and they make these accessible to current and future generations. In this way, centres can promote a national debate regarding redress or reparation for torture victims, reconciliation and the need to guarantee that such violations never happen again. They should be supported in their attempts, based on extensive clinical expertise , to obtain public apologies for the victims of human rights.

The ICAR Foundation in Romania can not only tell us about its experience of how to fight for public apologies for victims of torture from their Government but it also tell how its centre has supported cases in the Human Rights Court in Strasbourg (January 25, 2011: application no. 26246/05, which led to Romania being condemned on two counts for unsatisfactory handling of a case of manslaughter in police custody: First, the authorities' failure to protect the life of the victim and second, the lack of an effective investigation into victim's death.

We know that organising such a conference here in Moldova was not only a considerable strain on our colleagues here in simple practical terms – but we also know that some of them have suffered persecution themselves while trying to provide evidence for their clients.

This small country has seen dramatic changes and, in some small way, we might all be participating in a historical event: shaping the social tissue of this society in providing support for survivors of torture and human right abuses. We will be sure to take advantage of this rather special moment to tell of the efforts undertaken by health professionals throughout Europe who are working directly "in the field," but we would also like to consider together a possibly expanded role for our centres in providing professional documentation and expert opinions to the judiciary and asylum authorities here in Moldova.
Our colleagues in Moldova have themselves experienced the importance of proper documentation in a case that was brought to the European Court of Human Rights, and this will make it clear why this conference is of such importance here.

A case concerns an incident leading to imprisonment and routine ill-treatment and torture of a 27-year-old man which left him severely disabled. The European Court of Human Rights Strasbourg ruled on the 16 June 2009 that the authorities failed to conduct an effective investigation into the applicant's complaints of torture while in detention and that there was a lack of effective remedies in respect of the acts of torture complained of; The court held that the State was to pay the applicant compensation.

All this involved:

-An action of support by Amnesty International publishing a description of the applicant's case and an appeal asking for a medical examination of the applicant, carrying out an effective investigation into his complaints of torture and allowing the applicant to meet his lawyer in conditions of confidentiality.

-A letter by the United Nations High Commissioner for Human Rights to the Moldovan Minister of Foreign Affairs, a visit by a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which described his case in its report, which led to no result.

-An intervention by the Moldovan Ombudsman and a medical and psychological examination by "Memoria" Rehabilitation Centre for Torture Victims, which found evidence of all the conditions characteristic of victims of torture. The Centre also decided to help the applicant to fund surgery in order to "regain his hearing at least partially".

And I cannot even begin to mention all of the other parties involved – this is just one example showing why it is so important to collaborate with colleagues. You will have the privilege of hearing a more detailed story of how joint efforts can sometimes lead to justice – even after a long time.

In summary some of the current key issues:

- Mainstream health systems in European countries (and beyond) are not able to handle extremely traumatised victims of repression or torture.

- The necessary treatment for survivors (a right to health and rehabilitation, under international human rights law) is provided by highly specialised care and treatment centres, which may be voluntary organisations, but are often also partially state-financed.

- Rehabilitation Centres have been active for up to 25 years, addressing the specific needs of vulnerable groups, especially victims of torture and asylum seekers with serious medical and psychological needs. They also offer specialist training, use their expertise for lobbying to provide input into the structures and practices of health and social systems, and provide expert medical or psychological professional reports to support legal proceedings. Emerging from this work, they have published on relevant subjects of interest to a wide professional community[4].

- The centres have been pioneering in increasing knowledge about trauma and torture as well as in the trans-cultural opening of social and health systems. They've also worked to improve expert medical and psychological reports on trauma-related health problems in legal proceedings, and have developed specialist training courses for services such as police, border control, the army etc.

- They have participated in the advancement of human rights by the documentation of severe violations as well as by introducing ethical standards in professional bodies to ensure health professionals uphold their ethical, professional and legal duties to document torture, to protect survivors from further harm and to ensure they receive the highest form of healthcare available. Where those professional bodies have then failed to live up to those standards, centres have provided evidence which highlights breaches of codes of conduct.

- Although we are dealing on daily basis with a very narrow, specific area of highly traumatized persons, often with many physical injuries too, we can and do intertwine this knowledge in a comprehensive way with forensic medicine or forensic psychiatry/psychology not specialising in torture, and we can point to some distinct overlaps and differences.

- Seeing mostly traumatised persons, we have developed an expertise and can contribute in a field that has not seen relevant research.

- We have to strengthen the collaboration of practitioners in the use of expertise for strategic litigation cases and the use of any evidence to expose torture.

- The work of this network – through research, advocacy and mutual support – strengthens all of our individual efforts.

[4] "Begutachtung traumatisierter Flüchtlinge", 2006 – ("Psycho-medical expert reports on traumatized refugees").

Appendix 3: Mr Alexandru Postica (Attorney, Director of the Human Rights Programme, of the Promo Lex Association) "the Documentation of Torture for Justice in Moldova - Summary of the presentation „Effective use of evidence in the representation of torture cases, inhuman and degrading treatment in the ECHR - Moldovan retrospective cases"

Direct victims: victims who have suffered directly from the treatments applied from authorities or third parties. An application may be made only by living persons or on their behalf; a dead person cannot make an application to the Court, even by proxy [Polat and Kaya against Turkey (dec.)].

Indirect victim: a person who has a specific and personal connection with the direct victim (plaintiff), the Court may accept a petition from people who were considered indirect victims. Example: Lipencov v. Moldova (Application no. 27763/05), 25 January 2011, a mother was recognized as an indirect victim, who due to the degrading treatment to her minor child suffers from mental retardation.

"Beyond reasonable doubt", evidences must pursue a quite strong coexistence of clear and consistent facts. When it comes to people in detention then the burden of proof falls clearly on the shoulders of the authorities.

Suspicions or assumptions are not sufficient to obtain a victim status.
Abusive request: request is abusive if it is based on facts deliberately invented in order to mislead the Court (Varbanov v. Bulgaria, § 36). The worst example of such an abuse is conclusively falsifying documents sent to the Court [Jian v. Romania (dec.); Bagheri and Maliki against the Netherlands (December) and Poznanska and others v. Germany (dec.)].This type of abuse can be committed also by inaction, when the applicant from start fails to inform the Court on an essential element to consider in the case [Al-Nashif v. Bulgaria, § 89, and Kérétchachvili against Georgia (December.)]. Similarly, if important issues arise during the proceedings before the Court and if - despite the explicit requirement that lies under the regulation - the applicant does not inform the Court.

