

***The activity of the Ombudsman Institution from the perspective of the provisions of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment***

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*Note: The information presented in this chapter refer to the constitutional right to life and physical and mental integrity, the right to individual freedom and security of the individual as prescribed by the case law of the European Court of Human Rights*

**1.A The Objective of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment**

The Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57<sup>th</sup> session of the General Assembly of the United Nations Organisation. The Optional Protocol was signed by the Republic of Moldova at 16 September 2005 and ratified on 30 March 2006. It entered in force on 24 July 2006.

According to article 1 of the Optional Protocol its objective is to establish a system of regular visits undertaken by independent international and national bodies to the site of places where persons are deprived of their freedom, in order to prevent torture and other inhuman or degrading treatment or punishment.

Pursuant to the Optional Protocol deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority<sup>1</sup>. The definition given by the Optional Protocol to the deprivation of liberty makes it clear that in the case of the Republic of Moldova penitentiary, detention and preventive arrest institutions as well as medico-social institutions for persons with mental disabilities equally fall under the ambit of the former. At the same time, the spectrum of institutions which fall under the coverage of the national mechanism is not only large but it also has individual institutional complexity and peculiarity.

At the same time, at international level the OPCAT created a body of prevention within the UN – the Subcommittee against Torture, whilst at the national level the former requires the creation of domestic independent mechanisms of prevention.

The practice of implementation of OPCAT provisions does not offer a strictly determined formula for national prevention mechanisms, although the majority of European states which signed and ratified the OPCAT have opted for national institutions involved in the protection of human rights, because these have at their core the Principles on the status of the National Institutions responsible for human rights protection, known also as the Paris Principles, which envisage the existence of a large mandate, functional independence and pluralism. Therefore, the states parties have the freedom to select the type of body which suits best in each individual context of the country.

It is clear that the activity of regular review of the treatment towards persons confined to these institutions, as well as the formulation of recommendations to competent authorities to improve the respective treatment and detention conditions for persons deprived of their liberty presupposes the existence of an independent authority from the functional point of view, with appropriate resources ensured for a good management and functioning, with a personnel formed of experts with necessary knowledge and skills.

As a compliant measure to the requirements of article 3, 17 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment<sup>2</sup>, the Parliament of the Republic of Moldova adopted the Law no. 200 from

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<sup>1</sup> Article 4 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57<sup>th</sup> session of the General Assembly of the United Nations Organisation, <http://www2.ohchr.org/english/law/cat-one.htm>

<sup>2</sup> Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism). Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized

26.07.2007 on the amendment and completion of the Law of the Republic of Moldova on ombudsmen no. 1349 from 17 October 1997<sup>3</sup> and attributed the mandate of the National Torture Prevention Mechanism to the ombudsmen. The European Torture Prevention Committee mentioned the progress registered in this area.<sup>4</sup>

For the Republic of Moldova the empowerment of the ombudsman with the respective mandate represented an admissible alternative, taking into account the fact that the ombudsman corresponds in full to the criteria prescribed in the Optional Protocol for the national prevention mechanism:

- Functional independence (ombudsmen are appointed by the Parliament for a mandate of 5 years, hold immunity, is separate from the executive and judicial branches of power).
- Needed professional skills and knowledge to fulfil the mandate, as well as large competences to inspect places where people could be held in detention.

Also, understanding the need to involve the civil society in the national processes of eradication of torture the Centre for Human Rights was supplemented with a consultative council, which has the task to offer consultancy and assistance to the ombudsmen in the fulfilment of their mandates as part of the national torture prevention mechanism, holding directly linked competences to monitor the torture and other cruel, inhuman or degrading treatment of punishment phenomenon.

At the same time, Republic of Moldova confirmed its target towards transparency and pluralism in the process of torture monitoring when it offered unconditional access to civil society in detention places, which in their majority are special regime institutions, as well as the latter's empowerment with some of the ombudsmen's functions, showing at the same time the intention to establish an efficient cooperation between the civil society and the authorities.

The activity of the Consultative Council is prescribed by the Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights.<sup>5</sup>

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units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

<sup>3</sup> Law on the amendment and completion of the Law no. 1349 from 17 October 1997 on ombudsmen no. 200 from 26.07.2007, Official Monitor no. 136-140/581 from 31.08.2007

<sup>4</sup> Paragraph 42 from the Report of the European Committee for the prevention of torture 27-31 July 2009 <http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf>

<sup>5</sup> Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008

### ***B. Work organisation of the National Preventive Mechanism***

The ombudsmen and the members of the Consultative Council manage their activity by means of weekly meetings at the premises of the Centre for Human Rights.

The convocation of the members of the Consultative Council is dictated by the need to have a dynamic character to the activity of regular examination of the treatment applied to persons held in penitentiary, detention and preventive arrest institutions, as well as in medico-social institutions for persons with mental disabilities.

During the sessions the ombudsman and the members of the Consultative Council decide on the periodicity of the monitoring visits, involvement of specialists and experts during the visits, the reports drafted after the visits, development of recommendations to improve the behaviour towards persons deprived of their liberty, the detention conditions and torture prevention, examination of the received responses from the appraised authorities or persons with decision making powers, the revocation of the empowerments of the members of the Consultative Council, as well as on other issues pertinent to the good functioning of the National Torture Preventive Mechanism.<sup>6</sup>

In accordance with the competences of the members of the Consultative Council, presently the ombudsman who is responsible for the activity of the National Torture Preventive Mechanism and the members of the Consultative Council are divided into four mobile groups. Each group has the task to undertake preventive or monitoring visits to certain institutions. Besides these people, the personnel of the Centre for Human Rights and the representatives of the Centre in regions (Balti, Cahul, Comrat) are involved in the course of the monitoring visits.

After each visit, within a 72 hour period, the members of the Consultative Council and the employees from the Centre for Human Rights have the task to develop a report where they have to present their findings and recommendations which they consider necessary to improve the situation of the persons deprived of their liberty, with a subsequent reaction from the ombudsmen to the authorities. The employees of the ombudsman's office have developed methodologies and templates to unify the practice of monitoring and development of reports and increase the efficiency of the visits, such as:

- Guidelines on the methodology of monitoring in preventive detention isolators and detention facilities within the police commissariats, referring to:
  - treatment of the detained persons (criminal),
  - treatment of the persons on whose name the arrest warrant was issued.

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<sup>6</sup> Paragraph 22 from the din Regulations on the organisation and functioning of the Consultative Council approved by means of the Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008.

- Guidelines on the methodology of monitoring in preventive detention isolators and detention facilities within the police commissariats, referring to:
  - treatment of persons detained on the basis of the Code of Administrative Misdemeanours,
  - treatment of the persons on whose name a misdemeanours arrest was issued.
- Guidelines on the particularities of monitoring of cases of detention and/or arrest of minors.

The activity within the Consultative Council is based on volunteer basis, being supported by individual engagement and dedication to the cause of prevention and fight against torture and is not inspired from financial interest.

### **C. Powers of the members of Advisory Council**

Pursuant to paragraph 8 of the Regulations on the management and functioning of the Consultative Council, the mandate of the members of the Consultative Council is 3 years.

The candidate for the position of member of Consultative Council must hold a high moral probity, as well as to fulfil a series of requirements which would not allow harm the reputation of the Consultative Council member.

Pursuant to the independent fulfilment of the mandate of torture prevention, the members of the Consultative Council have the right<sup>7</sup>:

- Have unlimited access to institutions, organisations and enterprises, irrespective of the type of property, nongovernmental organisation, police commissariats and detention facilities within the former, in penitentiary institutions, preliminary detention isolators, military units, centres of placement of immigrants or asylum seekers, institutions which delivery social, medical or psychiatric assistance, in special schools for minors with behavioural deviations and other similar institutions;
- Request and receive information, documents and materials necessary to fulfil their mandate from the central and local public administration authorities, persons with decision making powers at all levels of the hierarchy;
- Have unlimited access to any information pertinent to the treatment and detention conditions for persons deprived of their liberty;
- Receive explanations from persons with decision making powers at all levels of the hierarchy on the issues which must be tackled during the monitoring process;

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<sup>7</sup> Art.23<sup>2</sup>, 24 letters b-d, f, g) from the Law on ombudsmen no.1349 from 17.10.1997, Official Monitor no.82-83/671 from 11.12.1997

- Have unlimited meetings and personal conversations, without witnesses, and if necessary, accompanied by a translator, with the persons placed in the mentioned institutions, as well as with any other person who, from his point of view, may offer the necessary information;
- Involve, during preventive visits to the detention sites where people are deprived of their liberty, independent specialists and experts in various fields, including lawyers, doctors, psychologists, representatives of nongovernmental organisations.

The composition of the Consultative Council must mandatorily include representatives of the civil society.

#### ***D. The management of the National Torture Prevention Mechanism***

The State Parties shall guarantee functional independence of the national preventive mechanisms, as well as the independence of their personnel. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.<sup>8</sup>

As a guiding source the Optional Protocol requires the State Parties to examine the Principles on the status and functioning of the national human rights protection institutions, known as the “Paris Principles”.<sup>9</sup>

The financial autonomy is a fundamental criterion, without which the national preventive mechanism may not show independence in the decision making process. The national preventive mechanism must be financially independent to be able to fulfil its main functions. The Paris Principles underline the need for an adequate financial coverage which would allow control over its personnel and premises and be independent of the Government and not be exposed to a financial control.<sup>10</sup>

Regretfully, the implementation of the National Preventive Mechanism in the Republic of Moldova was not supported by a additional increase of financial resources and this hampers its activity.

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<sup>8</sup> Article 4 of the Optional Protocol to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment was adopted on 18 December 2002 at the 57<sup>th</sup> session of the General Assembly of the United Nations Organisation, <http://www2.ohchr.org/english/law/cat-one.htm>

<sup>9</sup> The principles on the status and functioning of the national human rights protection institutions adopted in March 1992, part of the UN General Assembly Resolution 48/134 from 20 December 1993, <http://www.un.org/russian/documen/convents/paris.htm>

<sup>10</sup> Principle 2 from the principles on the status and functioning of the national human rights protection institutions adopted in March 1992, part of the UN General Assembly Resolution 48/134 from 20 December 1993, <http://www.un.org/russian/documen/convents/paris.htm>

This issue was also tackled in the Report of the European Committee for the Prevention of Torture following a visit in the Republic of Moldova which took place between 27 and 31 July 2009<sup>11</sup>, in the Recommendations of the ONU Human Rights Committee adopted as a result of the hearings of the second periodic report presented by the Republic of Moldova during 13-14 October 2009.<sup>12</sup>

Besides these, the burden to cover the necessary costs to ensure preventive visits, including the pay for experts involved in the preventive and/or monitoring visits was put on the Centre for Human Rights.<sup>13</sup>

An efficient implementation of the NTPM requires swiftness and mobility. However the regional representatives of the institution do not have access to transport means, whilst those of the Centre for Human Rights are exposed to a excessive wearing out.

### **E. NGO involvement in the work of the National Torture Preventive Mechanism**

The cooperation with the civil society represents an important component of the activity of the Centre for Human Rights, transposed into a regular and dynamic dialogue directed to fulfil the commitments both related to torture prevention and other activity components.

As mentioned above, the Centre for Human Rights created a consultative council, the composition of which is formed of representatives of the civil society.

Moreover, from the perspective of internal organisation of the National Torture Prevention Mechanism in the Republic of Moldova there is a transparent selection of the members of the Consultative Council and was supported from the outset by the nongovernmental organisations involved in human rights issues. The candidates selection committee itself is formed of a group of 5 persons who act independently, out of whom two are ombudsmen, two are representatives of the civil society and one representative of the academia, who enjoys recognised authority. The composition of the Committee is endorsed by order of the Director of the Centre for Human Rights.<sup>14</sup>

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<sup>11</sup> The Committee recommends actions to be taken without delay to ensure that the National Torture Prevention Mechanism is exercising its competences in full and without restrictions, taking into account the recommendations, observations and orientations which have been developed by the UN Subcommittee on prevention to consolidate the capacities and the mandate of the National Prevention Mechanism.

<sup>12</sup> Paragraph 10 a): the State Party must fortify the NTPM and support its independence, especially by means of increasing the financial resources allocated for it.

<sup>13</sup> Article 39 from the Parliament Decision of approval of the Regulations of the Centre for Human Rights, the structure, the nominal list of functions and its financing no.57 from 20.03.2009, Official Monitor no.81/276 from 25.04.2008; Article 35 from the Regulations on the organisation and functioning of the Consultative Council.

<sup>14</sup> Paragraph 10 of the Regulations on the organisation and functioning of the Consultative Council, approved by means of Order of the Director of the Centre for Human Rights from 31.01.2008, after positive endorsement from the Parliament's Standing Committee for Human Rights CDO-4 no.11 from 25 January 2008.

Additionally, while adopting the first composition of the Consultative Council emphasis was made on nongovernmental organisations, the stake being made first of all on their experience the monitoring of detention places, as well as the relationships of trust which they have most probably already established with the persons deprived of their liberty. Also, being empowered with some of Parliamentary advocates attributions; the representatives of civil society are viewed as an important link in the information, which permit the planning of monitoring visits of the National Torture Prevention Mechanism, but also to respond promptly in emergency situations through preventative visits.

Some specified circumstances determined by the daily activity of some members of Consultative Council, made impossible their participation at the work sessions, as well as at scheduled visits, which influence the rhythmic nature of visits. Also an index to determine completeness of prevention and eradication of torture and ill-treatment is the observance of the agreed terms of drawing reports and not least the quality of them.

From the date of approval of the first composition of the Consultative Council, during 2008 and 2009 the 5 members of the CC have filed in applications where they requested discontinuation of their mandate, motivating their choice with the presence of other activities which do not allow sufficient time to deliver on the undertaken commitments.

On 16 October 2009 the Centre for Human Rights announced the vacancy to supplement the positions of the Consultative Council, the deadline for application being set for 1 November 2009. Because only 2 applications have been received the deadline was prolonged until 13 November 2009. At the end of the process 7 applications have been received.

It is important to mentioned that starting with November 2008 a new practice was instated according to which the members of the Consultative Council received full discretion in selection the detention place they wish to visit and that they can arrange a visit without the participation of the ombudsman. Prior to Anatolie Munteanu's nomination approval the preventive visits were possible only with the participation of his predecessor.

#### **F. Carried out visits by National Prevention Mechanism during 2009**

During 2009 the National Preventive Mechanism continued its activity by means of regular monitoring of the treatment of the persons deprived of their liberty pursuant to the indication of a state body or based on its decision, or with its tacit agreement or consent, aiming at strengthening the protection of these persons against torture or inhuman or degrading treatment or punishment.

During the reference period 125 preventive and/or monitoring visits have been organised, out of which:

- 71 visits have been organised by the ombudsmen;



- 22 visits have been organised by the ombudsmen and the members of the Consultative Council;
- 32 visits have been organised by the members of the Consultative Council.

With regard to the institutions monitored:

- 41 visits have been organised in the institutions subordinated to the Ministry of Justice;
- 73 visits have been organised in the institutions subordinated to the Ministry of Interior;
- 6 visits have been organised in the institutions subordinated to the Ministry of Health;
- 3 visits have been organised in the institutions subordinated to the Ministry of Social Protection, Family and Child;
- 2 visits have been organised in other institutions.

At the same time 50 preventive visits have been organised during the events of 7 April 2009.

As a result of the undertaken visits the ombudsman intervened with 26 reaction acts, out of which 17 requests to initiate disciplinary or criminal procedures against the person with decision making powers who committed breaches which lead to considerable hampering of human rights and freedoms and 11 appraisals with recommendations on the measures which need to be taken to reinstate persons in their rights. As a result of these actions 22 criminal proceedings were initiated, 6 persons have been exposed to disciplinary measures, 8 persons out of which 2 directors of penitentiaries have been warned of the unacceptable deficiencies in the activity of the respective institutions. All prescribed measures, except those provided for in 3 appraisals, have been implemented by the designated authorities where the activities did not require major financial investments.

Compared to 2009, the number of visits undertaken in 2009 has considerable increased, as follows:

<i>N/o</i>	<i>Category of Institution</i>	<i>2008</i>	<i>2009</i>
<b>1.</b>	Institutions subordinated to the Ministry of Interior	27	73
<b>2.</b>	Institutions subordinated to the Ministry of Justice	13	41
<b>3.</b>	Institutions subordinated to the Ministry of Health	2	6
<b>4.</b>	Institutions subordinated to the Ministry of Labour, Social Protection and Family	1	3
<b>5.</b>	Other	-	2

With reference to the reaction acts which have been used for intervention within the National Preventive Mechanism, the situation can be described as follows:

<b>N/o</b>	<b><i>Type of act</i></b>	<b>2008</b>	<b>2009</b>
<b>1.</b>	Appraisals (article 27 of the Law of the Republic of Moldova on ombudsmen)	2	11
<b>2.</b>	Requests (art.28 paragraph (1) litter b) of the Law of the Republic of Moldova on ombudsmen)	2	17

The visits undertaken both in 2008 and 2009 within the National Preventive Mechanism have allowed the ombudsmen and the members of the Consultative Council to accumulate information and details related to the detention conditions and observance of the procedural rights of the persons in police custody. Subsequently, this information has made it possible to underline the main features which describe the state of affairs.

**G. Weaknesses in the investigation and prevention of cases of torture and international standards for effective investigation of torture cases.**

Following review of sentencing decisions of Moldova to the European Court of Human Rights issued on the application where the applicants claim torture, as well as the inadequate investigation of torture cases, and also taking into account the practice of Ombudsman Office as National Preventive Mechanism were indentified a number of problems which creates difficulties in investigation and prevention of this kind of cases, namely:

- Uneven awareness and not in full measure to the fact that torture is prohibited in absolute terms not being set some limitations or exemptions, even in case of public emergency threatening the life of the nation;
- Ineffective tactics and methods for the investigation of torture through the standards established by the art. 3 of European Convention on Human Rights and Fundamental Freedoms and those inserted in the Istanbul Protocol, as well as the lack of an independent specialized structures, with adequate financial resources and educated staff with exclusive jurisdiction to investigate all complaints of ill-treatment.
- Putting the burden of proof to investigate complaints of ill-treatment on behalf of victims as well as putting the statements based on police officers accused of abuse as a base for refusing the beginning of criminal investigation;

- keeping people involved in acts of torture in public positions during the investigation period;
- carrying out some incomplete investigations and without promptness on ill-treatment complaints, which including the ignorance of conclusions of medical-legal reports, as well as refusing the victims of torture to make an independent medical examination;
- Ineffectiveness of punitive practice with reference to torture;
- Deficiencies in changing subjective attitudes to phenomenon of torture and inhuman or degrading ill-treatments;
- Crisis means to effectively and immediately reaction of the recommendations sent by the Parliamentary advocates;

International standards regarding the effectiveness of the investigations of cases of torture are extremely high, and sometimes it is very difficult or impossible that states observe them entirely.

In most completely form, these principles are founding in the Principles regarding the effectively investigation and documentation of torture and other punishments or cruel, inhuman or ill-treatments recommended by the resolution of General Assembly UN nr.55/89 on 4 December 2000.

The aim of an efficient investigation and documentation of torture and other cruel, inhuman, degrading treatment or punishment (herein after “torture and other ill-treatment”) contains the following:

- Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;
- Identification of measures needed to prevent recurrence;
- Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

*States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated.* Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. ***Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.***

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.<sup>15</sup>

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<sup>15</sup> Chapter III, letter B) paragraph 78-82 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on

In the Republic of Moldova most of the complaints are not properly investigated and are rejected at almost all times. Also, the fact that the ex-officio investigations do not function constitutes a major problem. The judges, prosecutors or the penitentiaries' personnel hardly ever initiate investigations, even if there is medical proof or of other type of torture acts. The fact that the system of internal remedies does not function is demonstrated as well by the relatively high number of breaches of article 3 of the Convention, confirmed by the European Court of Human Rights in the latest years.<sup>16</sup>

Another aspect which shows serious concern when investigating cases of torture refers to persons who have the position of victim, or are witnesses in criminal cases initiated on torture or other ill-treatment committed by the employees of the penitentiary system. Most of the time, the convicts who have been ill-treated continue to serve their sentence in the institutions of the penitentiary system. Along with this, due to the closed character of these institutions, the persons who could deliver relevant information on the ill-treatment of a detainee are the same convicts who also serve their sentence in penitentiaries. Also due to the closed nature of the institutions, their administrations have sufficient means of direct and indirect psychological influence which determine a convict to renounce from his/her prior declarations.

Thus, during the visit undertaken on 14 September 2009 in the penitentiary institution no. 13, located in Chisinau municipality, four of the interviewed detainees have said that they are permanently exposed to psychological pressure from other convicts, as well as intimidated by means of unjustified disciplinary sanctions applied by the administration of the penitentiary institution no. 13, of the Chisinau municipality to determine them to withdraw their declarations on the criminal case where one of the suspects is an employee of the penitentiary system.

During the criminal investigation on a case where an employee of the penitentiary institution no. 4 from Cricova, Mr. P.S. was accused of committing a crime provided for by article 328, paragraph 2, letter a) of the Criminal Code of the Republic of Moldova, by means of decision of the Chisinau Military Prosecutors' Office from 19.08.2008 state protection measures have been ensured for convicts B.G., C.V. and M.E. to ensure personal security, as provided by the Law of the Republic of Moldova on state protection of the victims, witnesses and other persons who offer assistance in criminal investigations no. 1458 from 28.01.1998 (in force at that time). However, the data collected during the visit from 14.09.2009 at the penitentiary institution no. 13 of the Chisinau municipality as well as during the one from 13.02.2009 at the penitentiary

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torture and other cruel, inhuman or degrading treatment or punishment  
[www.ohchr.org/Documents/Publications/training8Rev1ru.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1ru.pdf)

<sup>16</sup> Paragraph 67, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from 12 February 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf>

institution no. 18, in the Branesti village, Orhei region, where at that moment the convicts were detained, have allowed the ombudsman conclude on the defective application of the above mentioned law and the Law of the Republic of Moldova on the protection of witnesses and other participants in criminal investigations no. 105 from 16.05.2008.

During the visit at the penitentiary institution no. 18 in Branesti village, Orhei region (13.02.2009) the convict B.G. was isolated, as a result of a request issued to the administration of the penitentiary on the reason of existence of danger for his personal security. Similarly, complaints have come from the victim and the other witnesses who have invoked that they are threatened by other convicts. Following the intervention of the ombudsman the situation was resolved. However, it was attested that the problem reappeared with their transfer to the penitentiary institution no. 13 in Chisinau municipality. Thus, it has been established that on 07.09.2009 the mentioned convicts have been transferred from the penitentiary institution no. 18, in Branesti village, Orhei region to the penitentiary institution no. 13 in Chisinau municipality with the aim to ensure their participation in court sessions at the Court of Appeal in Chisinau. However, the personal files of these people did not contain the decisions of the Director of the Penitentiary Institutions Department on the basis of which their transfer and detention in penitentiary institution no. 13 in Chisinau municipality was decided, which is a breach of the provisions of article 218 of the Execution Code<sup>17</sup> and articles 98, 99 from the Statute of sentence serving by convicts.<sup>18</sup>

In this respect, the above mentioned convicts have invoked their disagreement with their detention in the penitentiary institution no. 13 in Chisinau municipality as well as the fact that they have not been informed of the decision on the basis of which they have been transferred, mentioning that the reason why they have been transferred was acquired from a different source.

Also, convict B.G. said that during the period of detention in penitentiary institution no. 13 in the Chisinau municipality he had a discussion with the chief of mentioned penitentiary's

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<sup>17</sup> Sending the convicts to the place of serving the sentence and their transferral to another penitentiary under escort, with the observance of the rules of separate detention of women and men, of minors and adults, the convicted to life imprisonment and other categories of detainees. Convicts suffering from active tuberculosis or who have not followed a complete treatment of venereal diseases or who suffer from mental deviations, which do not exclude criminal responsibility, shall be transported separately from healthy convicts, and if necessary, based on the medical report, shall be accompanied by medical personnel. The transferral of convicts takes place from the state's funds as provided by the Execution Code and the Status of sentence serving by convicts.

<sup>18</sup> The transfer of detainees from one penitentiary institution to another takes place on the basis of decision of the Director of the Department of penitentiary institutions. The transfer may be orders in the following cases: when requested by the criminal investigation body or the court of law in the procedure of which a criminal case is being examined where the respective detainee is a party or a witness; to ensure uniform repartition of detainees according to the needs of the penitentiary system; reorganisation, liquidation or change of the category of the penitentiary; the need to separate the detainees involved in the same criminal case as defendants, witnesses or victims; implementation of security, schedule or prophylaxis measures; prevention of conflict situations between detainees; according to the medical indications; due to an exceptional family situation (for women – existence of infants or of pregnancy).

security service and was subsequently visited by another convict P.A, who categorically insisted on him withdrawing his statements previously made, the latter threatening him with physical reckoning. Another agent of the penitentiary institution no. 13 in Chisinau municipality to whom the convict B.G. makes reference and who exercised pressure upon him is Mr. V.I. The mentioned agent was enrolled in the penitentiary institution no. 4 in Cricova, where the incident took place, when citizens L.V. and L.P. have been ill-treated and is also a witness in the respective criminal case.

The findings allow sufficient grounds to suspect that the treatment of the mentioned convicts is incompatible with the provisions of article 6, paragraph 1, letters c) and d) of the Law of the Republic of Moldova on the protection of witnesses and other participants at criminal investigations no.105 from 16.05.2008, according to which the body empowered to protect witnesses and other participants in criminal investigations must identify the necessary and sufficient solutions to apply the optimal protection measures, as well as to develop the protection programme in cooperation with the protected person.

All these took place having on the other side the provisions of article 9 of the Law of the Republic of Moldova on the protection of witnesses and other participants in criminal investigations no. 105 from 16.05.2008 according to which the administration of the detention facility is empowered to use urgent and necessary assistance measures whilst article 225 of the Execution Code obliges the administration of the penitentiary to take such measures.

Under these circumstances, the ombudsman has concluded on the existence of reasonable doubt as to that similar intimidation actions against witnesses and victims have taken place and continue to take place.

On the respective case the ombudsman appraised the General Prosecutor's Office to undertake the measures necessary to isolate the respective convicts from any actions and threats which come from other convicts and from the employees of the penitentiary institution no. 13 in Chisinau municipality. Also, he asked the Ministry of Justice to check the legality of their transfer and detention in penitentiary institution no. 13 in Chisinau municipality.

Consequently, it has been determined that the transfer of the respective convicts took place without informing the Department of penitentiary institutions, thus the provisions of article 218 paragraph 2 of the Execution Code being breached.<sup>19</sup> As a result of these violations the wardens of penitentiaries no. 6 in Soroca and no. 18 in Branesti village have been warned on the need to observe the provisions of the legislation in force.

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<sup>19</sup> The transfer of convicts takes place from the state's funds as provided by the Execution Code and the Status of sentence serving by convicts.

## **2. Observance of right to life and physically and mentally integrity in the Transnistrian region,**

During 2009 the number of complaints received from citizens resident in that area has increased, as well as the appraisals received from the nongovernmental organisation Promo-LEX, involved in the promotion and protection of human rights, especial in the mentioned region, where the breach of the constitutional right to life and physical and mental integrity and the constitutional right to the liberty and person's security is invoked.

Particular emphasis is made on the large scale unjustified detentions, torture and other ill-treatment immediately after arrest applied by the employees of the so-called national security ministry, employees of the militia and the penitentiary system, with the aim to obtain confessions of imputed crimes from the arrested persons.

Other aspects invoked in petitions which may be qualified as inhuman and degrading treatment as provided by the case-law of the European Court of Human Rights relate to the inadequate detention conditions in penitentiaries and preliminary detention isolators, lack of adequate healthcare, insufficient quantity and inadequate quality of food.

The UN Special Reporter on torture issues showed concern with regard to the penitentiary institutions in respect to the level of violence between detainees. With regard to the treatment during the militia custody, the Special Rapporteur has received constant and credible complaints of frequent beatings and other forms of ill-treatment and torture, especially during interrogations. The methods of torture include sever beating with fists and rubber truncheons, including on soles of feet and kidneys, electroshocks, needles under nails.<sup>20</sup>

In this context, the ombudsmen have intervened as part of their duties to the representative for Human Rights from the transnistrian regions, Mr. Vasile Kaliko, empowered to visit the detention facilities in the region.

Following a petition received from the nongovernmental organisation "Promo-LEX" the ombudsman intervened in the case of Mr. **M. I., P. A., M. A**, detained in the penitentiary nr. 3, in Tiraspol city, the relatives of whom were making reference to his illegal arrest, inadequate conditions of detention existent in the mentioned penitentiary, application of physical and moral pressing on him from the employees of the Transnistrian bodies with the purpose to obtain declarations favourable for them. However, the obtained results, as well as the impediments related to the prohibition to visit detention facilities in the region, do not allow the formation of a complete and objective view on the treatment applied to the detainees.

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<sup>20</sup> Paragraph 28, Report of the Special Rapporteur for torture and other cruel, inhuman or degrading treatment of punishment, Manfred Nowak, from 12 February 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf>



Additionally, within a meeting with the representative for Human Rights in the Transnistrian region the situation of the treatment applied by the Transnistrian authorities on persons in detention was discussed, and some cooperation relations have been established, which however are not able to fully resolve the existent problems in the regions, a more active involvement of the state bodies being required here.

Also, pursuant to the Law on formulation of declarations to the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment no. 178 from 26.07.2007, the ombudsmen, acting with reference to article 21 and 22 of the Convention and contributing to the legal awareness of the population, have encouraged the petitioners who claim to have become victims of a breach to issue individual applications to the UN Committee against torture.

Transnistrian region operates two prisons under the control of the Moldovan authorities. It is Penitentiary Institution nr.8 which is a semi-closed type and PI nr.12 with a status of criminal investigation isolator that has a semi-field type for detention prisoners involved in the work of the prison service.

In this context, we have to mention that from year of 2002, PI-12 of Bender city has been disconnected from mains water, electricity and heat. The first period of disconnection from the network of the prison took place from 23. 09. 2002-19. 02. 2003 and the second period began 10. 07. 2003 and continues till the present.

Given that drinking water is brought in tanks in prison, provision of electricity is made using generators, food is prepared from coal stoves, prison space heating is also effected through stoves, their continued lack of throws back directly to the treatment people expiate his prison sentence in this.

Also, in early June 2009, prison No. 8 was picketed by about 100 residents of Bender city, their security being ensured by Transnistrian law enforcement bodies. During this period prison entrances and exits were blocked by special vehicles, only being allowed free movement of personnel, but food, drinking water and other household objects were moved manually by prison employees.

Despite the existing state of things at that time, authorities were able to ensure normal operation of the prison.

### **3. The state of affairs of people detained in the institutions subordinated to the Ministry of Interior**

#### **A. General considerations**

Judging by its importance, one of the most striking deficiencies in the activity of the MI bodies in relation to the functionality of the National Preventive Mechanism is the awareness

and/or defective application by some of the employees of the MI structures of their functional competences and the Law on ombudsmen, materialised by limitation of access of detention places in police commissariats or in other divisions.

During the preventive visit in the detention facility of the Chisinau Railway Station Police Transport Commissariat (12.01.2008), the access of the ombudsman was restricted. During the visit from 29.05.2008 the ombudsman and the members of the Consultative Council have been denied access in the “Scut” patrol and sentinel Regiment of the General Chisinau Police Commissariat. Additionally, the police officers of the guard unit, *while jeopardising the mandate of the National Torture Preventive Mechanism*, have suggested the ombudsman and the members of the Consultative Council to appraise the General Police Commissariat of the Chisinau municipality to obtain a written permission from the Commissar.<sup>21</sup>

During year 2009 other similar cases have been registered with the Operative Services Department of the Ministry of Interior – the visit from 28.05.09 of the employees of the Centre for Human Rights was possible only after 40 minutes; the visit of the ombudsman and the members of the Consultative Council to the Police Commissariat of the Riscani district of the Chisinau municipality has been restricted for a period of about 15 minutes; **no access was permitted at all**: on 09.04.09 in the Police Commissariats of the Riscani and Buiucani districts, on 11.04.09 – the General Police Commissariat of the Chisinau municipality and the Police Commissariat of the Centre district of the Chisinau municipality. These event took place irrespective of the fact that during 8-10 April 2009 the ombudsman sent letters to all Police Commissariats of the Chisinau municipality, the General Police Commissariat of the Chisinau municipality as well as to the Ministry of Interior in which unconditional access of the ombudsmen and members of the Consultative Council was asked to visit the preventive detention isolators in subordination with the aim to ensure the good functioning of the National Torture Preventive Mechanism. Additionally, national and international documents which regulate the activity of the National Torture Preventive Mechanism have been sent for consultation.

The restrictions and delayed access to the Police Commissariats have been included in the repeated appraisals of the Ministry of Interior, but the efforts have been limited to issuing an internal circular to the management of the subdivisions of the MI, along with a copy of the Law of the Republic of Moldova on ombudsmen no. 1349 from 17.10.1997 and warned persons only. More recently, an internal investigation was initiated, the results of which have not been made public until present. Additionally, it is acknowledged that such cases have been registered after

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<sup>21</sup> Report on the activity of the National Torture Prevention Mechanism in 2008, pag.10, [http://www.ombudsman.md/file/Raport\\_mecanism.pdf](http://www.ombudsman.md/file/Raport_mecanism.pdf)

the measure taken the Ministry of Interior, which demonstrates their inefficiency. This fact demonstrates that the implementation of the National Torture Preventive Mechanism in the Republic of Moldova confronts certain deficiencies dictated by the slow conformity of the authorities to the requirements of the Optional Protocol to the UN Convention against torture and other inhuman or degrading treatment or punishment.

The activity of the preliminary detention isolators within the Police Commissariats is regulated by the Order of the Minister of Interior on the management and activity of the guarding, escorting and detention of persons arrested and detained in the preliminary detention isolators, no. 5 from 5 January 2004.

Pursuant to paragraph 1.1 of annex no.2, the mentioned Order regulates the detention conditions of the detained and arrested persons, suspected and charged with committing crimes.

Actually, this Order is outdated and needs essential amendments. Thus, as mentioned, the Order was adopted to implement the provisions of the Law of the Republic of Moldova on preventive arrest no. 1226 from 27.06.1997 (repealed on 01.07.2005)<sup>22</sup> and the Criminal Procedure Code to ensure the observance of the rights of detained and arrested in preventive detention isolators.