Unsupported parts of the requirement, lack of evidence: The Court shall declare inadmissible any individual application submitted under art. 34 when it considers that the application is incompatible with the Convention or its protocols, manifestly unfounded or abusive. Article 35 § 3. Conditions of eligibility.

Proceedings before the Court have a contradictory character. Thus, parties – that is, the applicant and the respondent government - need to support their arguments both in fact (providing the Court with the necessary factual evidence) and the right (explaining why, in their opinion, the invoked provision of the Convention has or not been broken). Insofar as is relevant here, art. 47 of the Rules of Court, governing the content of individual requests, including the presentation:

a) Copies of all relevant documents and, in particular, judgments or other, on the claim. Moreover, according to art. 44C § 1 of the Court, "When a part fails to present evidence or information requested by the Court or does not disclose relevant information on its own initiative, or when giving evidence, otherwise, the lack of effective participation in the proceedings, the Court can draw of this behavior the conclusions it deems appropriate. "

The Court declares the application inadmissible for obvious lack of foundation: a) when the applicant is limited to quote one or more provisions of the Convention, without explaining how they were violated, unless this is clearly according to the facts of the case [Trofimchuk v. Ukraine (dec.), Baillard v. France (dec.)];

b) when the applicant refuses or fails to submit documentary evidence in support of his claims (namely, in particular, the decisions of courts and other national authorities), except the existence of exceptional circumstances beyond his control which prevent him from doing so (for example, when the prison authorities refuse to give the Court documents in a prisoner case).
Gutu v. Moldova: A critical appreciation was given to the applicant who was slammed down and soiled with mud. A critical appreciation was also given to the fact that he was handcuffed and because of this his reputation was impaired. Statements of other witnesses were given who confirmed that the applicant fell down as a result of quarrels with neighbors, also he was given a negative feature of the local government. There was found no violation of the art. 3 of the Convention.

(Physical) **Medical evidence:** In the accumulation of evidence it is important to bear in mind the difference between therapeutic medicine (dealing with the treatment of persons) and forensics (examining the legal aspects of injuries). Forensics is a specialized field of medicine, which aims is specifically focused in seeking the motives of bodily symptoms. In many countries both therapeutic aspects and the medical / legal are interpreted the same by medical workers, but to the extent feasible there should be involved doctors who have legal capacities in medicine and who understand the difference between these two areas.

Evidence of therapeutic medicine: medical tests are probably some of the most important types of evidence that can be awarded for documentation of torture. They can raise the level of trust essential to other evidence. But medical evidence is not always conducive to resolving the case.

Many types of torture leave few signs, and other physical signs caused by strikes and other actions may disappear. Often injuries reported by the petitioners could take place in other circumstances. In this sense, they can be given both medical certificates, as well as all the results from a treatment.

Ilascu v. Moldova and Russia. Electrocardiogram; conclusions from the Red Cross doctors
Taraburca v. Moldova. The report (Extract from medical file) offered by the RCTV "Memoria".
Paladi v. Moldova. Conclusions of an independent physician, Recipes and confirmation of ambulance call due to worsening health. Conclusions RNC, Republican Clinical Hospital, certificate issued.
Sock v. Moldova. Conclusions of a general practitioner outside the prison. Tarban v. Moldova, disability certificate, medical statement on file.
Boicenco v. Moldova. Conclusions of the cardiology hospital doctors, other medical specialists' conclusions extracted from medical records.
Holomiov v. Moldova. A lot of certificates that confirm the existence of several chronic diseases, including hepatitis and kidney disease.
Colibaba v. Moldova. Data released by the RCTV "Memoria" confirming that he had several injuries, as is described by the applicant.

On the other hand, the doctor without enough explanation substantiated by the applicant was cast aside by the Court. Modîrcă v. Moldova.

Forensic evidence: forensic examination may show that injuries could occur from the circumstances described by the petitioner. If the request is confirmed by both physical and psychic evidence, which was declared as complementary with victim statements, the importance of medical evidence will have a much greater importance.

Levinta v. Moldova. A forensic examination was presented which described the circumstances stated by the applicant. Moreover, he was given the visit certificate of ambulance doctors who recommended hospitalization, which was refused by the police.
Paduret v. Moldova. He was given a forensic that confirmed excoriation and confirmed the plaintiff's statements.
Corsacov v. Moldova. He was given a forensic which confirmed some damage in the region of the ears and deafness was diagnosed which coincided with the circumstances described by the victim.
Pruneanu v. Moldova. Buzilo v. Moldova, Parnov v. Moldova, forensic examination of the first days of detention.

If it is not immediately possible to invite a doctor to perform an investigation, it is recommended to document visual evidence of inhumane treatment. Attention needs to be drawn to the following: any visible injuries, such as swelling, calluses, abrasions, burns, etc.
Any musculoskeletal complications, e.g. walking, lifting up the stairs, stay, bending and lifting hands.

Any deviation from the norm such as the position of hands, back, and legs.

One will write a very detailed report (act), to be signed by the victim and the person who will perform this act; if possible to be signed by some witnesses. Can be carried out by filming or photographing victims; cases from April 7, 2009.

Psychological evidence: Even if there are specific types of torture that leave no physical traces, it still leaves noticeably psychological consequences. This applies especially to people in terms of torture which was applied intentionally humiliating sexual or religious nature, the threat of being killed, solitary imprisonment, or threat to the family. Although analysis of the individual mental state can only be done by the expert, simple observations of an unprofessional by the behavior of the victim compared with subjective comments he can make himself (e.g., describing the nightmare, thoughts of suicide), also can be interpreted by expert at a further stage and appreciated by the Court as conclusive evidence.

Stepuleac v. Moldova. Personal declaration after detention in a solitary cell, as well as the psychological pressure to which he was subjected.
Gorobeţ v. Moldova. The personal declarations after detention and a psychiatric treatment of 41 days in a psychiatric institution.
Ivanţoc and others v. Moldova and Russia. It was established that the denial to release the plaintiffs from detention after a court decision, through which the violation of art. 3 of the Convention was established, represents a serious violation of the right not to be subjected to torture.

Gavrilovici v. Moldova. The personal declaration after psychological disturbances following the impossibility to participate in religious rites related to the decease of his mother, as well as the lack of eye-glasses.
Pădureţ v. Moldova. The personal declaration in regard of the application of an especially perverse form of torture, that is, rape with a bottle.
Catan and others v. Moldova and Russia. There was not established any violation of art. 3 of the Convention following the existence of a frustration or anxiety, without being documented by a specialized doctor, even if there were made certain psychological assessments.

Amicus curiae testimonies represent external reports, made by certain organizations or by persons with expertise in the area. These testimonies are presented as autonomous evidence. They will contain the established circumstances with great detail.

Ilascu and others v. Moldova and Rusia. An analysis of the process in court, made by Andrzej Rzeplinscki, Professor of Criminal Law and Human Rights at the University of Warsaw, and Frederick Quinn. The conclusion was that the process did not correspond to the fundamental rights. A lack of contact with the defense and a lack of an impartial tribunal were established. In the end, the authors describe that process as being a political case from beginning to end. What was considered as terrorism according to Soviet laws, at the present moment is freedom of expression.
Paladi v. Moldova. Amicus curiae was taken by the Helsinki Committee for Human Rights regarding the plaintiff's detention.

Declarations of witnesses. Because acts of torture often happen in less accessible places, it is often very painstaking or even impossible to find witnesses. If there are victims, they very often do not want to make declarations. But if they, nonetheless, want to make declarations, it is clear that this will increase the judges' trust that the fact has indeed taken place. The declarations of persons having assisted during the moment of detention; the victim's state in that moment. If until the moment of arrest the victim has received some threatening letters. Other detainees can be as well credible witnesses for detention conditions. The doctor which has checked the victim's state immediately after detention. The best method to identify witnesses is to pass together with the victim through each episode from the moment of his detention and to halt at all moments after detention. It needs to be kept in mind, that the person's approval is necessary to take declarations from him. This needs to be signed by him.

Ilaşcu and others v. Moldova and Russia. Especially during the Ilascu case, there were heard tens of witnesses which confirmed the detention conditions as well as the way in which the process was examined in the region. The Court established the conditions in which he was given medical assistance via witnesses' declarations. The Court established expressly in art. 450 that the witnesses' declaration, as well as that of the plaintiffs' wives were precise, clear and corroborated the circumstances described by the plaintiffs.
Istrati v. Moldova. The statements of the doctor doing the operation were used. He admitted that the plaintiff was chained to the wall during the operation.

Other types of evidence: There is no previously established list of evidence. Often that takes into account the petition's character which follows to be submitted and needs to be determined by the petition's characters. On the one hand, there needs to be evidence to reinforce the veracity of the described fact. On the other hand, there needs to be objective evidence which will help to demonstrate how the given evidence is related to the overall

picture. To realize this, there needs to be undertaken creative action, as there are very many possibilities:

Press releases: these types of evidence needs to be taken with maximum attention; although normally they will not be sufficient, they are indirect but independent proof, that the incident took place, or for creating a clearer image of the events.

Official reports and statements**:** statements received during a state investigation or during the visit of a delegation, for example, the special UNO commissioner or delegates of the CPT. The resolutions by the international bodies, through which the indignation is shown regarding the situation in certain countries; Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules (adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies).

Ilascu and others v. Moldova and Russia. The CPT report from November 2000 regarding the places of detention, especially the Hlinaia prison.

Ostrovar; Becciev; Istrati; Sarban; Modîrcă; Feraru; Turcan; Arseniev; Culev; Ciorap; Plotnicova v. Moldova; The CPT reports regarding the Prison Nr. 13,
Stepuleac; Popovici v. Moldova; The CPT reports regarding the places of detention of CCCEC and DSO.
Evidence that the phenomenon of torture exists in the Republic of Moldova: reports by human rights organizations, which will depend of the respective organization's reputation.

Taraburca c. Moldova; reports of the Commissioners for Human rights, T. Hammerberg from 2009; CPT report from July 2009, Report of the Parliamentary Commission from 2009, Report IDOM and CREDO from 2009: "Freedom, Security and Torture" ; Declaration of the Bar Association from 17.04.2009

Thematic studies: if you want to show something concrete, you could make a study to establish general tendencies.

For example, there will be accumulated more similar cases in which the authorities have failed in effective investigations. The way in which certain norms from the Criminal Code or the penal procedure are treated; as well, an analysis of legal practice in certain crimes, to show that there are no effective remedies. Example: report made by BAAP; Soros Fundation Moldova.

Sochichiu v. Moldova. It was taken as fundamental evidence the video which shows the way of detaining the plaintiff.

Appendix 4: Psychological Documentation of torture and Psychological Reports: Ms Elise BITTENBINDER, Xenion and BAFF, Berlin, and Chair of the European Network

Slide 1: Why we engage in the documentation through psychological reports: Survivors of torture must know that their cases are dealt with in a just and legal way; the long and complicated process of healing and repair must always be seen in close conjunction to the legal and social processes.

That is why our rehabilitation work must include advocacy and the pursuit of legal remedies.

Slide 2: Documentation of torture through reports has become an important tool: Professional standards allow us to identify and report on torture and human rights violations based on our psychological knowledge. Evidence based on psychological findings is challenging. It has to be seen in close conjunction with legal and social processes and the process of exploring has to be non-intrusive so that "no further harm is done".

Slide 3: Documentation of torture & human rights abuses as prevention: Documentation of human rights abuses is used for advocacy (Bearing in mind ethical restrictions), via reports by expert witnesses given to decision makers (On condition: Informed consent of clients).
Some survivors want to participate in prevention:
A. from Kosovo (2000) "I want you to write it all down so that the whole world will know what's happening. Perhaps it will stop when everybody knows."

Slide 4: "Do no harm" principle in Psychological or Clinical reports: Committed to professional code of ethics, we have to make sure: "that we do no harm". That means: Keeping a balance between exposing past experience of trauma, running the risk of re-activating traumatic material while exploring life events in order to fulfil requirements of reporting.

Slide 5: The Survivors' Narrative & the obligation to inform: Our work is based on survivors' own descriptions of their lives:
Torture survivors were denied information as part of the total control over their lives.
Information (or the lack of it) is an important aspect of mental health.
The law and how it relates to the situation of survivors and their problems has to be part of the exploration for a professional report. see e.g. Guidelines for exploration by Berlin Chamber of Psychotherapy

Slide 6: Istanbul Protocol Manual on the Effective Investigation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 1999): "Psychological evaluations can provide critical evidence of abuse among torture victims for several reasons: torture often causes devastating psychological symptoms, torture methods are often designed to leave no physical lesions and physical methods of torture may result in physical findings that either resolve or lack specificity." (Para 260)
Slide 7: Standards for the Assessment of Psychologically Traumatised Persons (SBMP) [Germany] 2000: The performance requirements refer for example to the following questions:
From which conditions does the applicant suffer that are the concern of your specialist subject?
Does the applicant suffer from a posttraumatic deficiency according to DSM-IV/ICD 10?