Besides these, nor the Execution Code, nor the Law on the penitentiary system no.1036 from 17.12.1996, the Law on police no. 416 from 18.12.1990, the Law on the Centre for Fight against Economic Crimes and Corruption, nor the Statute of execution of the sanctions by the convicted adopted by means of Governmental Decision no. 583 from 26.05.2006 do not contain provisions on such institutions for the detention of persons.

Pursuant to the provisions of the Execution Code the persons, on whom the preventive arrest<sup>23</sup> or the sanction of misdemeanours arrest<sup>24</sup> was applied, must be detained in penitentiaries. With reference to the mentioned norms, there are chances for future convictions for the detention conditions during the execution of a misdemeanours arrest, because in reality it is being executed in provisional detention isolators within the Police Commissariats.

Under these conditions the issue of constitutionality of the respective detention facilities may be raised, which in principle exist in all regional police commissariats the activity of some of which has been suspended during the last 2 years.

Also, cases have been registered when the preventive detention isolator of the General Police Commissariat of the Chisinau municipality detained persons with a convicted status,

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<sup>22</sup> Article 334 letter c) Execution Code, Official Monitor no.34-35/112 from 03.03.2005

<sup>23</sup> Persons on whom preventive arrest was applied are held in penitentiaries - art.323 paragraph (1) Execution Code, Official Monitor no.34-35/112 din 03.03.2005

<sup>24</sup> The served sanction of administrative arrest is ensured by penitentiaries – article 333 paragraph (3) Execution Code, Official Monitor no. 34-35/112 din 03.03.2005

transferred there from a penitentiary institution for criminal investigation activities. The respective transfers have been authorised on the basis of the decisions of investigating judges, who wrongfully have made reference to the provisions of article 217, paragraph 2 of the Execution Code<sup>25</sup>.

Following the intervention of the ombudsman with reaction actions to the Supreme Council of Magistrates, where it underlined the defective interpretation and application of the legislation in cases of transfer of persons with a status of convicted from penitentiaries to provisional detention isolators under the subordination of the Ministry of Interior, the respective practice was stopped.

As acknowledged in most of the cases the preventive detention isolators facilities are situated in the basements of the police commissariats' premises and these would never be able to ensure detention conditions adapted to the persons placed under provisional detention.

The situation is even worse in the case of detention places within the Police Commissariats of the Chisinau municipality, the regional Police Commissariats where the activity of the provisional detention isolators was suspended, as well as in the case of police posts from the municipalities' and cities' districts and rural settlements.

In this respect, a first step in ensuring the observance of the right to physical and mental integrity resides in the need to transfer the preventive detention isolators from the jurisdiction of the Ministry of Interior to the jurisdiction of the Ministry of Justice. This is the only way to exclude the detention of persons in the institutions subordinated to the Ministry of Interior where it has been acknowledged that persons may not be exposed to an objective medical examination, the conditions of detention represent an imminent risk to be appreciated as breaching the international requirements in the field, persons are detained with the breach of fundamental guarantees, whilst the majority of them claimed to have been exposed to ill-treatment in the first hours of custody.

Recognising that the problem exists and is pressing, the authorities have decided to include it in the implementation of the National Human Rights Action Plan for years 2004-2008.<sup>26</sup> However this action was not accomplished one of the main reasons being the fact that the buildings which must be transferred shall need additional expenditures for which there are no

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<sup>25</sup> If it is necessary to undertake procedural acts on an offence committed by a convict who is serving his sentence or by another person, the convict, based on the conclusion of the investigating judge or the court of law, may be left in the criminal investigation isolator or transferred to it for a period of time which cannot be longer than the period of arrest provided for by article 186 of the Criminal Procedure Code.

<sup>26</sup> Chapter 7, paragraph 2 of the Parliament Decision on the approval of the National Human Rights Action Plan for years 2004-2008 no. 415 from 24.10.2003, Official Monitor no.235-238/950 from 28.11.2003

financial means planned in the state budget. Also, arguments linked to the impossibility to physically separate the provisional detention isolators from the commissariats have been invoked. Linked with all these, the authorities have opted in favour of the construction of 8 arrest buildings, an objective which can be found in the Concept of reformation of the penitentiary system and the Action Plan for years 2004-2010 to implement the Concept of reformation of the penitentiary system, approved by means of Government Decision no. 1624 from 31.12.2003.

At the same time, the need to resolve the issue of transfer of preventive detention isolators from the jurisdiction of the Ministry of Interior to the jurisdiction of the Ministry of Justice was tackled by the Reports of the European Torture Prevention Committee as a result of the visits undertaken in the Republic of Moldova between 14 and 24 September 2007, 23-31 July 2009; the Reports of the Centre for Human Rights on the observance of human rights for years 2003, 2004, 2005, 2008, as well as the Report on the activity of the National Torture Prevention Mechanism for year 2008. However, these recommendations have not been followed by adequate reactions from the authorities.

#### **B. Material detention conditions**

Compared to 2008 – the first year when the National Preventive Mechanism was functional in the Republic of Moldova – in 2009 it was acknowledged that the conditions of detention in the provisional detention isolators within the Police Commissariats did not substantially improve, these being in their major part incompatible with the international standards in the field.

The Ministry of Interior holds 38 provisional detention isolators, the activity of 8 of them being suspended. The capacity of the ones in use is of 1065 persons, with a total of 279 cells.

Because of the incompatibility of the technical norms and standard of recognised detention, by means of the MI Order no. 291 from 13.08.2007 the activity of the provisional detention isolators within the Ialoveni, Donduseni, Straseni Police Commissariats was suspended; by means of MI Order no. 95 from 10.03.2008 the activity of the provisional detention isolators with the Criuleni, Stefan-Voda, Glodeni, Ceadir-Lunga Police Commissariats was suspended; and by means of MI Order no. 314 from 24.08.2009 the activity of the provisional detention isolators of Calarasi Police Commissariats was suspended.

Thus, in the majority of mentioned provisional detention isolators the problem of natural and artificial light persists. Because some of the provisional detention isolators are situated in the basements of the Police Commissariats, their cells are not equipped with windows. Here the provisional detention isolator of the Operative Services Directorate of the Ministry of Interior, the Balti, Soroca, Drochia Police Commissariats are to be mentioned. The number of provisional detention isolators situated in the basements of the Police Commissariats is equal to 30. In

others, such as the provisional detention isolator within the General Police Commissariat of the Chisinau municipality, the Leova and Edinet district Police Commissariat although there are windows these are small and covered with metal bars doubled by a dense metal grid, which considerably limit the access of the natural light into the cells.

With regard to the artificial light, it has been established that it was also unsatisfactory.

Having no national regulation in this respect, it is considered that these deficiencies are not only incompatible with the international regulations in the field,<sup>27</sup> but eventually may generate extremely negative consequences for the image of the Republic of Moldova on the international arena. Pursuant to those provisions, all facilities where detainees are required to work or live must have sufficiently large windows to allow detainees to read or to write without degrading their eyesight and must benefit from natural light in normal conditions. These requirements also relate to the artificial light. At the same time, the windows must be constructed to allow fresh air to enter the cells.

It must be mentioned that the mentioned documents recommend the states parties to use as guidelines the principles which derive from its text when adopting domestic legislation and implementing it in practice, those being also the minimal requirements accepted by the issuing authorities.

With reference to the existence of the ventilation systems, some Police Commissariats lack them (Edineț PC), in others, even if present, produce powerful noise, whilst in the case of provisional detention isolators where heating is absent (Sorocș PC), those cannot be used during the cold time of the year.

Also because of the placement of provisional detention isolators in the basements of Police Commissariats, some of them lack toilets and water basins in cells (the Operative Services Department of the MI, the Police Commissariats in Balti, Cahul, Vulcanaesti), making it impossible to connect to the water supply and sanitation. The General Police Commissariat of the Chisinau municipality was examined and it has been determined that the sanitation in the isolator's cells does not correspond to the sanitary and hygiene standards. Here the cells are equipped with a Asian type toilet and a tap, which is also used as water disposal and source of drinkable water, representing a genuine source of infection. The wall separating the toilet from the rest of the cell was not capable of ensuring the intimacy of the detainees.

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<sup>27</sup> The norms of the European Committee for the Prevention of Torture, <http://www.cpt.coe.int/en/documents/eng-standards.pdf>; Recommendation no. R(87)3 adopted by the Committee of Ministers of the Council of Europe on European Rules for Penitentiaries, [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/prisons\\_and\\_alternatives/legal\\_instruments/Rec.R\(87\)3.asp](http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/Rec.R(87)3.asp); Resolution no.663 C of the UN Economic and Social Council on the Set of Minimal Rules on Treatment of Detainees, <http://www2.ohchr.org/english/law/treatmentprisoners.htm>;

At the same time, the enounced standards require that sanitary installations and access infrastructure be conceived to ensure each detainee the possibility to access them when necessary in conditions of cleanness and decency. The detention buildings, especially those reserved for detainees during the night must correspond to the hygiene requirements, taking into account the climate, especially with respect to the amount of air, minimal surface, illumination, heating and ventilation.

With reference to personal hygiene, during the visits it has been determined that the persons detained in provisional detention isolators in the subordination of the Ministry of Interior have the possibility to take a shower at least one per week. However, the detainees are not ensured by the administration of the detention facility with elementary objects for health and hygiene.

Similarly, the detainees enjoy the right to wear their own clothing. It has been determined that the majority of the detainees are imposed to use their own bed clothing given by their relatives, because the administration of the detention facilities cannot offer such objects.

With regard to the sleeping places, during the visits organised to the Operative Services Directorate of the MI and the General Police Commissariat of the Chisinau municipality, these represented platforms covered with wood. A similar situation was acknowledged at the Balti, Anenii Noi, Drochia, Hincesti Police Commissariats.

With respect to the attested situation on the inadequate conditions of detention in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality, the ombudsman has presented a review with recommendations to the administration of the Ministry of Interior to remedy the treatment of persons deprived of their liberty. As a result of the intervention of the ombudsman the metal protection tables and the organic glass were removed from the windows of the cells of the General Police Commissariat provisional detention isolator and this improved the natural light and ventilation; separating walls have been built to isolate the toilet from the rest of the cell's space; separate beds have been installed for each detained person, taking into account the necessary area for each detainee; washbasins and separate sanitation units have been installed; the beds have been supplemented with blankets, mattresses and pillows for each detainee; the walls of the cells have been refreshed with chalk solution; video systems have been installed on the perimeter and inside the isolator; the vacancy of medic has been filled, who reviewed the existent drugs, excluding those with an expired validity term, which have been identified during the visit of 27 May 2009.

Additionally, after the intervention of the ombudsman, the leadership of the Police Commissariat of the Edinet district has stopped the use of one of those three cells of the isolator until necessary resources are identified to undertake repair works.

It is to be mentioned that in the case of detention places within the Chisinau municipality Police Commissariats the cells are also not equipped with windows nor with a ventilation system.

The issue of the limit of the detention space was the subject of criticism against Republic of Moldova in the Reports of the European Torture Prevention Committee following the visits which took place between 11 and 21 October 1998, 10-22 June 2001, 20-30 September 2004, 14-24 September 2007. This issue was specifically underlined during the 7 April events and persists until present.

In this respect the inadequate conditions of detention in the units of the Ministry of Interior are still one of the main reasons of conviction of the Republic of Moldova by the European Court of Human Rights. In fact, the state of affairs attested in 2008 and 2009 corresponds, with certain minor adjustments, to the description and appreciation of the European Court of Human Rights in the *Becciev vs. Moldova* case from 4 October 2005. Thus, the applicant has claimed that his detention during 37 days in the provisional detention isolator of the Operative Services Directorate of the MI constituted a breach of his right guaranteed by article 3 of the Convention. In this case the Court acknowledged the breach of article 3 of the Convention based on the justification that the detainees in the provisional detention isolator have not been ensured with sufficient food, the applicant did not benefit from walks in open air, the window of the cells where he was held was covered with metal plates which obstructed natural light, in the cell the artificial light was always on, whilst the detainees were obliged to sleep on wooden platforms without blankets, mattresses and pillows.

In two other cases, *Popovici vs. Moldova*<sup>28</sup> and *Stepuleac vs. Moldova*<sup>29</sup> Republic of Moldova was convicted for the breach of article 3 of the Convention for the same reasons.

At the same time, while issuing these decisions the Court made reference to the findings of the European Torture Prevention Committee following the visits in the Republic of Moldova in the periods of 10-22 June 2001<sup>30</sup> and 20-30 September 2004<sup>31</sup>, considering that these offer at least a credible basis for evaluation of conditions in which the detainees are held.

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<sup>28</sup> Case *Popovici vs. Moldova*, applications no.289/04 and 41194/04, ECtHR Decision from 27 November 2007

<sup>29</sup> Case *Stepuleac vs. Moldova*, application no. 8207/06, ECtHR Decision from 6 November 2007

<sup>30</sup> Paragraphs 53-58: In its report on the visit from 1998 (paragraph 56), CPT was obliged to conclude that the material conditions of detention in the visited detention centres were in many aspects inhuman and degrading treatment and constituted also a significant risk for the health of the detained persons. Although it recognises that it is not possible to transform over night the existent situation in these institutions, the CPT recommended a number of immediate drastic measures which could guarantee basic detention conditions and respect the fundamental requirements of human life and dignity. Unfortunately, during the visit from 2001 the delegation did not find any trace of such improvement measures, on the contrary, it attested the worsening of situation. For instance, the renovation and reconstruction of cells in the PDI of the Department of fight of organised crime and corruption in Chisinau (reopened in 2000) which should have reflected the recommendations of the CPT in 1998, have proven to have a contrary effect. All conceptual and organisational deficiencies underlined



In another case<sup>32</sup> Republic of Moldova was convicted for breaching article 3 of the Convention because of the inadequate conditions of detention in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality. The applicant invoked the fact that the cells where he was detained were overcrowded, dark, humid, dirty, and had a high temperature. The natural light was absent and there was a very weak electric bulb always on. The ventilation was not functioning properly, producing a consistent noise and was only moving the air from one direction to the other. The detainees were allowed to smoke in the cell, because of which the applicant had constant headaches and could check a respiratory disease. The cell had a toilet but without tap water, being separated from the rest of the cell with a 50 centimetres wall. There was a very unpleasant smell in the cell. The cell was infested with insects and rats and the detainees were allowed to take a shower with cold water only once in twenty days. The cells had an area of about ten or eleven square meters and at all times there were at least eight people.

An alarming situation was attested in the *Malai vs. Moldova case*<sup>33</sup>, the applicant invoking the inadequate conditions of detention in the provisional detention isolator of the Orhei

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by the CPT at the period have been consciously reproduced: cells without access to natural light, low level artificial light and always on, inadequate ventilation, furniture which was exclusively comprised of platforms without mattresses (although some of the detainees had personal blankets). A similar conclusion may be formulated in respect to the new section of the Balti PDI, built for detainees administratively sanctioned. It can only be regretful that the efforts of renovation of this building, in the current economic situation deserves appreciation, the Moldovan authorities have not paid any attention to the CPT recommendations. Actually, this state of affairs suggests that leaving aside the economic considerations, the material conditions of detention in the police sections remain influenced by a concept related to the liberty privation which has been long out-of-date. In the visited PDI the delegation received numerous complaints on the quality of food. This included in essence: a cup of tea without sugar and a piece of bread in the morning, cereals paste for lunch and a hot cup of water for supper. In some places the food was distributed only once per day and constituted of a soup and a piece of bread. With respect to the access to the toilet when needed, the CPT wishes to underline that it considers that the practice according to which the detainees satisfy their physiological needs using pots in front of one or several people, in such a limited space such as the PDI cells, which serve also as space of living, is by itself degrading, not only for the individual in discussion, but also for the ones who are forced to be witnesses to what is happening. Therefore, **the CPT recommends the surveillance personnel be clearly instructed that the detainees who are placed in cells without a toilet must – if they request it – be taken out from the cell without delay during the day to visit the toilet.**

<sup>31</sup> Paragraphs 41-47: From 1998, when CPT visited Republic of Moldova for the first time, it has serious concerns on the conditions of detention in the institutions of the Ministry of Interior. The CPT notes that in 32 out of 39 PDIs there have been “cosmetic” repairs made and that in 30 have been created places for daily walks. However, the visit from 2004 did not allow eliminating the concerns of the Committee. Actually, most of the recommendations made have not been implemented. If to make reference to the visited police sections or PDIs, the detention conditions are invariably exposed to the same criticism as in the past. The detention cells do not have access to natural light or have very limited access; artificial light – with small exceptions – was mediocre. Nowhere persons obliged to stay over the night in detention do not receive mattresses or blankets, even those detainees held for longer periods. Those who have such objects could obtain them only from their relatives... With respect to food... in PDIs the made arrangements were similar to those criticised in 2001 (consult paragraph 57 of the report on that visit): in general, three modest portions of food per day which included tea and a piece of bread in the morning, a dish with cereals for lunch and tea or hot water for supper. Sometimes only the lunch was served. Fortunately, the norms of the receipt of packages have been improved, which allowed the detainees who had relatives to slightly improve these insufficient daily food portions. In conclusion, the detention conditions in the police sections remain problematic; they remain disastrous in PDIs, continuing in many ways to constitute inhuman and degrading treatment for detainees.

<sup>32</sup> Case *Străisteanu vs. Moldova*, application no. 4834/06, ECtHR Decision from 7 April 2009

<sup>33</sup> Case *Malai vs. Moldova*, application no. 7101/06, ECtHR Decision from 13 November 2008

Police Commissariat. Thus, the applicant has first stated that he was placed in a cell with no bed, chair or washbasin, this type of cell being reserved for detention periods no more than 3 hours. Subsequently, he was placed in cell no. 9 of the isolator, which did not have windows. The isolator did not have any ventilation. The electric light was always on, although it was so weak that it was difficult to distinguish the faces of other detainees. The cell had a length of approximately seven meters and a width of three meters and there were seven detainees in it. There was no toilet in the cell, however in a corner, which was not separated from the rest of the cell there was a large bucket. There was no washbasin in the cell and the detainees had to keep the water in plastic bottles which were allowed to be filled from time to time outside the cell. There were no beds, but only a thick rug a bit above the floor on which four people could sleep. The cell was not equipped with bed clothes and the applicant claimed that he could sleep only one hour per day. Moreover, the cell was infested with insects and as a result the applicant's body was covered with painful bites, some of which have become bruises. The applicant sent photos to the Court where he showed the bites on his body. The food was insufficient and of a very poor quality. The detainees were fed only once per day in dirty dishes, the applicant experiencing permanent hunger. His relatives were not allowed to bring food, because he did not recognise his guilt. The applicant did not have any contact with his relatives or with the outside world. He did not have paper, pens or envelopes. There was not TV or radio in the cell and because of the lack of natural light in the cell the applicant had lost the sense of time.

With reference to the general principles on the detention condition, the Court has established that the treatment may be considered "inhuman" because inter alia it was premeditated, was applied for many consecutive hours and caused either injuries, either intense physical or psychological suffering. The Court considered the treatment "degrading" because it caused the victims the sense of fear, concern and inferiority capable to humiliate or degrade them. When determining if a certain form of treatment is degrading in the sense of article 3, the Court shall take into account if the aim of this treatment was to humiliate and degrade the person, and if, with regard to the consequences, this treatment has negatively affected his personality in a way incompatible with article 3. Even in the absence of such a purpose the acknowledgment of breach of article 3 cannot be categorically excluded.

Article 3 requires the state to ensure that the person is detained in conditions which are compatible with the respect of his human dignity, that the method of penalty execution does not cause sufferings and intense pain which oversteps the level of sufferings inherent to his detention and, taking into account the exigencies of detention, the person's health and integrity are adequately ensured, among others, by means of delivery of the necessary medical assistance.

When the detention conditions are evaluated, the cumulative affects of these conditions as well as the duration of detention must be taken into account.

### **C.Torture and ill-treatment**

Besides inhuman and degrading treatment, the remarks made during the visits in 2009 have shown that application of torture against persons in police custody continues to exist. After an analysis of the reasons of committing crimes as a criterion, the illegal actions of the police agents can be classified as follows:

- Committed to obtain favourable declarations, confessions, proof by illegal means;
- Committed to show the superiority sentiment over the victims of their illegal actions and ignorance of the general behavioural rules, as well as the possibility to use their positions to “educate”;
- Committed during an abusive use of the powers without being aware of the legislation in force.

During the visits organised to the institutions subordinated to the Ministry of Interior the majority of interviewed persons have invoked application of violence during detention in the Police Commissariats. These allegations have referred mostly to the fact the violence was applied by the police agents in the first hours of detention, during questioning and in the absence of a lawyer, and if they were refusing to make favorable statements, the ill-treatment continued during the period of detention in provisional detention isolators, a period which continued from 24 to 48 hours.

In this respect, the ombudsman have repeatedly expressed their concern, where they have categorically condemned the violent and vandalism actions admitted during the protests on 7 April 2009, considering them intolerable for a state where the rule of law prevails, democratic, where human dignity, rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed.

Numerous allegations about the torture brought by persons detained in police custody and placed immediately after the end of the protest of April 7, 2009 stringency revealed the phenomenon of torture, its systemic nature and rooted. Factual state impose the immediately, tough and determined reaction by the competent authorities to eradicate the ill-treatments, and spread the spirit of non-tolerance of torture throughout society.

The founded gaps of activity of MIA indicate the existence of serious weaknesses in ensuring the right to life and physical and mental integrity, guaranteed by Article 3 of the Convention and Article 24 of the Constitution of the Republic of Moldova, requesting and the review of the activity review of the activity of specialized internal security service of MIA.

Thus, during the preventive visits organised in the Police Commissariats after the events of 7 April, out of 45 persons arrested by the law enforcement agents due to the mass disorders in the centre of the Capital, who at that time were detained at the provisions detention isolator within the General Police Commissariat of the Chisinau municipality, 11 have invoked excessive application of violence from police agents when arrested. Two of them, M.A. and M.S. have declared that they have been ill-treated in the offices of the 2<sup>nd</sup> floor of the General Police Commissariat.

It is to be mentioned that by means of the Order of the Centre for Human Rights during the visits the representatives of the Centre in regions were involved and preventive visits have been also organised in the regional Police Commissariats of Cahul, Cantemir, Comrat, Anenii Noi, Leova, Falesti, Edinet, Singerei, Balti, Glodeni, Briceni, Floresti, Ocnita, Riscani, Donduseni, Soroca, Drochia.

Almost all interviewed persons have been arrested in the night between 7 and 8 April and they have declared that they have been ill-treated by masked police agents, beaten with fists, feet and the back of the guns on various parts of their bodies. The ombudsman has also been informed that after persons have been brought to the General Police Commissariat of the Chisinau municipality they have been beaten with rubber batons and imposed to pass through a corridor where there were on both sides policemen who have beaten them with the rubber batons and with their feet.

Although the majority of the arrested enjoyed the services of a defender, some of them did not receive the services of a barrister, because the Code on administrative misdemeanours (version of 1985) does not provide for the obligation to ensure the arrested persons on the basis of a misdemeanour with a barrister, even if for the respective misdemeanour the person was suspected of there was no sanction provided in form of administrative arrest. However, these people encountered difficulties in the enjoyment of their right to use the services of a barrister.

It must be mentioned that the ombudsman has underlined the issue that the majority of the persons in detention within the Police Commissariats of the Chisinau municipality have been detained for non-aggravated hooliganism (article 164<sup>1</sup> CAM of the RM), to which mandatorily resistance during arrest (article 174<sup>5</sup> CAM of the RM) was added or humiliation of the police agent (article 174<sup>6</sup> CAM of the RM). Also, the consequences which may arise out of the provisions of article 249 paragraph 3 CAM of the RM (version of 1985) have been underlined, in accordance with which the above-mentioned misdemeanours once committed allowed the

detention of the person until the case is examined by a court of law and that the police agents abused this provision each time they had this possibility.<sup>34</sup>

Persons who have been arrested in relation to the events in April 2009 have been incriminated the same articles.

Although with delay, on 31 May 2009 the new Misdemeanours Code entered in force and brought clarity on the main reasons on which a person can be arrested, however the problem is not yet definitively solved.

The results of the visits have shown that in the case of detained/arrested persons of criminal grounds, the state guaranteed legal assistance offered by lawyers where not delivered accordingly, the assistance being of a purely formal nature, the barristers have shown lack of initiative while protecting the rights and legitimate interests of the suspects.

Therefore it becomes impetuous that the Bar Association monitor more efficiently the process of delivery of the state guaranteed legal assistance by means of a functional evaluation and monitoring mechanism of the quality of services offered by barristers, capable to prevent any mistake or breach of law from the judicial bodies.

A legal framework defectively applied by the police agents relates to the right of the detainees to inform their close relatives or any other person about their place of detention, which is in contradiction with the provisions of article 173 of the Criminal Procedure Code and article 247 of the Code on Administrative Misdemeanours (version of 1985). According to the claims of the detainees, the relatives found out about the place of their detention from colleagues, friend, district inspectors. In the case of citizen V.A. (year of birth 1983), detained in the preventive detention isolator of the General Police Commissariat of the Chisinau municipality, the place of his location was not communicated to anyone until the moment of the visit of the ombudsman.

At the same time, the issue of observance of the right to inform the relatives on the place of detention was positively tackled by the Police Commissariats of the Drochia, Vulcanesti and Taraclia regions, where the leadership of the Commissariats took all the necessary measures to ensure this right.

Psychological climate – psycho- emotional extremely tensed between police and protesters, of violent results of who suffered 296 employees of MIA, imposed the limitation of officer's access to the prisoners and urgent transfer from police custody in detention insulator subordinated to the Ministry of Justice.

During the visit in penitentiary no. 13 of the Chisinau municipality, where there were 105 persons transferred at the time from the provisional detention isolator of the General Police

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<sup>34</sup> Report on the activity of the National Torture Prevention Mechanism for 2008, page 14

Commissariat of the Chisinau municipality, at 27 of them various corporal injuries have been detected and registered and these people have mentioned that these injuries have been caused by police agents during the arrest or during police custody.

At the same time, it has been established that with regard to 24 of the persons the minutes of arrest have been developed with breaches of procedure, having either no date or hour of arrest. In the case of 9 persons the minutes of arrest have been developed after the expiry of the legally prescribed period of 3 hours.

It must be mentioned that during the visits to the detention facilities 247 arrested persons have been interviewed, including on the basis of the code of administrative misdemeanours for committing misdemeanours during the protest actions on 07.04.2009, including 3 minors who at that time have been detained in penitentiary no. 13 of the Chisinau municipality.

As a result of the accumulation of information and the attested breaches during preventive visits on 17.04.2009 the ombudsman sent to the General Prosecutor's Office a review, where the list of detained persons was attached, who at the moment of transfer to penitentiary no. 13 of the Chisinau municipality had corporal injuries (registered by the doctors of the penitentiary) and recommended initiation of efficient and public investigation of these cases of ill-treatment, including establishment of circumstances under which these persons have suffered from injuries and identification and punishment of offenders. Also, the list of persons was attached against whom procedural breaches have been committed and the ombudsman recommended to prosecutors to act accordingly.

Also on the 17.04.2009 the ombudsman has appraised the General Prosecutor's Office and asked initiation of investigation of cases of decease of citizens V.B., I.Ț., and E.Ț., including the Prosecutors' Office in Chisinau municipality, which was asked to investigate the cases of ill-treatment of citizens B.O., M.A. and C.V.

On 21.04.2009 the ombudsman appraised by means of a review the Ministry of Interior where it has been commented on the depicted deficiencies during the visits which deal with the inadequate medical examination of the persons in police custody, lack of appropriate medical assistance to these people during detention, defective fill-in of registries, inadequate detention conditions, and mentioned about the consequences which may arise out of these deficiencies.

After information was published on the [www.unimedia.md](http://www.unimedia.md), [www.jurnal.md](http://www.jurnal.md), [www.chisinau.md](http://www.chisinau.md) news sites the ombudsman requested the General Prosecutor's Office to undertake necessary actions to establish the place of stay of citizens D.S. and G.A., who continued at that time to be declare missing after the events of 7 April. At last instance, those have been found.

The attitude to the ombudsman addressing regarding the sexual abuse committed by police officers against girls detained at the premises of the police was not consistent. In this respect it becomes unclear the way the appraisal of the ombudsman was examined with respect to the claimed sexual abuse committed by police agents against the girls detained in the Police Commissariat. Thus, by means of the answer of the Chisinau Prosecutor's Office from 19.05.2009 the ombudsman have been informed that the respective allegations are not true and do not fit with the factual findings. Subsequently, the means of the answer received from the Internal Security Directorate of the Ministry of Interior from 18.02.2010 the ombudsman has been informed that such actions did take place and a criminal investigation was initiated on the respective allegations.

With respect to the reactive actions of the ombudsmen or based on those pertinent for the 7 April 2009 events, the prosecutors have initiated criminal investigations, as follows:

- In 9 cases criminal investigations on alleged actions based on article 309/1 of the Criminal Code were initiated;
- In 2 cases criminal investigations on alleged actions based on article 328 paragraph (2) letter a) of the Criminal Code (12 victims) were initiated;
- In a case criminal investigation on alleged actions based on article 152 paragraph (2) letter e) of the Criminal Code was initiated;
- In a case criminal investigation on alleged actions based on article 187 paragraph (4) of the Criminal Code was initiated;
- In a case the decease of citizen B.V criminal investigation was initiated on the basis of article 151, paragraph (4) of the Criminal Code.

*A good example of this is that of citizen. A.C. , who was arrested as a result of events of April 7, who invoked the violence of constitutional right to life and physical and mental integrity. He was arrested on 8 of April 2009 in the centre of Chisinau by the persons dressed in civilian form and then escorted together with two other persons at the General Office of Police, where he was obliged to write an explanation as to admit that he offended in public the officers of police. Subsequently he was placed in preventive detention isolator of General Office of Police in Chisinau. According to the affirmations of citizen A.C., on 9 of April he was ill-treated by some police officers in one offices of General Office of Police in Chisinau, with application over different parts of the body with fists, with stick and with a metal spoon for shoes. Subsequently, on 10 of April 2009, approximately between 2.00 h -3.00 h together with other 20 arrested persons on account of the events of 7 of April 2009, he was escorted at the preventive detention isolator of Police Office of Vulcanesti district. Before being placed in the cells, they were obliged*

*to run through the corridor of isolator while they were hit with fists, with feet and weapon over all body parts by the police officers of one subdivisions of Ministry of Internal Affairs.*

*Based on the existence of reasonable suspicion regarding the grave violation of human rights and constitutional freedoms of citizen A.C., and according to the art.28 of Law on parliamentary advocates, was requested to investigate this case, with a decision of prosecution bodies in the limits of competence. So, after the ombudsman approach, it was unleashed a criminal investigation by the General Attorney.*

The ombudsman insists on the vulnerability of the persons detained in provisional detention isolators of the Police Commissariats, where police agents have unlimited access in any period of day or night. This is an undisputable argument in favour of an urgent process of transferral of the provisional detention isolators from the subordination of the Ministry of Interior to the Ministry of Justice. A suspicion rises that the maintenance of the isolators within the criminal investigation bodies suits these subjects, which use the very detention as a mechanism of physical and mental influence to recognise, even a false one, of the guilt in committing crimes, as well as in the interests of those who use illegal means to obtain confessions. Judging from the above mentioned, the implementation of the objective which can be found in the Concept of reformation of the penitentiary system and the Action Plan for years 2004-2020 to implement the Concept of reformation of the penitentiary system approved by means of Governmental Decision no. 1624 from 31.12.2003, namely, the construction of 8 arrest houses is of absolute need.

The ombudsman considers, as it results from the Report of the Human Rights Commissar of the Council of Europe published after the visit in the Republic of Moldova during 25-28 April 2009<sup>35</sup> and the Report of the European Torture Prevention Committee published after the visits in the Republic of Moldova during 27-31 July 2009<sup>36</sup>, that it is the duty of the competent authorities of the state to investigate and clarify the causes of circumstances of the events which took place on 7 April 2009, which may contribute, by establishing the truth and reality, to the healing of the deep trauma suffered Moldovan nation.

A positive aspect in the case of provisional detention isolators relates to the adequate equipment of the walk yards, with no complaints coming from the persons with respect to the refusal to be allowed walks, except for the persons arrested during the 7 April events, where due to the overcrowded isolators, this right was not possible to observe.

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<sup>35</sup> Paragraphs 35-50 of the Report of the Commissioner for Human Rights of the Council of Europe following the visit to the Republic of Moldova on 25-28 April 2009, <http://www.bice.md/UserFiles/File/chr-rpt-2009-md-ro.pdf>

<sup>36</sup> The Report of the European Committee for the Prevention of Torture following the visit to the Republic of Moldova on 27-31 July 2009, <http://www.cpt.coe.int/documents/mda/2009-37-inf-eng.pdf>



Another deficiency registered during the visits relates to the inadequate filling-in of the registers of people detained and the registry of visitors, in some of them the lack of chronology being depicted.

Thus, the Police Commissariat of the Ciocana district even if it had a registry in the form of a copybook of 48 pages, there was no registration of visitors made. The Botanica district Police Commissariat made registrations only if that was requested by the visitors. The Riscani district Police Commissariat of the capital was defectively registering the detained persons.

In the case of a minor who was arrested and ill-treated in the Leova region Police Commissariat, the registration with regard to his detention in the Commissariat was missing, although the police agents did not deny the presence of the minor during the respective time in the commissariat.

During 2009 the prosecutors have examined 6027 petitions where petitioners have invoked torture, inhuman and degrading treatment from the representatives of the state. This number rose considerably compared to the four previous years (in 2005 - 1155 complaints, in 2006 – 1386 complaints, in 2007 – 1289 complaints, in 2008 – 1075 complaints).

In 5334 cases of alleged crimes have not been satisfied by means of initiation of criminal investigations, due to lack of crime elements in the invoked persons' actions by the petitioners.

In 693 cases criminal investigations were initiated, as follows:

- 208 cases have been initiated on the basis of article 309/1 of the Criminal Code of the Republic of Moldova, for acts of torture;
- 438 cases have been initiated on the basis of article 328 of the Criminal Code of the Republic of Moldova, for acts of violence and excess of power;
- 47 cases have been initiated on the basis of other articles for application of inhuman and degrading treatment.

Out of the total number of investigated cases, the prosecutors have finalised investigations and developed the indictment in 293 criminal cases, these being sent for examination to the courts of law, having a total of 383 suspects.