If so, is the post-traumatic deficiency caused by abuse and torture in their native country or has it other sources?
Does the applicant show any further physical or mental traces or consequences that allow conclusions of suffered torture?

Slide 8: SBMP vs. Istanbul Protocol: The SBMP is very restrictive and arguably does not comply with the Istanbul Protocol. For example,
The SBMP:
"Psychological statements concerning the reliability/ believability of statements made to support an application for asylum are not to be made."

The Istanbul Protocol:
"Does the clinical picture suggest a false allegation of torture?"
(Paras 105(f) and 287(vi)

Slide 9: Istanbul Protocol: Psychological Evidence should:
A. Correlate the degree of consistency between the psychological findings and the report of alleged torture.
B. Provide an assessment of whether the psychological findings are expected or typical reactions to extreme stress within the cultural and social context of the individual.
C. Indicate the status of the individual in the fluctuating course of trauma-related mental disorders over time, i.e. what is the time frame in relation to the torture events and where in the course of recovery is the individual?
D. Identify any coexisting stressors impinging on the individual (e.g. ongoing persecution, forced migration, exile, loss of family and social role, etc.) and the impact these may have on the individual.
E. Mention physical conditions that may contribute to the clinical picture, especially with regard to possible evidence of head injury sustained during torture or detention.

Slide 10: Istanbul Protocol: Conclusions and recommendations
1. Statement of opinion on the consistency between all sources of evidence cited above (physical and psychological findings, historical information, photographic findings, diagnostic test results, knowledge of regional practices of torture, consultation reports, etc.) and allegations of torture and ill-treatment.
2. Reiterate the symptoms and disabilities from which the individual continues to suffer as a result of the alleged abuse.
3. Provide any recommendations for further evaluation and care for the individual.

Slide 11: Istanbul Protocol: Torture survivors may have difficulty recounting the specific details of the torture for several important reasons, including:

Factors during torture itself, such as blindfolding, drugging, lapses of consciousness etc.;
Fear of placing themselves or others at risk;
A lack of trust in the examining clinician or interpreter;
The psychological impact of torture and trauma, such as high emotional arousal and impaired memory, secondary to trauma-related mental illnesses, such as depression and post-traumatic stress disorder (PTSD);
Neuropsychiatric memory impairment from beatings to the head, suffocation, near drowning or starvation;
Protective coping mechanisms, such as denial and avoidance;

Culturally prescribed sanctions that allow traumatic experiences to be revealed only in highly confidential settings.

Slide 12: Istanbul Protocol: Cultural Factors:

"The assessment of psychological status and the formulation of a clinical diagnosis should always be made with an awareness of the cultural context. Awareness of culture-specific syndromes and native language-bound idioms of distress through which symptoms are communicated is of paramount importance for conducting the interview and formulating the clinical impression and
conclusion. (Para 262)"

Culturally prescribed sanctions that allow traumatic experiences to be revealed only in highly confidential settings (Para 142 (g))

Slide 13: Istanbul Protocol: Communication Barriers & Interview Conditions:

- Fear of placing oneself or others at risk
- Lack of trust in the examining clinician and/or interpreter
- Lack of sense of security during the interview
- Poor setting
- Poor timing
- Physical barriers: pain, fatigue, sensory deficits
- Socio-cultural barriers:
  - gender of the interviewer,
  - language and cultural differences
- Barriers due to transference or counter-transference reactions during the interview
- Poorly conducted and/or badly structured interviews

Slide 14: Assessment of Psychologically Traumatised Persons in Germany, 2000:
A summary of the structure of an assessment (in right of residence proceedings)

I Commissioning of the Assessment
II Sources
III Questions and Hypotheses
IV History
a) According to Files
b) According to Own Statement
V Results
VI Discussion and Conclusion, Diagnosis
VII Reply to Questions
VIII Summary
IX Sources of Literature

Slide 15: Assessment of Psychologically Traumatised Persons (in Germany) in more detail:
History: according to file and according to own statement
1. Symptoms/reports related to the condition
2. Special history (medical/psychological history of trauma)
3. Biographical medical/psychological history
4. Family medical/psychological history

5. General (somatic) medical history

Resulte: Psychological findings, observation of behaviour, analysis of relationships

Optional: General medical, Internal medical and neurological results
Results of psychological tests
Results of any instrumental tests

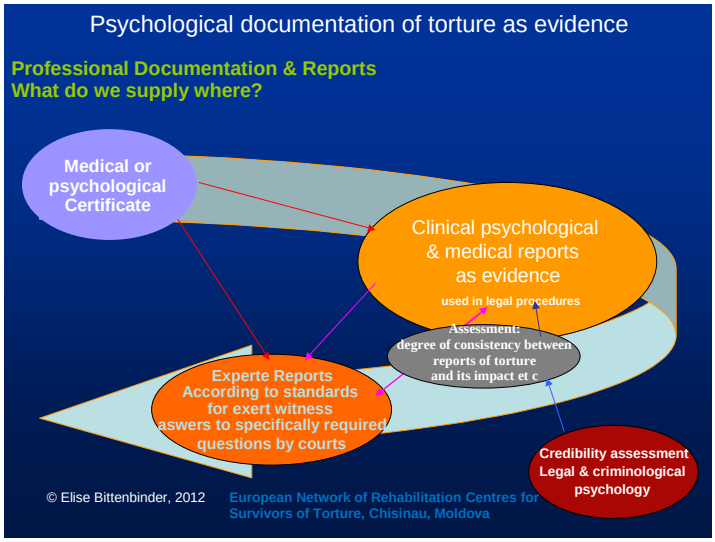
Slide 16: Identifiable signs of credibility: "Experience shows that the truthful narration of a real occurrence is characterised by exactness, clarity and detail. The applicant's statement did not conform to this requirement." Inconsistent accounts have been demonstrated in a Swedish study to be the most important factor in evaluating fabricated stories, used by about 1 in 5 of decision-makers. This is based on a naïve assumption that inconsistent accounts of torture or other traumatic experiences should be taken as indicating fabrication or lying. (Should discrepant accounts given by asylum seekers be taken as proof of deceit? Jane Herlihy, DClinPsych and Stuart Turner, MD, BChir, MA).

Slide 17: Identifiable signs of credibility: istanbul Protocol: Inconsistencies in testimony can occur for a number of valid reasons, such as memory impairment due to brain injury, confusion, dissociation, cultural differences in perception of time or fragmentation and repression of traumatic memories. (Istanbul Protocol para 190)

Slide 18: Identifiable signs of credibility: Diagnostic Manuals: DSM-IV. The DSM-IV definition of PTSD relies heavily on the presence of memory disturbances in relation to the trauma, such as intrusive memories, nightmares and the inability to recall important aspects of the trauma. The individual may be unable to recall with precision specific details of the torture events but will be able to recall the major themes of the torture experiences.