In the same period, due to the fact that confirmation was not found to the allegations of victims in criminal cases of ill-treatment from the police, as well as because of the fact that the result of the investigations did not manage to collect sufficient proof to confirm guilt of certain police agents in application of ill-treatment, as well as other crimes, in 265 of the criminal cases the criminal investigation was stopped based on lack of crimes components in the actions of suspected persons.

As a result of the undertaken visits and the interventions of the ombudsman with reactive acts, as well pursuant to the European Court of Human Rights pertinent for this issue, the

ombudsman acknowledge that the authorities empowered with investigation of cases of violence from the police agents continue admitting omissions.

*A relevant example in this respect is the case of citizen C.S. who was transferred from the Straseni region Police Commissariat to the penitentiary no. 13 of the Chisinau municipality on 09.10.2009. After the examination made by the duty doctor of the penitentiary no. 13 of the Chisinau municipality, he depicted the following corporal injuries: contusion and excoriation of the soft tissues of the face and stern, abundant forehead excoriations.*

*After the visit of the penitentiary no. 13 of the Chisinau municipality citizen C.S. explained that on 09.10.2009 around 12<sup>00</sup> hours, being escorted in the preventive detention cell of the regional Police Commissariat he was hit with his head by a nearby wall by the police agents, lieutenant-major C.M. because he refused to offer certain explanations on the crimes he is suspected of. Also, he explained that as a result of the hit he lost conscience and when he recovered it he found himself in the regional hospital. After he left the hospital he was escorted back to the Police Commissariat and then to the Court to be handed over to the escort. Initially, the police escort refused to take him for escort to penitentiary no. 13 of the Chisinau municipality, because he had corporal injuries, but after the phone call of the police agent C.M. to his superiors, citizen C.S. was accepted for escort.*

*Initially being refused in initiation of criminal investigation, after documentation the ombudsman determined with certainty that the corporal injuries have been caused to citizen C.S. during custody of state authorities.*

*The ombudsman intervened with a request to the General Prosecutor's Office as a result of which the decision not to initiate criminal investigations was cancelled and investigations initiated on the basis of article 309/1 of the Criminal Code of the Republic of Moldova.*

*In another case which took place on 28 July 2009 minor M.V. was brought and placed in a cell of the guard unit of the Police Commissariat, where he was ill-treated for about a half an hour by a road traffic police agent and another person dressed in civilian clothes. According to the report of the expert, issued by the forensic doctor on 08.07.2009, minor M.V. had average corporal injuries. Although the examination of cases of ill-treatment must be made by independent bodies, which have no circumstances which may question their impartiality,<sup>37</sup> in the present case the investigation was made by the Police Commissariat who have intervened at the*

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<sup>37</sup> Paragraph 19, 85-87 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on torture and other cruel, inhuman or degrading treatment or punishment [www.ohchr.org/Documents/Publications/training8Rev1ru.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1ru.pdf)

*Leova region Prosecutors' Office with the proposal not to initiate criminal investigations. Following the intervention of the ombudsman on 10 August 2009 the Leova regional Prosecutors' Office initiated criminal investigation on the basis criminal component provided for in article 328 paragraph (2) letter a) of the Criminal Code of the Republic of Moldova.*

As mentioned above, the ill-treatment of persons in detention, as well as lack of effective investigations of ill-treatment complaints constitute severe breaches and omissions in the light of article 3 of the Convention, a fact already acknowledged in the cases examined by the European Court of Human Rights, the result of which was the conviction of the Republic of Moldova.

The European Court reaffirms in a quasi-permanent formulation that article 3 protects one of the fundamental values of democratic societies. Even in the most difficult conditions such as fight against terrorism and organised crime, the Convention forbids in absolute terms torture and inhuman or degrading treatment or punishment. Article 3 does not provide for restrictions, does not accept any derogation, even in case of public danger which threatens the life of the nation.

According to the standards instituted by article 3 of the Convention, when a person suffers from corporal injuries while in detention or police control, any such injury shall create a powerful presumption that this person was exposed to ill-treatment. It is up to the state to give a plausible explanation pertinent to the circumstances in which these injuries have been caused, the non-compliance with which issues a clear application of article 3 of the Convention.

During proof evaluation the Court usually applies the standard of proof "beyond a reasonable doubt". However, such proof may also be deducted from the coexistence of sufficiently reasoned, clear and coordinated conclusions or of certain similar factual incontestable presumptions. When the events in a case are in their entirety or vast majority known by the authorities only, such as the case of persons in authorities' custody, strong factual presumptions shall develop with respect to the corporal injuries which appeared during detention. Indeed the burden of proof is on the authorities, which must present satisfactory and convincing explanations.

The Court reiterates that when a person makes convincing declarations that he was exposed to treatment from police or other state agents which breaches article 3 of the Convention, the provisions of this article, read in the context of the general obligation imposed on the state by article 1 of the Convention to "recognise each person under its jurisdiction the rights and freedoms defined in the Convention", impose an official and effective investigation. Similar to an investigation made on the basis of article 2, such an investigation must allow

identification and punishment of the responsible persons. Thus, general prohibition by a law of torture or inhuman or degrading treatment or punishment, irrespective of its fundamental importance, would be ineffective in practice and would make it possible for state agent in certain circumstances to commit abuses against persons under their control, them having in this case a virtual immunity.

Investigation of serious charges of ill-treatment must be complete. This means that the authorities must take serious efforts at all times to find out what happened and must not relay on weak or unjustified conclusions to discontinue investigations and use them as basis for their decisions. They have to take all reasonable and available actions to ensure proof pertinent to the incident, including declarations of witnesses and forensic reports. Any omission during the investigation which may jeopardise the possibility to establish the cause of corporal injuries or the identity of the responsible persons risks breaching these standards.

Similar principles have been included in the national legislation thanks to the initiative of the Centre for Human Rights. Thus, pursuant to article 10 paragraph (3, 3<sup>1</sup>) of the Criminal Procedure Code of the Republic of Moldova<sup>38</sup>, during the criminal proceedings nobody can be exposed to torture or cruel, inhuman or degrading treatment, nobody may be detained in humiliating conditions, may not be obliged to participate in procedural actions which affects his/her human dignity. The burden of proof of non-application of torture and other cruel, inhuman or degrading treatment or punishment lies on the authority in which custody the person deprived of his/her liberty was, placed at the availability of a state body or pursuant to its order, with the express or tacit agreement of consent.

Also, any declaration, complaint or any other circumstances which allows ascertaining that a person was exposed to torture, inhuman or degrading treatment must be examined by the prosecutor as prescribed by article 274<sup>39</sup>, in a separate procedure. Regretfully, these provisions are not always fully respected.

In 2009, based on the provisions of article 309/1 of the Criminal Code of the Republic of Moldova the courts of first instance have issued 5 decisions on 9 persons, all police agents. Out of these, 4 decisions against 8 police agents are of conviction and one decision on a police agent is of acquittal. With respect to all 8 police agents the courts of law have established penalties in form of privation of liberty, but with the use of the provisions of article 90 of the Criminal Code of the Republic of Moldova, the conditional suspension of the penalty was established. At the

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<sup>38</sup> The burden of proof of non-application of torture and other cruel, inhuman or degrading treatment or punishment is on the authority in whose custody is the person deprived of liberty, placed at the disposal of a state body or at its indication, or with its tacit agreement or consent.

<sup>39</sup> Article 298 paragraph (4) Criminal Procedure Code no. 122 from 14.03.2003, Official Monitor no.104-110/447 from 07.06.2003

same time, as a complementary penalty they have been deprived of the right to hold certain functions or exercise certain activity within the Ministry of Interior.

With respect the convictions based on article 328 of the Criminal Code of the Republic of Moldova, during the reporting period the police agents have been exposed to 18 decisions on 23 persons, out of which 14 sentences against 16 persons of conviction and 4 sentences with respect to 7 persons of acquittal. Additionally, from those 16 agents only one was prescribed with a liberty privation penalty, the others being conditionally suspended from their penalty based on article 90 of the Criminal Code of the Republic of Moldova.<sup>40</sup> The complementary penalty in form of deprivation of the right to hold certain functions or exercise certain activity within the Ministry of Interior was applied against 15 persons.

It must be mentioned that too indulgent sanctioning of the representatives of state authorities guilty of torture and other ill-treatment contribute to the persistence of such acts.

While the Court tackled the preventive effect of the interdiction of application of ill-treatment in the decision from 20 October 2009 issued on the case *Valeriu and Nicolae Roşca vs. Moldova*<sup>41</sup>, for the first time the Republic of Moldova was convicted for inadequate sanctions for persons who used torture, bringing serious criticism to the way justice is managed.

The claimants have declared to have been ill-treated by the Centre district Police Commissariat of the Chisinau municipality and the Ialoveni region Police Commissariat. According to the allegations of the claimants, they have been beaten during several hours in the Centre district Police Commissariat of the Chisinau municipality by the police agents who arrested them. Subsequently they have been escorted to the General Police Commissariat of the Chisinau municipality, where they have been handcuffed, electrocuted and their soles beaten with rubber batons, with the purpose to determine them to recognise their guilt in committing a crime which they did not commit. On 13 June 2001 the claimants have been transferred to the Ialoveni Police Commissariat to verify their involvement in other crimes.

In the same day, the Ialoveni Police Commissariat was visited by the members of the European Committee for the Prevention of Torture, to whom one of the claimants described the way and place he was ill-treated. It must be mentioned that the members of the Committee have

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<sup>40</sup> If at the establishment of the imprisonment punishment for a period of up to 5 years for crimes committed with intention and up to 7 years for crimes committed with imprudence, the court of law, taking into account the circumstances of the case and the convict's personality, shall reach the conclusion that it is not rational for it serve the established sentence, it can conditionally suspend the serving of the sentence by the convict, mentioning in the decision the reasons of conviction with conditional suspension of serving the sentence and the probation period. In this case, the court of law decides on the non-serving of the sentence applied in the probation period it fixed and the convict shall not commit another offence and by means of exemplary behaviour and honest labour shall recover the trust given to him. The control over the behaviour of those convicts with conditional suspension of serving the sentence is made by the competent authorities, whilst in case of military personnel – by the respective military commander. The period of probation is established by the court of law between 1 and 5 years.

<sup>41</sup> Case Valeriu and Nicolae Roşca vs. Moldova, application no.41704/02, ECtHR Decision from 20 October 2009.

visited the Ialoveni region Police Commissariat on 14 and 15 June 2001. Only on 18 June 2001 the claimants have been examined by a forensic doctor, who confirmed the existence of light corporal injuries.

Following the investigations undertaken by the authorities based on the complaints of ill-treatment from the applicants, three police agents have been considered guilty in committing the crime provided for in article 185 paragraph 2 of the Criminal Code of the Republic of Moldova (version of 1961), with a penalty of imprisonment for 3 years, with privation of the right to hold certain functions or be involved in certain activities for a period of 2 years. Also, the court decided to suspend the imprisonment penalty set for police agents for a period of one year.<sup>42</sup>

The claimants continued to allege that they are victims of ill-treatment, in spite of the disagreement manifested by the three police agents. Taking into account the intensity and the aim of which the applicants have been exposed to ill-treatment (and namely, to obtain favourable confessions), this treatment should have been qualified as torture as it is provided by article 3 of the Convention. They have also claimed that the state did not fulfil its positive obligation which derives from article 3 of the Convention because the investigation undertaken based on the complaint on ill-treatment of the applicants took too long, almost 4 years, whilst through the application of a liberty non-privative penalty to the police agents the state did not ensure the preventive effect of the legal interdiction to apply ill-treatment. Moreover, the claimants have expressed their disagreement with the legal qualification of the acts of the police agents, them being convicted for power abuse and not for torture.

In this case, the Court reminded that hits applied on applicants' soles (*falaka*) is a form of ill-treatment extremely condemned which presupposes intention to obtain information, intimidate or punish (*Corsacov and Levința*), and may be considered as torture within the scope of article 3 of the Convention.

The Court noted that it is for the national courts to establish the appropriate penalty for persons who committed crimes, which would on one hand ensure reinstatement of social equality, whilst on the other – prevent new crimes from being committed. The national courts have provided the respective explanations, motivating that the application of the suspension of penalty execution because of the: relatively young age of the offenders, lack of criminal records, presence of families and positive characteristics from the society. However, the Court has noted

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<sup>42</sup> Excess of power or overstepping of duty competences, i.e. acts from a person with decision making powers which clearly overstep the limits of the competences provided for by law, if it caused considerable damage to the public interest or the rights and interests protected by law of the physical and legal entities, combined with acts of violence or the use of arms, or torture acts and which humiliate personal dignity of the victim – is punished with privation of liberty from a period of three to ten years, with privation of the right to hold certain functions or practice certain activities for a period of up to five years.

that national courts should have taken into account both aggravating and attenuating circumstances. The national courts have not taken into account that the police agents did not regret their actions and during the entire proceedings have denied application of ill-treatment against the claimants.

Finally, the Court considered that the preventive effect of the adopted legislation, especially to prevent acts of torture, may be insured only if such legislation is applied each time the circumstances require it. Along with it, the failure of the authorities to initiate a criminal procedure in accordance with article 101/1 of the Criminal Code (version of 1961)<sup>43</sup>, without any explanation on the selection of another type of offence (abuse of power), is insufficient to ensure the preventive effect of the adopted legislation with respect to the prevention of application of acts of torture.

The Court stated that the procedural norms existent in article 3 go beyond a preliminary investigation, stage in which ... the investigation leads to an action in justice in front of the national courts: the action in its entirety, including at the stage of court examination must fulfil the requirements of prohibition provided for in article 3. This means that the national judiciary authorities must ensure that physical and psychological sufferings shall not remain unpunished. This fact is essential for the upkeep of the trust of the society in justice, being a support for the law supremacy, as well as for the prevention of any aspect of tolerance or involvement of the authorities in committing illegal actions.

#### **D. Health services**

Efficient functioning of the medical services in the provisional detention isolators may bring a substantial contribution to the prevention of torture and other ill-treatment. Along with that, during the visits it has been determined that the medical examination of the persons in detention is either superficial, or is done with delay, or is not performed at all. Thus, after the investigation of the circumstances of the events of 7 April 2009, the examination of persons by a doctor was made only after their liberation from detention or after transfer to institutions subordinated to the Ministry of Justice.

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<sup>43</sup> Actions by means of which pain or strong sufferings, physical or psychological are intentionally caused to a person, especially with the purpose to obtain from this person or from a third person information or confessions, to punish for an act which this person or a third person has committed or is suspected to have committed it, to intimidate or make pressures on him or to intimidate or make pressures of a third person, or on any other reason based on a form of discrimination, whatever it may be, when such pain or suffering are generated by an agent of public authority or any other person who acts with an official title or at the express or tacit indication of consent of such persons, with the exception of pain or suffering, inherent from legal sanctions or caused by them – is punished with privation of liberty for a period from 3 to 7 years.

The vacancy of doctor is vacant in the Comrat Police Commissariat since May 2009, in the Calarasi Police Commissariat – since November 2009, in Ialoveni Police Commissariat – since November 2009, in the Straseni Police Commissariat – since 2008, in provisional detention isolator of the Operative Services Directorate of the MI – since 1997.

At the same time, within the provisional detention isolators of the Nisporeni, Cimislia, Basarabasca, Cahul Police Commissariat the doctors are employed part time, without an established working schedule and visit the isolators only when the police agents request it.

During police custody the medical examination of the person takes place in the presence of the police agents, more specifically the Chief of the provisional detention isolator, the latter having access to medical examination papers. Actually, the respective requirement derives from paragraph 2.11 of Annex no. 2 of the Order of the Ministry of Interior on the management and activity of the guarding, escorting and detention of persons arrested and detained in the preliminary detention isolators, no. 5 from 5 January 2004, in accordance with which the persons brought to the preventive detention isolators, before attributed to cells are asked by the doctor and in the presence of the duty agent on their state of health and exposed to sanitarian disinfection.

These provisions are contrary to the Norms of the European Committee for the prevention of Torture which recommend that medical examination in police custody takes place outside questioning and preferably not in the presence of the police officers. Further, the results of each examination, the relevant declaration of the detainee and the conclusions of the doctor must be officially registered by the doctor and given for consultations to the detainee and his/her barrister.<sup>44</sup>

With respect to the case-law of the European Court, in the *Gurgurov vs. Moldova*<sup>45</sup> case, the state was convicted for the omission of the authorities to ensure an adequate investigation of the alleged ill-treatment of the claimant, which was materialised through a forensic examination with a delay of more than a week. Thus, the claimant states that immediately after arrest he was escorted to the Riscani district of the Police Commissariat of the Chisinau municipality where he was exposed to ill-treatment by the police agents each day during lunch breaks and in the evenings. After the first ill-treatment he was brought to his cell. His cell mates have put him in bed where he stood for 2 days. Because he issued a complaint to the prosecutor's office, he was repeatedly brought to the General Police Commissariat of the Chisinau municipality where he was again beaten. The police agents requested him to

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<sup>44</sup> Paragraph 38 from the Rules of the European Committee for the prevention of torture, Chapters from the General Reports of the CPT, <http://www.cpt.coe.int/lang/rom/rom-standards.pdf>

<sup>45</sup> Case Gurgurov vs. Moldova, application no.7045/08, ECtHR Decision from 16 June 2009



withdraw his complaint on ill-treatment and threatened him with death. Following the ill-treatment the claimant was given disability of a second level of gravity.

*Because the claimant could not rise up, on 3 November 2005 he was visited by two doctors. They have been escorted by one of the police agents who allegedly tortured him. The police agents told the doctors that the claimant fell of the bed. The doctors prescribed the diagnosis of hysteria and have recommended the services of a neurologist. After that, the claimant was brought in another room, where, according to his statements, the police agents requested him not to tell anyone about torture acts. He claims to have been threatened with death or twenty five years of imprisonment. A police agent gave an explanation from the claimant's behalf, where it is said that nobody beaten him and that he fell of the bed and caught a cold; the claimant declares that he was forced to sign this declaration.*

Subsequently, on 11 November 2005 and 16 January 2006 the claimant was exposed to forensic examination where corporal injuries have been identified.

Starting with 15 February 2006 the claimant undertook a series of medical investigations at the Medical Rehabilitation Centre of Torture Victims "Memoria", which confirmed the corporal injuries identified by the forensic doctors. Here he was exposed to detailed analysis and examinations by different doctors. In a document entitled "Extract from medical file" from 26 February 2006 it was mentioned that the claimant was suffering from the consequences of a cranial trauma (brain concussion of the left hemisphere predominantly in the temporal part), post-traumatic organic brain syndrome, post-traumatic adhesive bilateral otitis, post-traumatic neuritis of the internal ear's cochlea, bilateral brain sensorial deafness and medullar lumbar concussion L1-L2 with a spastic tetra-paresis of the lower extremities. Additionally, plenty of psychological conditions have been identified which are inherent to torture victims.

In the *Colibaba vs. Moldova*<sup>46</sup> case, on 28 April the claimant filled in a complaint to the Buiucani district Prosecutor's Office of the Chisinau municipality related to an alleged ill-treatment. On 29 April 2006 the claimant was brought to the policemen, who, as alleged, have ill-treated him at the Centre for Forensic Medicine, where he was exposed to a forensic examination in their presence. According to the claimant, the medical examination took merely a couple of minutes and was superficial. According to the forensic examination report from 28 April 2006, besides corporal injuries caused during the suicide attempt, the claimant did not have any other signs of violence on his body.

With respect to such a medical examination *the Court noted that it has doubts as to the credibility of the report from 28 April 2006. It notices with concern that the claimant was*

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<sup>46</sup> Case *Colibaba vs. Moldova*, application no.29089/06, ECtHR Decision from 23 October 2007

*brought to the Centre for Forensic Medicine by policemen who allegedly have ill-treated him and that the medical examination took place in their presence. In such circumstances the Court cannot exclude the possibility that the claimant felt intimidated by the persons he accused to have tortured him. The Court refers to the accusation of the claimant that after he complained to the barrister, he was repeatedly ill-treated. The Court considered that it is difficult to give importance to a medical report based on a medical examination made in the presence and under the control of the persons to have allegedly ill-treated the claimant.*

#### **4. Situation of persons detained in the institutions subordinated to the Ministry of Justice.**

##### **A. General considerations**

The penitentiary system must guarantee the observance of the fundamental rights of the convicted persons who serve their penalties or liberty deprivation measures, their access to education to ensure reintegration, grow responsibility and increase the level of trust in society, by ensuring a healthy custodial environment. In this respect, the penitentiary system must ensure the social replacement and rehabilitation of persons deprived of their freedom, also taking into account the need to reduce the risk of degradation of the individual's condition while serving the penalty. Also, the penitentiary system must ensure failsafe mechanisms to limit barriers of any kind, identify, promote and apply accordingly the internal regulations in support to the legislation which guarantees the rights of the individual and discourage and punish abuses.

It is obvious that in any country, no matter how democratic, the population does not show interest and, even less, sympathy to the detainees. An almost general concept is that the place of the offenders is "behind bars". Free people tend to ignore the fact that after the sentences are served, the detainees return among them. In other words, the population perceives more the punitive part and less, or even not at all – the educative part. The direct consequence of this aversion of the population to the penitentiaries' world, is the slow pace with which the absolutely necessary reform of the penitentiary system take place in the aspect of improvement of the detention conditions, accent on re-education and re-socialisation and, not least, the change of mentality. There is a need for political will for radical changes in the way the professional training of personnel takes place and, naturally, substantial funds to have all these elements implemented.

Along with it, the problems of the penitentiaries of the Republic of Moldova are far from being resolved. The political elite is fully aware of the fact that the reform of the judicial system is an essential condition to be fulfilled in the process of adherence to the European Union, and this element contains the requirement of improvement of conditions in penitentiaries and observance of human rights.

During 2009 complete monitoring visits have been organised for the first time in penitentiary no. 1 in Taraclia, no. 2 in Lipcani, no. 3 in Leova, no. in 6 Soroca, no. 7 in Rusca village, Hincesti region, no. 8 in Bender, no. 11 in Balti municipality, no. 16 in Chisinau municipality, no. 17 in Rezina, no. 18 in Branesti village, Orhei region. In some of the above mentioned penitentiaries repeated visits have been managed, which allowed monitoring of the measured undertaken by the authorities on the basis of the recommendations formulated by the ombudsman.

With reference to the reference period, from the penitentiary institutions 2053 persons have been liberated, out of whom:

801 – due to the effective and integral served sentence;

348 – due to the effective and integral served sentence with the application of the privileged compensation of the working days made in accordance with article 257 of the Execution Code;

755 – conditionally exempted from total sentence, based on article 91 of the Criminal Code;

10 – guarantees;

38 – based on the amnesty acts;

3 – freed due to state of health based on article 95 of the Criminal Code;

59 – freed due to change of the remainder of the sentence with a softer penalty.

It must be mentioned that the number of detainees in penitentiaries has actually decreased, this being inferior to the officially set detention limit. Along with it, despite the maximum established limit, there was no evaluation made of the living spaces in the penitentiary institutions, which may show if this upper limit respects the standard of 4 sqm, recommended by the European Committee for the Prevention of Torture for each detainee.

Also, compared to the last four years, in 2009 there was a significant decrease of mortality in the penitentiary system, as presented below:

<b>N/o</b>	<b>Name of malady</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
1.	Tuberculosis	17	8	17	9	7
	HIV/TB	8	4	8	6	4
2.	SIDA	1	1		2	3
3.	Cancer	9	1	2		1

4.	Neural system diseases	1	1		2	
5.	Cardio-vascular diseases	16	16	8	13	11
6.	Respiratory diseases	3	1	3	1	
7.	Digestive diseases	3	5	6	2	3
	- <i>Diabetes</i>	1		1	1	
	- <i>Cirrhosis</i>	2	5	5		3
8.	Trauma, poisoning	7	6	5	4	3
9.	Suicides	4	3	2	5	6
10.	Others	2	1		3	
	<b>Total</b>	<b>71</b>	<b>47</b>	<b>48</b>	<b>47</b>	<b>38</b>

Compared to preceding years the number of cases of hunger strikes and detainees' auto-mutilation has considerably increased, for 2009 it being 473 and respectively 992 cases. Actually, these are some protest measures of detainees which expressed the disagreement with the actions of administration of penitentiary institutions and of the criminal body's actions, as well as the disagreement with court decisions issued on the causes of their criminal accusation.

In this respect, granting rights, advantages and a civilised detention regime, correlated with a strict observance of the obligations, interdictions and restrictions imposed by the Statute of serving the sentence by the convicted would reduce the desire of the detainees to make recourse to such measure, the majority being interested to serve the sentence in as advantageous as possible terms and leave the penitentiary.

The rights of the convicted become a growing concern on the European level, the majority of cases related to human rights filled in to the European Court of Human Rights having been resolved in favour of the convicted persons due to a non-application or a defective application of the provisions of the Convention for the protection of human rights and fundamental freedoms.

In this respect, by means of Decision no. 1624 from 31.12.2003 the Government approved the Concept of reform of the penitentiary system and the Action Plan for years 2004-2020 to implement the Concept of reform of the penitentiary system, the main aim of which being in essence the creation of decent detention conditions and fulfil the international provisions, reformation of the process of education of the convicted, their re-education, specialisation and recycling of human resources for activities under new conditions. A very important aspect relates to the need to implement the provisions of article 172, paragraph (9) and

article 338 of the Execution Code by means of construction of 8 arrest houses, placed in different regions of the Republic. Although, pursuant to the Concept the initiation of construction of the first arrest house were to begin already in 2008, whilst in the case of others – in 2009, regrettably we acknowledge that the authorities comply too slow to their own planned measures.

### **B. Material conditions of detention**

The detention conditions in the domestic penitentiary system constitutes on of the priorities of the activity of the ombudsmen as a national torture prevention mechanism. During the visits undertaken discussion were held both with the detainees and the penitentiaries' personnel, the conclusions and recommendations of the ombudsmen being most of the time sent to the penitentiary institutions in discussion, and in some cases to the hierarchically superior bodies.

With respect to the *nutrition of the convicted* it is to be mentioned that the provisions of the domestic law are compliant to the international standards.<sup>47</sup>

The convicted persons' nutrition is marinated from the state budget funds, with the respect of the minimal standards provided for by the Government. The convicted are served hot meals three times a day at prescribed hours. The convicted pregnant women, women who breastfeed, convicted minors, convicted persons who work in hard or toxic working conditions, as well as sick convicted persons, as prescribed by the doctor, and with disabilities of the 1<sup>st</sup> and 2<sup>nd</sup> level of gravity receive supplementary nutrition. Also, the law prohibits reduction of quantity, quality and caloric value of the food given to convicted persons as means of punishment. The convicted are given permanent access to drinkable water.<sup>48</sup>

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<sup>47</sup> Paragraph 22 from the **Recommendation of the Committee of Ministers of the member states on the European Penitentiary Rules REC(2006)2, adopted on 11 January 2006 during the 952th reunion of the Delegated Ministers** <https://wcd.coe.int/ViewDoc.jsp?id=955747>: Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work. The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law. Food shall be prepared and served hygienically. There shall be three meals a day with reasonable intervals between them. Clean drinking water shall be available to prisoners at all times. The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds; Paragraph 20 from the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, <http://www2.ohchr.org/english/law/treatmentprisoners.htm>: Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he needs it.

<sup>48</sup> Article 247 Execution Code no.442 from 24.12.2004, Official Monitor no. 34-35/112 from 03.03.2005

The Government adopted Decision no. 609 from 29.05.2006 on the minimal norms of daily nutrition and lavatory and household objects of the detainees, there being special nutrition plans adopted for certain categories of convicted persons.<sup>49</sup>

Although during 2009 the nutrition of the convicted persons has improved, this issue continues to be tackled by the convicted persons during the visits in the penitentiary institutions.

Such complaints have been predominantly coming from the penitentiary institutions no. 17, Rezina, no. 18, Branesti village and no. 2, Lipcani.

During the visits undertaken to the penitentiary institution no. 5, Cahul and no. 18, Branesti village, it has been established that potatoes were missing from the served food, and their substitution<sup>50</sup> with other products when detainees were served has generated serious unrest from the latter in penitentiary no. 18.

During the discussions with the convicted persons they have declared that the food is of poor quality and insufficient, it is one and the same each day and it is prepared in conditions which cannot ensure adequate hygiene.

Also, the discussions with the administration of the respective penitentiaries have revealed that it is impossible to ensure nutrition to detainees as prescribed by the variety of products included in the Governmental Decision no. 609 from 29.05.2006.

At the same time, during the visits the conditions in the kitchen, as well as the inventory in the canteen in the penitentiary institutions no. 2, Lipcani and no. 18, Branesti village, do not correspond to the sanitary and hygiene regulations. The inadequate sanitary condition existent in the kitchen, confirmed by the members of the group, does not require confirmation from experts in the field, it being too obvious. Under the respective circumstances the ombudsman has concluded on the insufficient and inefficient observance of the obligations by the medical service, the personnel of which is obliged to regularly check the sanitary and hygiene condition of the buildings and the territory of the penitentiary, and, if needed, present the warden a report with recommendations to improve the situation.<sup>51</sup>

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<sup>49</sup> Article 1: It is being approved: the general minimal amount of daily food for detainees, according to Annex no. 1; minimal amount of daily food for pregnant detainees and mothers who breastfeed, according to annex no.2; minimal amount of daily food for detainees with tuberculosis, according to annex no. 3; minimal amount of daily food for minor detainees, according to annex no.4; minimal amount of daily food for detainees with illnesses and with disabilities of the 1<sup>st</sup> and 2<sup>nd</sup> level of gravity, according to annex no. 5; minimal amount of cold food during escort, according to annex no. 6; minimal amount of toilet objects and personal hygiene for detainees, according to annex no. 7; amounts of detergent, soap and cachinnate soda consumption at mechanic wash (expressed in grams for each kilogram of dry clothing, depending on the level of dirt and hardness of water), according to annex no.8.

<sup>50</sup> Order of the Ministry of Justice on the approval of nutrition norms for detainees for exceptional cases when supply of detainees with hot meals is not possible, and the norms of substitution of certain food products with others no.100 from 07.03.2007, Official Monitor no.36-38/149 from 16.03.2007

<sup>51</sup> Article 252 Execution Code no.442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005

*Because of the fact that the ombudsman was appraised by a considerable number of convicted persons who serve their sentence in the penitentiary institution no. 18, Branesti village, Orhei region, who invoked inadequate quality and insufficient quantity of food, lack of adequate medical assistance, breach of sanitary and hygiene regulations, as well as poor detention conditions in the penitentiary, the involvement of the Department of Penitentiary Institutions was requested to check the situation in the penitentiary and clarify the circumstances which generated unrest among the convicted persons.*

*The explanations of the administration imply that the disinfestations of the penitentiary took place in May 2009. The response of the Department of Penitentiary Institutions no. 1/4514 from 28.10.2009 gives assurances that the sanitary and epidemiological condition of the penitentiary is satisfactory, a condition contrary to that acknowledged during the visit from 25 November 2009. The problem of disinfestations continue to be invoked by the detainees, which allows the ombudsman to conclude on the simplistic attitude of the leadership of the Department of penitentiary institutions on the deficiencies made public and recommendations of the ombudsman.*

*The visit from 25.11.2009 took place with participation of a forensic doctor within the National Science and Practical Preventive Medicine Centre, who noted the following: „the storage for bread is equipped with 2 shelves and a table to cut bread. In the room on the table and on the shelves excrements of rats have been detected. Some pieces of bread had holes as a result of them being eroded by rats. There was not inventory registered for cleaning purposes, the window was broken. On one shelf of the same room was the butter, which according to the allegations of the convict cook B.R. was brought on Monday.*

*The food storage in the kitchen had a sack with sugar, a sack with buckwheat, a sack with peas and a sack with grain with depicted rat excrements. There are also two fridges, one of which had unprocessed meat, fish and margarine, which breaches the sanitary, and hygiene norms and the rules of storage of food products.*

*Other 8 boxes with margarine were kept on the floor.*

With respect to the penitentiary institution no. 2, Lipcani, although the food allowance put in the kettle per person for period 06.09.2009-05.10.2009 was approved by the warden, the paper confirming it did not have a date of approval and was not signed by the chief of the medical service and the chief of the logistics service. Also, the schedule of food repartition (the menu) was missing in the canteen.

Such a state of affairs is contradictory to the provisions of article 32 of the Order of the Ministry of Justice on the approval of the Regulations on the management of the nutrition of convicts in penitentiaries no. 512 from 26.12.2007.<sup>52</sup>

An adequate case relevant for this issue was acknowledged at the penitentiary institutions no. 1, Taraclia, no. 7, Rusca village, Hincesti region, no. 11, Balti municipality.

It is most welcome that the legislation permits the convicts to receive packages with provisions, parcels and banderols and keep the food products in unlimited quantity, with the exception of those which require thermal processing before consumption and alcoholic drinks.<sup>53</sup> However, the visits have shown that very many detainees are neglected by their families and friends, other come from too poor families to be able to send these packages. The ombudsman expresses his concern with respect to the cases, although rare, which continue to manifest, when the administration of the penitentiaries, while showing its superiority over the convicts, hand over the packages with delay.

With respect to the *sanitary conditions, light and ventilation*, these issues persists practically in the majority of the penitentiaries' buildings in the Republic of Moldova, exception here being only the penitentiary institution no. 1, Taraclia and no. 7, Rusca village, Hincesti region.

Republic of Moldova inherited old penitentiaries with degraded buildings, of a bushing nature, compliant to soviet standards. These types of penitentiaries do not correspond to the requirements of the national and international acts, whilst the financial possibilities of the state do not allow them to be reconstructed or renovated.

The penitentiary institutions, with the exception of those with a status of criminal investigation isolator, host convicts in large dormitories which do not fully have the facilities to cover the daily needs of the convicts, such as: the sleeping space, the day use space and sanitary installations. The detainees are held in extremely tight, dark, humid spaces, without ventilation,

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<sup>52</sup> The nutrition repartition tables are developed by the chief of logistics of the penitentiary, with the chief of the medical unit and the chief of the canteen. The nutrition repartition tables are signed by the deputy chief of logistics of the penitentiary (chief of the logistics service) and the chief of the medical unit. The nutrition repartition tables are approved by the chief of the penitentiary. The nutrition repartition tables are developed and are approved 2-3 days prior to the start of the month, week and are sent in due course to the canteen for the personnel to use them as guidelines in preparation of food products. The nutrition repartition tables may not amended, except for special circumstances and only with the written permission of the chief of the penitentiary. The nutrition repartition tables are developed separately for each subsistence norm (including for special nutrition schedules) for a week with its repetition each week during the month. Depending on the conditions and needs, the nutrition repartition tables may be developed for one or more days. The tables are developed in two copies, out of which one (the original) is stored in the penitentiary's accounting office and serves as confirmation for the purchase of the products for the canteen, and the second is placed in the section of hot meals preparation.