Slide 19: For example, the victim may be able to recall being raped on several occasions but not be able to give the exact dates, locations and details of the setting or the perpetrators. Under such circumstances, the inability to recall precise details supports, rather than discounts, the credibility of a survivor's story. (Istanbul Protocol para 253)

Slide 20: Professional Documentation & Reports: What do we supply where?



Slide 21: Federal Constitutional Court Decision (BVeG) of 11.09.2007 (Germany): Quality of report gives evidence that damage to health is a serious possibility. Rules that Federal Office for Migration & Refugees plus courts have to investigate and clarify implications

Slide 22:Federal Constitutional Court Decision (BVeG) of 11.09.2007 (Germany): Qualitative factors of evidence given: Substantiated - Plausible - Logical

Slide 23: Federal Constitutional Court Decision (BVeG) of 11.09.2007 (Germany): Minimum Criteria for professional or expert reports:
Diagnosis
How the illness is presenting itself
Information on context of exploration
Verification of given information
Other plausible explanations
Prognosis (not always necessary)

Slide 24: Why do we engage in the documentation through psychological reports?:
Asked to appear as expert witness in court I questioned the judge:
"Why do you need my report – you have got medical and other reports".
Her answer: "Psychotherapists explore and explain the real life experience of the person and put it in the context of their legal situation. That is what I need to come to a conclusion".

Appendix 5: Procedures and written instruments for early identification of vulnerable persons: Dr Lorenzo MOSCA, CIR, Italy

Abstract (powerpoint unavailable)
The Extreme Trauma and Torture Survivors Identification (E.T.S.I.) Interview:
A tool for an early identification of tortured and extremely traumatised victims among asylum seekers and refugee population

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* Italian Council for Refugees - Together with VI.TO. Project

ABSTRACT
In the past years, the awareness of the large incidence of trauma related syndromes and their severe impact on the possibility to achieve integration has grown. In particular, empirical evidence has underlined the specific role of complex post-traumatic syndromes in determining pervasive and chronic psychological and cognitive alterations, that can seriously hinder personal resources and determine the emergence of psychiatric breakdowns. Such clinical conditions are usually the product of extreme traumas, that is prolonged or repeated interpersonal trauma, such as torture, abduction and sexual abuse. This issue has become a specific target of European policies that are stressing, through the implementation of European Refugee Fund, the importance of an early identification of high vulnerabilities among asylum seekers, aiming to improve the capacity of hosting countries to take care of their particular needs.

In this frame, our group has designed a clinical semi-structured interview for the early identification of tortured and extremely traumatised victims among the asylum seekers population (the E.T.S.I. Interview). The interview allows to gather information on different aspects, as trauma related symptoms, previous traumatic experiences and resilience. At the same time, the Interview can be used for Triage evaluation, that is to determine, through a specific colour code, the likelihood a person has experienced extreme traumas and the urgency for medical and psychological interventions.

The E.T.S.I. Interview was tested in Italy in 8 first reception centres for asylum seekers during a period of 9 months. A total of 148 complete interviews have been collected by the medical and psychological staff in all centres. Furthermore, part of the participants was later referred to Centre for Post-Traumatic and Stress Pathologies of San Giovanni-Addolorata Hospital in Rome, allowing to make a comparative analysis between the first E.T.S.I. Interview assessment carried out in the first reception centres and a deeper clinical assessment carried out by experienced clinicians in post-traumatic stress disorders. A statistical analysis assessed the reliability of the interview. The results show the reliability of the Interview and high correlation rates between scores in each section of the interview, between all sections and the Triage score, as well as the following clinical assessment. The E.T.S.I. Interview can be considered a reliable tool and, therefore, recommendable for the early identification of asylum seekers who survived extremely traumatic experiences.

Appendix 6: "Documentation of torture for asylum seekers: 20 years of experience in Switzerland": Dr Laurent SUBILIA, Geneva

Slide 1: Hôpital Universitaire de Genève 1000 beds, 600 doctors, 2'500 nurses.
Care to victims of violence in the HUG . Département de Médecine Communautaire et de Premiers Recours. Consultation Interdisciplinaire de Médecine et de Prévention de la Violence (1998) Institut Universitaire de Médecine Légale Unité de Médecine pénitentiaire CTG: Consultation pour Victimes de Torture et de Guerre 2 doctors, 1 psychologist 200 patients /year

Slide 2: Medical report Geneva experience:
1989: request by patient for a medical for medical documentation of torture, "constat de lésion" Not considered by authority.
1992 Medical report formalized with the help of the "Institut de Médecine légale" (HUG)

Slide 3: Medical report Frame of the medical report: Context of consultation.
Detailed personal history. Description of violence : method of torture (list).
Complaints : past and present.
Clinical examination : somatic / psychological / psychosocial. Paraclinic investigation.
List of diagnostics : due to violence / not relevant.
Discussion: necessary treatment, evolution under treatment, general medical knowledge on sequels of violence.
Conclusion: causality link.

Slide 4: Medical report (2) Geneva experience: 1994. Strasbourg European Court : on the basis of a medical report Switzerland is asked to reconsider a negative decision given to an asylum seeker torture victim.

1995. Legal precedent of the Swiss Appeal Commission : « the administration can not simply disregard the conclusion of a medical expert ». Medical report taken in consideration in the asylum procedure. Contacts with the Federal Office for Refugees & with the Swiss Appeal Commission : request for seminars. Exchange allows better understanding of medical and legal field.

Slide 5:
1986: collaboration with a judge of the Swiss Appeal Commission for a legal precedent : eligibility to protection for disarmed soldiers from Srebrenica.
1988-89: 80 rapports written per year, 80% positive decisions.
1988: Formal document for declaration of health problems set- up by the Swiss Medical Federation and the Federal Office for Refugees.
2001: toughening up of the asylum policy, new legal precedent : « the judge is bound by the conclusions of a medical expert but not by those of a treating physician ».

Slide 6: Key points of Geneva experience: Formal exchanges between the medical and legal professionals, clarify expectations and needs. Medical report: scientific document, beware of over empathic or too brutal descriptions. The quality of the medical report depends on the quality of the therapeutic relation. Medical report: importance of the coherence of the clinical picture. Therapeutic weight of the medical report (process close to narrative therapy or debriefing).

Slide 7: Clinical picture pathognomonique of torture: Torture sequels : vicious circle

Somatic; Psychological; Psychosocial. Need for global restructuration - coherent coordinated treatment

Slide 8: Sequela of Torture:

- Physical: Similar to poly-traumatization.
- Psychological: loss basic trust, "shattered assumption"
  Personality disorders
  Anxiety disorders
  PTSD, Depression
  Somatization
  Dissociative disorders
- Social: Avoidance, Social withdrawal, Asocial behavior

Slide 9: Interview: avoid unnecessary stressors (avoid flash-backs):
Architectural setting Running of the interview
Attempt to establish a relation based on:
Empathy: empathy based on "benevolence", goodwill.
Respect: convictions, coping methods .
Knowledge: of implications of violence.
Avoids "questioning": under torture the good answer may not be the truth but that which does not hurt.
Avoids any form of authority or power struggle = return of the perpetrator.
Such therapeutic links help to restore "basic trust".

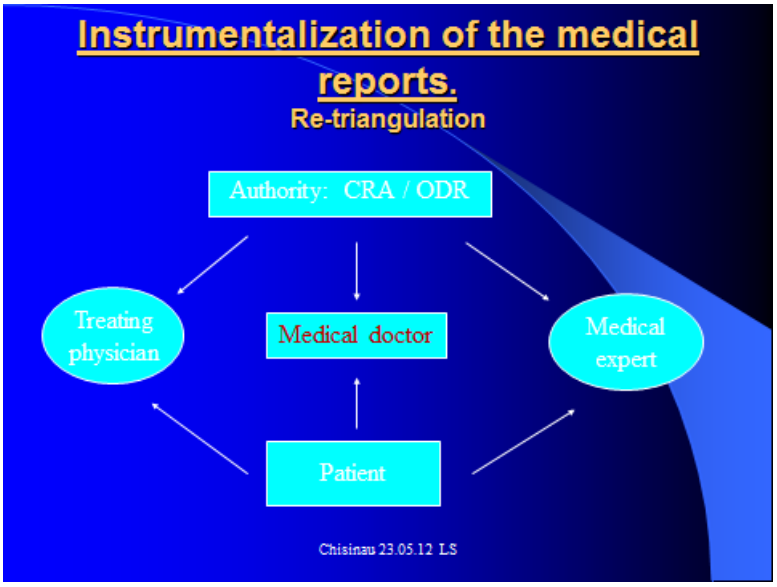
Slide 10: Rapports médicaux: Position of the treating physician versus the medical expert. Administrative procedure versus penal procedure. Necessity to clearly define the professionnal fields. Problem of the instrumentalization of the medical reports

Slide 11: Medical report / «Expertise» Assessment:
Medical report: On behalf of the patient
Handed to the patient
Written by treating doctor
Based on the medical file.

Descriptive: anamnesis, clinical examination, investigations, diagnostic, treatment, prognostic.
Limited to the physician-patient interaction

Medical expertise:
Official mandate.
Handed to the judge.
Written by appointed medical expert.
Based on: a few interviews, a medical examination, a medical file, contact with third persons.
Descriptive/analytic/affirmative, answer to given question, assessment of non-medical factors.
Out reach the medical field

Slide 12:



Slide 13: Medical report: Key points of Geneva experience:
Formal exchanges between the medical and legal professionals, clarify expectations and needs.
Medical report: scientific document, beware of over empathic or too brutal descriptions.
The quality of the medical report depends on the quality of the therapeutic relation.
Medical report: importance of the coherence of the clinical picture.
Therapeutic weight of the medical report (process close to narrative therapy or debriefing).

Slide 14: Stress reaction: vital function adaptation to environmental changes (vital functions = breathing, digestion): Immediate adaptive reaction to event:
- Hyper arousal
- Focalization
- Dissociation

PTSD : persistence of these reactions

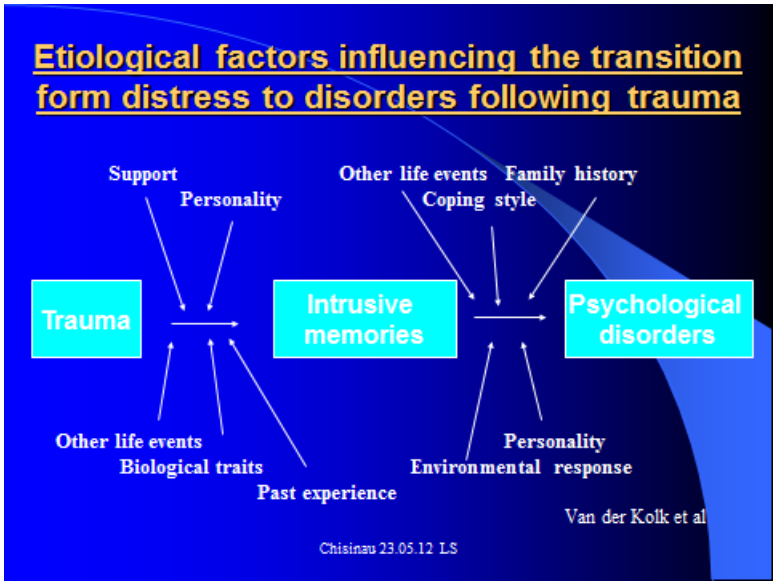
Slide 15: Post traumatic stress disorders (ICD10 F43.1 / DSMIV): Person must have been exposed to a traumatic event.
Person's response involved fear, helplessness, horror.

The person persistently re-experiences the event (intrusive recollections, nightmares, flashback).
Avoidance mechanism, numbness of feelings (amnesia, social withdrawal, loss of interest).
Symptoms of increased arousal (sleeping disorders, irritability, concentration difficulties).
Social dysfunction.