<sup>53</sup> Article 230 Execution Code no. 442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005; article 87, 163 letter a) from the Stature of serving the sentence by the convicts, approved by Government Decision no. 583 from 26.05.2006, Official Monitor no.91-94/676 from 16.06.2006



where the cigarette smoke is abundantly present. Along with the above mentioned some of the penitentiaries which have beds in two levels seriously hamper the access of the natural light in living spaces.

Besides these findings, the existence of adequate conditions was detected in the detention block for minors of the no.2 penitentiary, Lipcani city and the sector for minors in the no. 11 penitentiary, in Balti municipality.

A more degrading situation was attested in the case of quarantine cells, transit cells and the cells of the disciplinary isolator.

Immediately after reception, the convict is placed in the quarantine room for a period of up to 15 days, during which he is exposed to medical examination to establish his state of health and labour capacity and prescription, if needed, of individual treatment.<sup>54</sup>

Usually, the quarantine spaces are comprised on 1 to 3 cells. Thus, when the visits have been organised in the penitentiary institution no. 18, in Branesti village, Orhei region, in the two quarantine cells was cold and both of the windows were covered with blankets. Additionally, it was attested that the condition of the windows was disastrous, the wood was decayed, and to keep warm in cells the convicts have covered the perimeter of the windows with cotton from the mattresses. In penitentiary institution no. 2 the quarantine cells were equipped with a toilet and bed clothing, the beds and the furniture to keep the personal things of the convicts were in a disastrous condition. In penitentiary institution no. 2, in Leova the quarantine cell could be characterised by excessive humidity and abundant cigarette smoke.

Actually, the detention conditions in quarantine have attracted the attention of the members of the international delegations who have inspected the penitentiaries of the Republic of Moldova.<sup>55</sup>

The cells of the disciplinary isolator hold persons who have been exposed to disciplinary measure in form of incarceration as a result of the decision of the penitentiary's administration, as well as those provisionally placed until the arrival of the warden. Along with these people convicts who present danger to the personal security of the convicted persons are also held there, because of the lack of other spaces.

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<sup>54</sup> Article 219 paragraph (6) Execution Code no.442 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005

<sup>55</sup> Paragraph 35, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from 12 February 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/107/71/PDF/G0910771.pdf>: As confirmed by the authorities, persons arriving in penitentiary institutions, as a general rule have to spend 15 days in quarantine in order to undergo a medical examination of their overall state of health and their labour capacities The Special Rapporteur found that conditions in quarantine cells are generally worse than elsewhere and was concerned about the high risk of infection in these cells, since detainees with contagious diseases seemed not always to be separated.

The findings for these cells are that they are very small, with a sanitation facility, which is a genuine infection source. The upper part of the toilet has a tap which is also used as water disposal and a source of washing. Not every time this space is divided by the rest of the cell and this does not allow adequate privacy. The cumulative effects of these conditions prove to be extremely negative for the detainees. The penitentiary institution no. 8, in Bender municipality contains cells where repair works have not been made for a very long time.

Moreover, the detainees held in these cells do not have the possibility to serve dinner in adequate hygienic conditions and there is no necessary inventory for that. Also, in some cells the windows with direct exit to natural light are absent, those being covered by other installations or constructions, in other the windows are covered with drilled metallic plates.

During 2009 repair works have been made in the disciplinary isolator of the penitentiary institution no. 9, of the Chisinau municipality, as well as 2 cells of the disciplinary isolator repaired of the penitentiary institution no. 18, Branesti village, Orhei region. The rooms for interviews are in general adequately equipped. The rooms for long meetings are equipped with beds, table and chairs, whilst some of them even have TV, audio and video equipment. Also, the convicts who enjoy long term visits, as well as their relatives have the possibility to use kitchens equipped with the necessary furniture, gas cookers and fridges. Similarly, the rooms for meetings are equipped with shower cabins and other sanitary installations which correspond to the sanitarian and hygienic norms.

With respect to the bathrooms, during the visits it was attested that their condition varies. In some penitentiaries these are kept in adequate condition in spite of limited financial resources (penitentiary no. 11, Balti municipality), in other capital repair works have been made (penitentiary no.2, Lipcani, the building for minors), in others repair works have been made due to the intervention of the ombudsman (penitentiary no. 3, Leova, penitentiary no. 18, Branesti, Orhei region).

An alarming situation was attested in penitentiary no. 18, Branesti village, where there are 4 other rooms in the same space with the bathroom, which are used as locker room to keep the clothes of the convicts involved in extraction of limestone from the mine, two serve as rooms for professional school and a room equipped for temporary living for two persons. The ombudsman is worried of the existent conditions in the locker room for convicts involved in underground works.

In this respect it must be mentioned that the poor condition is an argument in favour frequently brought forward as justification of breach of human rights in the third world countries. However, the European Court of Human Rights did not give importance to this aspect. While pleading in front of the Court, the Government of the Republic of Moldova mentioned that the

lack of financial means could be a reason for breaching article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Government argued that because of the insufficient financing it is not always possible to offer meat, fish and milk products. However, the Court does not accept such arguments to justify the poor detention conditions. In *Poltoratskiy vs. Ukraine*<sup>56</sup> case, the Court stated that the lack of resources cannot in principle justify the conditions in jails, which are so bad that they do not meet the necessary conditions to observe the provisions of article 3 of the Convention. Under these conditions, the economic situation of a country may explain certain cases of breach of article 3, but in no way can it justify them. The case-law of the European Court of Human Rights does not allow the consideration of the economic situation of a country when the decision is taken whether such breaches of human rights are acceptable.

With reference to personal hygiene, clothing and blankets, although the Government Decision on the approval of minimal standards for daily nutrition of detainees and issuance of detergents no. 609 from 29.05.2006 provides for the standards of issuing soap for detainees' baths and other sanitarian and hygienic purposes, this issue remains still unresolved during 2009.

According to article 245 of the Execution Code and article 495 of the Statute of sentence serving by convicts, the convicted person has the possibility to take a bath and shower, at admissible temperatures, for so often as the general hygiene requires it, but not less than once per week, with the mandatory change of the personal and bed clothing. Subject to the financial possibilities and within the allocated funds, daily shower is permitted.

During the visits and concluding from the discussions with the administration of the penitentiaries and detainees, it has been attested that the latter have access to baths at least once per week. Daily shower is offered to the convicts involved in underground works.

It has been attested that the convicts used their right to wear own clothing.

With respect to the change of bed clothing, this issue has not been tackled by the convicts nor by the personnel of the penitentiaries. It has been detected that the bed clothing differs from one convict to another, which demonstrates that they are the property of the convicts and are brought by their relatives.

The amendments applied to the Criminal Code to reduce the sanctions for certain offences and decriminalisation of other offences, as well as the approval of the two Laws on amnesty had as consequence the decrease of the overcrowdings in penitentiaries. At first glance,

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<sup>56</sup> Case *Poltoratskiy vs. Ukraine*, application no.383812, ECtHR Decision from 29.04.2003; Paragraph 4 from the Preamble of the Recommendation no. R(87)3 adopted by the Committee of Ministers of the Council of Europe on European Penitentiary Rules, [http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/prisons\\_and\\_alternatives/legal\\_instruments/Rec.R\(87\)3.asp](http://www.coe.int/t/e/legal_affairs/legal_cooperation/prisons_and_alternatives/legal_instruments/Rec.R(87)3.asp)

the problem of overcrowded penitentiaries was resolved, however it continues to exist in the preventive detention isolators.

The described detention conditions are valid for the case of penitentiaries with the purpose of criminal investigation isolator, especially the penitentiary institution no. 13 situated in the Chisinau municipality, also mentioned in the conviction decisions of the Republic of Moldova issued by the European Court of Human Rights.

In the *Ostrovar vs. Moldova*<sup>57</sup> case the applicant claimed to have been detained in a cell of 25 sqm, sometimes with more than twenty people. There were twenty metal beds, without mattresses or blankets and it was not always possible to have access to a bed due to overcrowdings. After he filled in his application to the Court, he was transferred into another cell even smaller, of 15 sqm, where he claimed that had to sleep as per established queue and where the conditions of detention were much worse than in the previous cell.

Smoking was not prohibited by the internal regulations of the prison and because there were no separate spaces for smoking, the detainees were obliged to smoke inside the cell. The claimant was suffering from asthma and the administration of the prison knew about this fact, because he was arrested and brought to prison shortly after a followed treatment against asthma in a hospital where he was arrested. Due to the exposure to cigarette smoke, the claimant suffered multiple asthma attacks which usually would take place two to three times per day.

The situation was worsened by the fact that the windows of the cell were closed with window blinds through which fresh air could not enter. Moreover, the cell did not have a ventilation mechanism and as a result was very humid. Because of the lack of heating and thermal isolation, the cell is very cold during winter and very hot during summer.

The window blinds do not allow the entrance of the natural light. Despite this, the administration of the prison limited electricity in cells to an amount of six hours per day; therefore, the detainees had to live in darkness and had huge difficulties in preparing food.

The cell was supplied with water for ten hours per day only, and sometimes even less. Access to hot water was limited to only once in fifteen days. There were no spaces to wash and dry clothes. The detainees were obliged to dry out their clothes in the cell.

Because of the insufficient medical assistance and the poor hygienic conditions, the cells have been infested with chinch, lice and ants. The cell mates were suffering from infectious diseases, such as tuberculosis, respiratory and skin infections.

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<sup>57</sup> Case *Ostrovar vs. Moldova*, application no.35207/03, ECtHR Decision from 13 September 2005

The toilet was 1.5 meters from the table used for lunch and was open at all times. It was impossible to prevent the bad smell due to the lack of appropriate water supply and lack of cleaning products.

The food served to detainees was of a very low quality, being formed of boiled water with a bad smell, being almost impossible for consumption. The claimant declared that the Government spent 2.16 Moldovan lei (MDL) (equivalent to 0.14 Euro (EUR) at that time) for the daily nutrition of a detainee, whilst the price of a piece of bread was higher than 3 MDL.

Taking into account the cumulative effects of the conditions in cells, lack of full medical assistance, exposure to cigarette smoke, inadequate food, the period of detention and the specific impact of these conditions on the claimant's health, the Court considered that the sufferings endured by the claimant overstep the inevitable level inherent to detention and acknowledges that the sufferings which followed have overstepped the level of severity in the sense of article 3 of the Convention.

Additionally, during the examination of the respective case, the Court took into account the documents of the European Committee for the prevention of torture issued as a result of the visits undertaken in the Republic of Moldova during 11-21 October 1998<sup>58</sup>, 10-22 June 2001<sup>59</sup> and 20-30 September 2004.<sup>60</sup>

Most of the penitentiary institutions managed capital repair works and reconstruction of heating systems took place in penitentiaries no. 17 in Rezina, no. 4 in Cricova and no. 3 in Leova to improve the conditions of detention in penitentiaries and prepare for the cold season.

During this year penitentiaries no. 6 in Soroca, no. 9 in Chisinau municipality and no. 15 in Cricova and no. 18 in Branesti village had their heating systems repaired for the living spaces.

The Department of penitentiary institutions has already bought 40 washing machines with a capacity of 5 kg, 10 washing machines with a capacity of 25 kg and 10 drying machines with a capacity of 10 kg and distributed them to the penitentiaries. Also, pursuing the aim to ensure the hygienic norms and resolution of the problem of lack of bed clothing, ten thousand sheets, three thousand pillows, three thousand blankets, five thousand towels and three thousand mattresses have been bought. The respective goods have been distributed predominantly to the vulnerable categories of detainees: minors, women and sick detainees. Two water heating installations with a capacity of 1500 liters were purchased to ensure hygiene and prevent infectious maladies for

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<sup>58</sup> Paragraphs 77, 80-83 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 11-21 October 1998, <http://www.cpt.coe.int/documents/mda/2000-20-inf-fra.pdf>

<sup>59</sup> Paragraphs 69, 78, 82 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 10-22 June 2001, <http://www.cpt.coe.int/documents/mda/2002-11-inf-rom.pdf>

<sup>60</sup> Paragraphs 53, 55, 79, 83 from the Report on the visit undertaken in Moldova by the European Committee for the prevention of torture during 20-30 September 2004, <http://www.cpt.coe.int/documents/mda/2006-07-inf-fra.pdf>

the detainees in the penitentiary institutions no. 9, in Chisinau municipality and no. 15 in Cricova, as well as two installations with a capacity of 3000 liters for penitentiaries no. 18 in Branesti village and no. 17 in Rezina.

The Department of penitentiary institutions purchased 6 refrigeration rooms with a capacity of 6 and 3 sqm to store food products in large quantities, where subsequently shall be used to store products which require low temperatures.

On 5 August 2009 the penitentiary institution no. 16 in Chisinau municipality officially opened-up the *Mother's and child's House* built with the support of a series of foreign donors and its purpose is to detain convicted pregnant women and mother with children who are in detention. The opening up of such an institution shall offer the possibility to deliver appropriate medical assistance to women, as well as the opportunity to spend more time with their children in an environment similar to the one in liberty. The building is equipped with five bedrooms of two beds each, each room being equipped with a kitchen, shower cabin and toilet. The first floor has a medical room, the storage and the playroom for children. There is also a courtyard for walks appropriately equipped.

The considerable efforts from the authorities to renovate the penitentiaries by means of capital repairs, adjustment of heating systems, procurement and instalment of certain new small boilers, repair of toilets, current repair works of water supply systems, electrical and heating networks, demonstrates that actions are taken to improve the situation, but these actions are too timid in the context of the existent problems.

### **C. Torture and ill-treatment**

Although compared to the preceding years torture and other ill-treatment in penitentiaries has substantially diminished, there have been however depicted cases during 2009 of application of excessive force against convicts, as well as cases of violence between convicts.

The ombudsman examined the problem of physical and psychological violence applied against certain categories of convicts, put by the majority in disadvantageous conditions. While examining the problem the main reason of the violent behaviour between the convicts was identified and it resides in hierarchical classification of convicts in penitentiaries. The ill-treatment of unfavoured convicts is mostly expressed by physical and psychological violence, brutal and aggressive behaviour, humiliation and their constraint to do or not to certain actions, the result of which is the feeling of fear and continuous insecurity of these convicts.

Thus, if the observance of the personal integrity and security of the unfavoured convicts is incompatible with the common detention, if requested by the convicts or pursuant to the initiative of the penitentiary, they are isolated or placed in groups of convict who have similar problems as provided by article 225 of the Execution Code.

To conclude on the force of the psychological impact produced by violence and abuses with which unfavoured convicts are facing, the example of a detainee who due to security reasons refused to visit public spaces for all convicts such as the bathroom and the canteen shall be described. Thus, although his personal security was ensured by the penitentiary agents, he refused to visit the bathroom for more than a year and received his food from other convicts or from relatives by means of packages, all this because he feared he could face other convicts.

Other examples of abuses mentioned by unfavoured convicts represent their forced involvement in unpaid public service labour in penitentiaries for other convicts, being thus obliged to perform double work to the amount provided for by the legislation. Also, the issue of monthly transfers from the accounts of unfavoured convicts to the accounts of other convicts against the will of the former has been underlined.

In this respect, the measures taken by the administration of the penitentiaries to depict cases of application of physical and psychological violence, as well as constraints of any type, which are limited merely to the isolation of the respective convict, are from the point of view of the ombudsmen insufficient and without any effect. Moreover, after the discussions held with the respective group of convicts it cannot be excluded that in some cases the abuses against convicts take place with the tacit approval of the penitentiaries' employees, which from the ombudsman's point of view is absolutely inadmissible.

In this respect, article 166 of the Execution Code guarantees the right to defence and observance from the institution or body which ensures the service of the conviction of the dignity, the right and freedoms, including not being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

It must be mentioned that it is the authorities who must ensure and guarantee individual security and protection of each person placed in custody or under their control. As a conclusion to this issue, we consider insufficient and insignificant the actions undertaken by the penitentiaries' administrations to ensure personal security and protection of unfavoured convicts against violence and abuses, the consequences of which may constitute an issue judged in perspective proceedings initiated against the Republic of Moldova at the European Court of Human Rights, the breach of article 3 of the Convention being invoked and it does not exclude conviction of the state on the international level.

During 2009, cases of violence between convicts have been registered in penitentiary institutions no. 17 in Rezina, no. 13 in Chisinau municipality, no. 5 in Cahul and no. 2 in Lipcani.