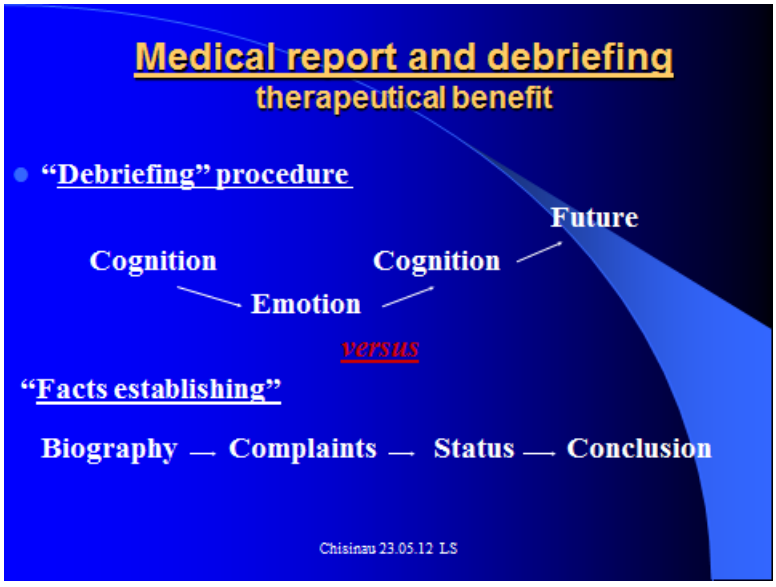
Slide 16: Victims of organised violence. Violence = destructuration process:
Existential disintegration: (similar to early schizophrenia).
Culpability: (betrayal of beliefs, ideas, loyalties alliances, survivor's culpability).
Alexithymia: (loss of the capacity to express strong emotions).
Existential vulnerability: (vulnerability in front of any difficulty).
Defence mechanism: (denial, "splitting", anger, rigidity of coping mechanism, "paranoiac" disorders).
Risk of spiral of hostility : authority = return of the perpetrator

Slide 17: Social pathologies Prisoners unaware of symptoms / accommodation to minimal social functioning pathologies: Loss of self-control and self-initiation of behavior.
Loss of the ability to initiate behavior apathy / lethargy / depression / despair.
Feeling of unreality – derealisation – lack of interpersonal contact / loss of sense of self / disconnection of experience from meaning / acting out way of getting a reaction from environment.
Social withdrawal : starving for / afraid of social contact withdrawal into own world of fantasy.
Deprivation of positive emotion : anger / rage.
Pathologies escape detection by prison health staff.

Slide 18:



Slide 19:



Slide 20: Torture: légal definition:
2 Adolescents, 17 years, parallel personal history:
detained 6 months, tortured, parents slaughtered.
Sierra Leone : asylum granted by quasi-state authority.
Algeria : application rejected, no official recognition of FIS : provisory admission.

Appendix 7: The role of medical documentation of torture from a legal perspective: Dr Lutz OETTE, REDRESS, UK

I. Role of medical documentation under international law

1. Individually: Prevention and right to an effective remedy - Accountability and Reparation

2. Structurally: Ending impunity for torture

II. Using medical evidence to prove torture

1. Medical evidence: Evidence of medical nature, such as medico-legal reports, that can be used to demonstrate that someone has suffered torture or ill-treatment

2. Use of medical evidence: in legal proceedings, fact-finding, advocacy purposes

3. What can medical documentation prove:
Definition of torture: article 1 UN Convention against Torture; article 3 European Convention on Human Rights as interpreted by Court: 'deliberate inhuman treatment causing very serious and cruel suffering'

CAT Definition:

(i) Severe physical or mental pain or suffering: physical or psychological consequences of ill-treatment

(ii) Intention: may be inferred from types of injury (i.e. some can only be inflicted deliberately)

(iii) Purpose: medical documentation, both in terms of time and nature of injuries, may enable distinction to be made whether ill-treatment was inflicted in law enforcement situation or in custodial context

(iv) Official involvement: medical documentation would not establish conclusive proof but can be used to show time of injuries (especially in custody) and nature (especially patterns used by law enforcement agencies or others) that demonstrate official link

Important: Role of medico-legal reports is not to make legal determination of torture but to enable decision-makers, such as a judge, to determine whether the documented facts (findings) together with the medical opinion (consistency of findings with alleged torture) provide credible evidence of torture

III. Prevention

Proving torture or ill-treatment to:
- provide protection against further torture or ill-treatment, including access to required health care (treatment, hospitalisation and possibly transfer to prevent further torture; request provisional measures)
- excluding statements, confessions or other evidence obtained as a result of torture or ill-treatment

- show that someone is at risk of torture or ill-treatment if sent to particular country (prospective assessment, also important in refugee context)

IV. Accountability: Obligation of state to investigate allegations of torture

1. Purpose of investigation:
(a) Clarification of facts and establishment and acknowledgment of individual and State responsibility for victims and their families
(b) Identification of measures needed to prevent recurrence
(c) Facilitation of prosecution/disciplinary sanctions and need for full reparation and redress

2. How: promptly, impartially and effectively (article 3 ECHR)
Effectively: methods capable of obtaining purpose of investigation, namely establishing facts and identifying perpetrator(s) of torture
In more detail, the European Court has analysed what steps authorities must take when gathering evidence, and has made reference in its jurisprudence to offers of assistance; objectivity; attitude of the authorities towards victims and alleged perpetrator(s); timely questioning of witnesses; seeking evidence at the scene, e.g. by searching detention areas, checking custody records, carrying out objective medical examinations by qualified doctors; use of medical reports, and, in death in custody cases, obtaining forensic evidence and carrying out an autopsy (Salman v Turkey, 2000)

CoE Guidelines on Eradicating Impunity for Serious Human Rights Violations-2011
Thoroughness

The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist or other discriminatory motivation. It should be capable of identifying any systematic failures that led to the violation. This requires the taking of all reasonable steps to secure relevant evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence; and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.

3. Role of medical documentation in investigations well established but challenges in practice:
Recognition of Istanbul Protocol as providing best practice
Physical safety and access to medical examination;
Delays in undertaking medical examination that may make it difficult to document injuries
Inadequate medical reports due to formal requirements/lack of capacity/interference; importance of report that provides evidence that injuries may have/have occurred as result of torture
Focus on physical evidence rather than psychological evidence
Even where good medical reports, limit where inability to establish identity of perpetrators for other reasons, such as lack of witnesses

V. Right to an effective remedy and reparation:

1. Well established right in international law: article 14 CAT (important development: draft general comment of the Committee against Torture setting out its interpretation of right to reparation, including rehabilitation) ; article 3 and 13 ECHR; Basic Principles and Guidelines on the Right to Reparation adopted by UNGA in 2005, also reflected in CoE Guidelines on Eradicating Impunity
Procedural right to effective access to justice and material reparation, particularly compensation, rehabilitation, satisfaction and guarantees of non-repetition

2. Role of Medical evidence, particularly medico-legal reports:
Crucial evidence to prove that someone has been subjected to torture or ill-treatment
Medical evidence important to determine amount of compensation, types of rehabilitation needed and broader systemic changes

3. Challenges in practice: lack of timely access to doctor; limited reliance on sound medical evidence, particularly psychological evidence; insufficient capacity/awareness on part of doctors, lawyers and judges

VI. Importance of medical documentation beyond individual case

Important role in fact-finding, such as Commissions of Inquiry, with a view to identifying nature and scale of violations, particularly patterns of torture; of increasing importance but perhaps less so in European context though valuable in conflict situations

Broader significance: documentation as a means of understanding and exposing nature and extent of torture, which may give impetus to greater awareness and preventive measures; support of advocacy efforts and 'transitional justice' initiatives

VII. In light of these considerations, what should a state do/what should lawyers and NGOs advocate?

1. Seeking to implement best practices so as to meet its international obligation

2. Legislative framework: access to lawyer and doctors in detention; requirement to obtain forensic evidence in investigations; recognising validity of both physical and psychological evidence; giving complainants a right to seek second medical opinion to challenge validity of medical reports

3. Institutional framework: guaranteeing independence of forensic doctors; improving capacity

4. Developing culture in which forensic medical evidence is valued and personnel is available to provide high-quality medical documentation

VIII. Role of legal profession:

Recognition of importance of medical evidence.

Appendix 8: Overview of medical certification of torture at European centers based on a questionnaire, Dr Camelia Doru, ICAR

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Presentation by Camelia Doru, ICAR foundation, Romania Xth European Network Meeting, Chisinau 23-25 of May, 2012

The survey was decided last year in Amsterdam during the Annual European Network Meeting with the scope to create a background document for this year meeting proposed to take place in Chisinau focusing on "Documentation of torture – providing evidence for justice". The survey is the result of the working group "Assessment & Documentation" and it was possible thanks to the interest shown by
20 centres from 16 countries:

CENTERS

1. SPIRASI, Dublin , Ireland
2. IAN , Belgrade, Serbia
3. Memoria", Chişinău, Moldova
4. XENION ,Berlin , Germany
5. Swedish Red Cross -five centers for treatment of victims of torture along with some other providers
6. Unit for the Rehabilitation of Victims of Torture, Nicosia, Cyprus
7. Primo Levi Association, Paris, France
8. ICAR foundation, Bucharest, Romania
9. Equator, Centre for Transcultural Psychiatry North Netherlands, Beilen , Nederland
10. Consultation pour victimes de Torture et de Guerre DMCPRU/HUG Geneva , Switzerland
11. OASIS ,Copenhagen, Denmark
12. Refugee Therapy Centre, London, UK
13. Phoenix, Wolfheze, Netherlands
14. Center for Therapy and Rehabilitation "Vive Žene" Tuzla, Bosnia Herzegovina
15. Therapy Centre for Victims of Torture, Cologne, Germany
16. Psychosocial center for refugees, Düsseldorf, Germany
17. SOZE , Brno, Czech Republic
18. Zebra, Austria
19. RCT, Copenhagen, Denmark
20. Department for Special Rehabilitation, Deacony and Social Services, Oulu, Finland

COUNTRIES

1. Austria (AT)
2. Bosnia Herzegovina, (BA)
3. Czech Republic (CZ)
4. Cyprus (CY)
5. Denmark (DK)
6. Finland (FI)
7. France (FR)
8. Germany (DE)
9. Ireland (IE)
10. Moldova (MD)
11. Netherlands (NL)
12. Romania (RO)
13. Serbia (RS)
14. Sweden (SE)
15. Switzerland (CHE)
16. United Kingdom (UK)

Documentation of torture is a concern of the majority of the rehabilitation centers whether the centers are entitled or not to issuing certificates

In some countries any medical doctor is entitled to provide the medical documentation (E.g. DK, CHE, DE, IE , SE, FR). In other places (E.g. AT, MO, RO) only forensic doctors can issue the certificates. There are countries where other health professionals are issuing certificates _ e.g. psychological, social (NL, DE). In spite of different legislation in European countries, most of the centers are issuing certificates, hoping that they may at least contributing to the more general picture of the clients.

The purpose of these certificates is to document the medical /psychological signs/consequences of torture in court either for obtaining asylum status or reparation including condemnation of perpetrators. It is worth mentioning that “fresh cases of torture” – less than one month – are reported in one case – on the occasion of a wild political repression. Torture was the instrument to fight political diversity and freedom of expression in a non democratic environment.

The Istanbul Protocol is known and used as a guide by the professionals of most of the centres. Other medical professionals including the forensic doctors are not necessarily using this reference. Translation is available in more than 50% of respondent languages; the problem is that on UN webpage they registered only official translations, meaning less than in reality.

Regarding the time of medical evaluation and certification of torture most of the respondents (66%) declared that they see the clients after one year, 28% within the first year, and only 5% within less than 6 months. This confirms the serious limitation represented by the long time between the trauma occurrence and its identification. After one year physical evidences are mostly disappeared and the psychological signs, even detectable are more difficult to treat and need longer time. The risk to become chronic is high.

The survey is touching briefly the problem of dual loyalty (two interests potentially conflicting each other) that some of our colleagues – e.g. prison, military, forensic physicians – are facing. The most known example is the one of the doctor asked to assess the capacity of a prisoner to resist torture.
There are situations like conflicts, army duty, war, – including the war on terror – raising fundamental questions about the purposes for which professionals will allow their technical expertise to be used.

Physicians are often exposed to this ethical dilemma when asked to sharing medical records of detainees with interrogators; providing advice to interrogators about how to perform interrogations; failing to report witnessed or suspected abuse; and delaying, inadequately completing, or falsifying death certificates. Forensic doctors providing improper documentation was the case of Romania during the 1989 shift of power. The difference between health professionals and other professionals that may also confront dual loyalty is that the first established binding ethical norms protecting them against violations (e.g. there is no national security concern to excuse a doctor participation in abuses) and sanctioning them in case of breach of code of conduct.

As most of the centers are working with asylum seekers, the early identification of cases of torture remains a standing problem. Accessibility to the reception centers exists in more than 55 % of centers, is possible at request in 25% of centers and in 16% is not possible. Less encouraging is the situation of detention centers where access is more limited. Addressability to the centers is ensured through various referral systems including individual professionals, institutions, NGO's, self-referrals, courts etc. that somehow seems to work.

More complicated is the problem of gathering data regarding the centers' impact on asylum procedure. A rigorous/successful system to collect such information was not reported.
Interesting feed backs were received regarding the duration for issuing medical certificates from rehabilitation centers and from forensic institutes. Generally the forensic institutes take longer but some centers due to their limited capacity reported similarly long intervals.

The price for certification depends on the country but is quite high at all public institutions. The clients with no income or very small income cannot afford the prices. At our centers certificates are mostly provided for free.