*On 15.09.2009 the ombudsman was informed of an incident which took place in the penitentiary institution no. 5 in Cahul, where convict I.A. was ill-treated by two other convicts, who tattooed his forehead with an uncensored word.*

*This incident constituted source of an internal investigation, which ended with the disciplinary sanctioning of four employees of the penitentiary institution no. 5 in Cahul and with the warning of one for duty negligence. Thus, the **warning** was applied to the deputy schedule and supervision officer, lieutenant majoring justice Carastan Alexandru; with **reprehension** – the supervisor of the schedule and supervision service, soldier in justice Suverjan Iurie; with **warning on incomplete duty service** – deputy schedule and supervision officer, captain in justice Crodogolov Valeriu and the superior supervisor of the schedule and supervision service, sergeant major in justice Rogoza Ion. At the same time the specialist of the security service lieutenant major in justice, Ciobotaru Alexandru, was **warned**.*

*Additionally, in this incident the Cahul region Prosecutor's Office has initiated by means of the order from 22.09.2009 criminal investigation of the convicts who ill-treated I.A. based on the offence elements specified in article 151 paragraph 1 of the Criminal Code.*

*The ombudsman considered that the application of disciplinary sanctions against penitentiary employees who due to negligence admitted violence acts among convicts are insufficient because during the investigations it has been determined with certainty that convict I.A. had strong physical and psychological sufferings, which created fear, anxiety and inferiority sentiments, which according to article of the Convention reach the gravity threshold to qualify it as inhuman and degrading treatment. Following the intervention of the ombudsman, by means of General Prosecutor's Office decision from 6 November 2009 the initiation of criminal investigations has been decided with respect to the employees of the penitentiary on the basis of offence provided for in article 327 paragraph 1 of the Criminal Code, presently the case being under investigation at the Military Prosecutors in Cahul.*

The ombudsman considers that the disciplinary sanctions applied to the employees of the penitentiary system who are guilty of duty negligence and acceptance violence actions between convicts, without any explanation of such behaviour, are insufficient to ensure the preventive effect of the legislation prohibiting torture. Moreover, the application of disciplinary sanctions does not have serious consequences for the warned personnel and the authorities do not offer sufficient redress to the ill-treated person.

During the preventive visit undertaken on 11 December 2009 in the penitentiary institution no. 17 in Rezina all interviewed convicts, who at that time were in block no. 3, have mentioned that during the ransacks between 23 and 30 November 2009, on 7 and 10 December



2009 the penitentiary's personnel have unjustifiably applied excessive physical force and specialised equipment.

During the visit six of the interviewed convicts had corporal injuries and signs of lack of adequate medical assistance.

All these persons except one have explained that the corporal injuries have been caused by the penitentiary's personnel during ransacks after the application of physical force and specialised equipment. Additionally, they have not been examined by the forensic doctor delegated from the Forensic Medicine Centre in Chisinau to participate in the group of visitors.

*Thus, the convict P.A. declared that the data offered to the ombudsman to be used according to his competence, mentioning that on 23.11.2009 he was ill-treated by agent G.M. and two other employees when he was supposed to have his daily walks. On 08.12.2009, again aimed to demonstrate inferiority, the agent G.M, ordered him to stand on his feet although he was only dressed in his underwear and irrespective of the fact that at that time there was another person in the cell of feminine gender (doctor). For the refusal to stand on his feet he was handcuffed and escorted to one of the cells of the disciplinary isolator (being dressed only in his underwear) where he was beaten with the rubber baton on his hunkers and feet by agent G.M. while agents M.I. and B.D. were holding him.*

*Convict G.S. told that on 29.11.2009 he was ill-treated by the agents of the penitentiary, being beaten with fists, legs and rubber batons on various parts of his body. He explained that the conflict started as a result of a simple argument appeared because the doctor did not want to examine him, although he issued to written requests in this respect. He said that he does not know the names of the agents who ill-treated him, but would recognise them if needed.*

*Convict L.I. explained that on 31.11.2009 he was in the wood processing workshop when, without any explanation he was aggressed by 7 agents of the penitentiary, who beat his face with their fists and used their rubber batons to beat his body.*

*Actually, the declarations of the convicts pertinent to the application of force and special equipment were identical. The ombudsman has declared that in this case the physical force was not justified and disproportionate, the aim proposed by the employees of the penitentiary was to impose the convict to have a "legal" behaviour.*

*The administration of the penitentiary justified the application of the physical force and special equipment to eliminate physical resistance of the convicts shown during ransacks,*

*manifested by refusals to be checked, although some of the convicts were about to leave for their daily walks.*

*Concluding on the above mentioned the ombudsman considers that the imprudent actions of the administration of the penitentiary, which had as aim underlining superiority over convicts, have led to the creation of an extremely tense atmosphere in the penitentiary.*

*Also, the fact of existence of corporal injuries with the mentioned convicts confirms the reasonable suspicion according to which the other convicts of block no. 3, who have alleged ill-treatment but who did not present any tracks of violence, have been subject to repeated acts of violence, humiliation and abasement.*

*Following the intervention of the ombudsman, based on the decision of the Rezina region Prosecutors' Office from 28.12.2009 criminal investigation was initiated on the basis of article 328, paragraph 2 of the Criminal Code, the case being presently developed by the Chisinau Military Prosecutors' Office.*

Pursuant to the case-law of the European Court of Human Rights the state has the obligation to respect the prohibition imposed by article 3 of the Convention, an essentially negative obligation not to apply ill-treatment to persons under its jurisdiction, as well as the obligation to protect physical integrity of persons under its jurisdiction, especially of the persons deprived of their liberty due to increased vulnerability.

Physical integrity of any person is guaranteed in absolute terms even in cases of fight against terrorism and organised crime. In **Selmouni vs. France**,<sup>61</sup> the Court stated that any use of force against a person in a situation of inferiority, because he/she is deprived of his/her liberty, is prohibited by the ambit of article 3 of the Convention. This principle is applied as well in cases of violence committed against detainees by the personnel of the penitentiary system (**Labita vs. Italy**<sup>62</sup>). In **Tomasi vs. France**<sup>63</sup> case the Court established that „any use of physical force against a person deprived of her liberty which does not have a necessity determined strictly by her behaviour hampers human dignity and in principle constitutes a breach of the right guaranteed by article 3.

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<sup>61</sup> Paragraph 87, Case Selmouni vs. France, application no.25803/94, ECtHR Decision from 1999

<sup>62</sup> Paragraph 120, Case Labita vs. Italy, application no.26772/95, ECtHR Decision from 06.04.2000

<sup>63</sup> Paragraph 113, Case Tomasi vs. France, ECtHR Decision from 27.08.1992

#### D. Health services

With respect to the health care in penitentiaries, this is offered by a qualified personnel, free of charged, each time this is necessary. Any penitentiary must have a general doctor, a dentist and a psychiatrist. The convicts receive treatment and medicine free of charge.<sup>64</sup>

In practice, the adequate implementation of the above-mentioned provisions remains problematic, first, because of the fact that specialised medical personnel is absent in penitentiaries. It has been determined during the visits that many positions of psychiatrist, pharmacist, nurse, as well as other categories of medical and sanitary personnel are vacant, as follows:

N/o	Penitentiary institution	Vacancy	Date when position became vacant
1.	Department of Penitentiary Institutions	Chief of Medical Division	29.12.2009
		Deputy Chief, chief of the curative section and of the medical and military committee	28.12.2009
		Superior specialist, internist doctor, curative section and the medical and military committee	27.11.2009
		Superior specialist, doctor, psychiatrist, narcologist, curative section and medical and military committee	30.12.2009
2.	Penitentiary no.1, Taraclia city	Specialist, psychiatrist	22.08.2005
		Pharmacist	10.07.2008
3.	Penitentiary no.2, Lipcani city	Chief doctor	24.03.2008
		Doctor psychiatrist	18.02.2007
4.	Penitentiary no.3, Leova city	Chief doctor	12.10.2009
		Specialist, psychiatrist narcologist	23.04.2008
		Doctor, radiologist	22.10.2005
5.	Penitentiary no.4, Cricova city	Chief doctor	31.12.2008
		Specialist, therapist	16.12.2009

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<sup>64</sup> Article 249 Execution Code no.443 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005; Section 41 from the Statute of sentence serving by convicts, approved by means of Government Decision no.583 from 26.05.2006, Official Monitor no.91-94/676 from 26.05.2006

		Specialist, psychiatrist	13.12.2005
6.	Penitentiary no.5, Cahul city	Chief doctor	18.02.2009
7.	Penitentiary no.6, Soroca city	Specialist, therapist	26.01.2009
		Sanitary agent	08.12.2009
8.	Penitentiary no.7, Rusca village	Nurse	08.09.2008
9.	Penitentiary no.10, Goian village	Psychiatrist, narcologist	01.02.2009
		Dentist	01.02.2009
		Sanitary agent	01.02.2009
		Pharmacist	01.02.2009
10.	Penitentiary no.12, Bender municipality	Specialist, therapist	25.11.2005
11.	Penitentiary no.13, Chisinau municipality	Doctor, dermatologist-venereologist	23.03.2009
		Specialist, phthisiologist	06.09.2007
		Specialist, psychiatrist, narcologist	11.06.2007
		Sanitary agent	08.12.2009
		Sanitary agent (civilian employee)	11.09.2006
		Assistant – radiologist	10.05.2007
		Nurses (4 positions)	01.01.2009
12.	Penitentiary no.16, Chisinau municipality	Deputy chief for curative activity	23.09.2009
		Specialist, phthisiologist, section contagious diseases	16.02.2010
		Specialist, infectiologist, section contagious diseases	11.04.2008
		Specialist, neuropathologist, section of psycho-neurology	31.12.2008
		Chief, section internal diseases	29.12.2009
		Chief, section radiology	07.10.2009
		Specialist, phthisiologist, section phthisiology no. 1	09.11.2009

		Specialist, phthisiologist, section phthisiology no. 2 (2 vacancies)	09.11.2009
		Specialist, phthisiologist, section phthisiology no. 3	18.06.2008
13.	Penitentiary no.17, Rezina city	Deputy chief, chief of hospital	27.03.2009
		Chief	27.03.2009
		Specialist, therapist	15.10.2004
		Chief, section of phthisiology no.1	15.10.2005
		Chief, section of phthisiology no.2	15.10.2005
		Specialist, phthisiologist (3,5 vacancies)	15.10.2004
		Doctor – gynaecologist	01.06.2009
		Superior nurse	01.06.2009
14.	Penitentiary no.18, Branesti village	Sanitary agent	10.09.2008

Although a mobile group was created (surgeon, psychiatrist, oculist, otorhinolaryngologist, dermatologist-venereologist, infectiologist, therapist, phthisiologist) from doctors of the penitentiary institution no. 16 of the Chisinau municipality, which during 2009 have made medical examinations in all the penitentiaries of the Republic, the insufficiency of medical personnel has however consequences on the quality of the offered medical assistance.

Along with it, it is the obligation of the medical service of the penitentiary to regularly check on the sanitary and hygienic condition of the rooms and the territory of the penitentiary. It has been established that the doctors in penitentiaries are too reserved with respect to the presentation of conclusions on the results of inspections where recommendations may be on the measures to be taken to eliminate deficiencies. Frequently, the doctors limit their conclusions to the lack of any complaints from the detainees.<sup>65</sup> Here penitentiaries no. 2 of the Lipcani city and no. 18 of the Branesti village can be mentioned.

Breaches have been found with respect to the observance of the provisions of article 251 paragraph (3) of the Execution Code, manifested by means of non-implementation of obligations

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<sup>65</sup> Article 252 paragraph (2) Execution Code no.443 from 24.12.2004, Official Monitor no.34-35/112 from 03.03.2005: The chief of the penitentiary is obliged to get acquainted with the report and the recommendations of the doctors and of the medical service and urgently take the necessary measures. If the chief of the penitentiary considers that the observance of the recommendations in the penitentiary is impossible or if it is unacceptable, he presents a report to the Department of Penitentiary Institutions with the opinion of the doctor or of the medical service.

by the doctor who made the medical examination of the convicts, to appraise the ombudsman if it has been determined that the convicts have been exposed to actions of torture, cruel, inhuman or degrading treatment or other ill-treatment. In this respect, article 251 paragraph (3) of the Execution Code with the amendments included by the Law of the Republic of Moldova on the amendment and completion of certain legislative acts no. 13 from 14.02.2008 clearly provide that the doctor who makes the medical examination must inform the **prosecutor and the ombudsman** in case it has been established that the convicted person was exposed to torture, cruel, inhuman or degrading treatment or other ill-treatment, as well as the obligation to include the findings and the declarations of the convicted person pertinent to them in the medical file.

Thus, the ombudsman was not been informed by the doctor of the penitentiary institution no. 17, in Rezina city of the case of ill-treatment of convict S.S. who at the moment the preventive visit from 13.07.2009 was in the cell of the disciplinary isolator and had visible corporal injuries.

Following the intervention based on which it has been requested to initiate a disciplinary investigation of the doctor who is guilty of this omission, the ombudsman has been informed by the administration of the penitentiary no. 17, in Rezina city that article 251 paragraph (3) of the Execution Code does not provide for such an obligation for the doctor, which indicates on the fact that the administration of the penitentiary does not take into account the amendments operated in legislation. Subsequently, due to unsatisfactory performance of duties the block sanitary agent A. Peşchin was sanctioned with a reduction of his single allowance with 10%.

It has been determined that the failure to perform this duty is in most of the cases dictated by the lack of knowledge of the standards enshrined in article 3 of the Convention, the administration of the penitentiaries and the medical personnel invoking their personal omission as a justification.

A striking case was detected on 11.12.2009 during a preventive visit to the penitentiary institution no. 17, in Rezina city, where the convicts were given "CINARISIN" pills with an expired validity term. Moreover, the pharmacy of the penitentiary had another 200 packages with "CINARISIN" pills with their expired validity period. As a result of this findings the ombudsman has concluded on the defective observance of duties by the medical personnel and the administration of the penitentiary who are obliged as part of their duties to coordinate and control the way of prescription, issuance and management of drugs.

The General Prosecutors' Office initiated criminal investigations based on article 327 of the Criminal Code following the depicted breaches and the intervention of the ombudsman.

Although, according to the national legislation medical assistance is offered to convicts every time they need it or when they request it, the implementation of this obligation is defective in some penitentiaries.

Thus, during the same visit organised at the penitentiary institution no. 17, in Rezina city, the convicts who have been exposed to physical force and special equipment during the ransacks from 23-30 November 2009, 07 and 10 December 2009 have invoked lack of medical assistance, although it has been repeatedly requested, including examinations to establish existent corporal injuries.

Only two of the convicts had papers which confirmed the medical examination, however in both cases the papers of the medical examination did not correspond to basic requirements of a doctor's consultation: presentation of personal data, anamnesis, establishment of objective data, diagnosis and recommendations.

In this respect, with reference to the standards of examination of ill-treated persons, the Istanbul Protocol<sup>66</sup> states that medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and, in particular, must obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations must be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials. The medical expert should promptly prepare an accurate written report. This report should include at least the following:

- The circumstances of the interview: The name of the subject and name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); any appropriate circumstances at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factors;
- The background: A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment was alleged to have occurred and all complaints of physical and psychological symptoms;

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<sup>66</sup> Paragraphs 83-84 from the Istanbul Protocol from 1999 recommended by the UN General Assembly Resolution 55/89 from 4 December 2000, UN Manual on effective investigation and documentation on torture and other cruel, inhuman or degrading treatment or punishment [www.ohchr.org/Documents/Publications/training8Rev1ru.pdf](http://www.ohchr.org/Documents/Publications/training8Rev1ru.pdf)

- A physical and psychological examination: A record of all physical and psychological findings upon clinical examination including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- An opinion: An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given;
- A record of authorship: The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. The report should be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that the report is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or when authorized by a court empowered to enforce the transfer.

***The recommendations of the ombudsmen:***

1. *Ensure the practical implementation of the provisions of the Istanbul Protocol to efficiently investigate the cases of torture, inhuman and degrading treatment;*
2. *Ensure efficient, complete and public investigations on cases when persons allege to have been tortured or exposed to other cruel, inhuman or degrading treatment or punishment, excluding thus perspective convictions of the Republic of Moldova by the ECtHR;*
3. *Direct responsibility imposed on the Police Commissariats for alleged cases of torture, inhuman and degrading treatment as prescribed by article 10 (paragraph 3<sup>1</sup>) of the Criminal Procedure Code of the Republic of Moldova and prompt and consequent disciplinary and criminal reaction towards those chiefs of units who have been accused on ill-treatment and who would put the Government in a difficult position to offer plausible explanations on the ill-treatment of persons during their detention in police custody;*
4. *Undertake measures to create an efficient protection and rehabilitation system for the victims of torture and strengthen and consolidate the activity of the existent ones;*
5. *Ensure the implementation of an initial and continuous professional training programme for the personnel of the Ministry of Interior and the Department of Penitentiary Institutions in the field of observance of human rights (the Centre for Human Rights expresses its availability to ensure the necessary human resources needed to implement these actions and the financial means with the support of the “Support to Strengthening the National Torture Preventing Mechanism in accordance with the provisions of the Optional Protocol to the CAT”, financed by the European Union and co-financed by the United Nations Development Programme, signed between the Centre for Human Rights and the United Nations Development Programme in Moldova);*



6. *Take measures within the Ministry of Interior structures to ensure the observance by the police agents of all levels of the Law of the Republic of Moldova on ombudsmen no.1349 from 17.10.1997 to ensure unconditional access in detention places or in places where people may be detained;*
7. *Increase efforts and speed up the construction of arrest houses, to ensure the implementation of the preventive measures and misdemeanours arrest in conditions which would eliminate ill-treatment towards persons held in these institutions;*
8. *Ensure the real implementation of the right to a fair trial, sufficient and efficient for alleged victims of torture, by means of initiating research in certain units which would exclude subjective attitude towards the adopted solution;*
9. *Bring the existent detention conditions in the preventive detention isolators under the subordination of the Ministry of Interior to the national and international standards in the field.*

