**CENTRE FOR HUMAN RIGHTS OF MOLDOVA**

# REPORT

## on human rights observance in the Republic of Moldova year 2006

**Chisinau, 2006**

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## Address to Mr. Speaker of the Parliament and deputies

In accordance with Article 34 of Law No. 1349-XIII on Parliamentary Advocates, we would like to present the Report on Human Rights Observance in the Republic of Moldova for the year 2006.

This Report has been drafted as the previous ones and covers the analysis of the situation on human rights observance in the country based on notifications and investigations carried out by Parliamentary Advocates, the examined petitions, information gathered from other sources including taken from the mass media, etc. The Report makes a general analysis of the most vulnerable fields, where frequent infringements of constitutional human rights are registered.

The idea of human rights enjoys a considerable popularity. In this context, the Republic of Moldova has undertook real steps towards the promotion and protection of human rights by adhering to the Universal Declaration of Human Rights, by developing a continuous process of harmonizing the national legislation with the international standards, by democratizing and reforming the law institutions in the country, by elaborating and implementing of National Human Rights Action Plan. But proclaiming the attachment to human values and declaring these as major objectives is not sufficient – we should promote and respect these by instituting efficient mechanisms of implementation.

Moldova has many gaps regarding the observance of human rights, irrespective of the undertaken actions and it is appreciated to the extent the reforms are becoming efficient. The human rights observance in the Republic is thus, directly proportional to the level of implementation of reforms, to the harmonization of national legislation with the European norms in the field.

The most frequently infringed rights are: the social rights, property rights, right to human protection, free access to justice, and the right to an equitable law suit. The considerable number of petitions addressed to the European Court and the increasing number of suits lost by the Republic of Moldova serve as good proof of this. This situation is based on objective and subjective reasons, including socio-economic situation of the country and lack of executory discipline. The main requirements cover mostly the implementation of reforms and the execution of adopted laws. Certain structures and persons with main duties have a formal attitude towards this field and do not understand their responsibility. The existing gaps should constitute the object of serious government concerns.

Last year was one of the most important in the modern history of Moldova due to reform implementation in different fields.

In June 2006, the Parliament voted the modifications to the Constitution regarding the death penalty abolition even in the exceptional cases. The Optional Protocol to the Convention on Torture and Other Punishment or Cruel, Inhuman or Degrading Treatment has been ratified and the Concept on the Cooperation between the Parliament and Civil Society has been adopted. Some modifications of the magistrates' statute and judicial organization have been adopted, the National Institute of Justice has been established, the Audiovisual Code and Law on Gender Equality between Women and Men have been adopted, etc.

Some reforms have caused, however, controversies in the society and have generated actions of protest from behalf of citizens.

Over a period of many years, the Transnistrian region of the Republic of Moldova is a region where the human rights are infringed every day. An unsolved issue is the impossibility of Parliamentary Advocates to intervene to protect the human rights and liberties of the citizens from the Left Bank of the River Nistru. The attempts to set efficient collaborative relations with the Transnistrian Ombudsman had no positive results.

The Parliamentary Advocate is a link to society's realities and expresses very clearly the harmonization tendency of the Republic of Moldova to the European human and legal values and exigencies. Bearing this in mind, the Parliamentary Advocates are important players in the implementation of EU-Moldova Action Plan in the fields of human rights, because the main goal – European integration – depends on the success of this implementation.

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***Director of Centre for Human Rights of Moldova***

## GENERAL INFORMATION

Since its establishment in 1998, the Centre for Human Rights of Moldova has been an independent authority that serves the citizens especially in improving their relations with public administration and services.

The Parliamentary Advocates contribute to the reinstatement of citizens in their rights, verify if the institution – subject of complaint – conforms to the vested authority of public service, discover the functional deficiencies and contribute to the reinstatement of complainers in their rights.

If an administrative decision affects the constitutional rights of someone, the Parliamentary Advocates have the competence to submit notes, recommendations, and notifications contributing to the settlement of conflicts between physical persons and public administration through mediation, in an amiable way and through dialog.

The Parliamentary Advocates are vested with the authority to forward to central and local public authorities general objections and suggestions regarding the constitutional rights and freedoms of the citizens and the improvement of the activity of administrative system.

In its activity, the Institution of Ombudsman observes the Principles related to the status of national institutions for the promotion and protection of human rights (Paris Principles), one of the key documents of the United States Organization, which was transferred in the Law on Parliamentary Advocates.

National institutions shall not substitute the activity of law entities, local public authorities or of non-governmental organizations. The Institution of Ombudsman has a complementary function and its consolidation contribute to the efficient enhancement of national and international systems of promoting and protecting the human rights.

The Institution of Parliamentary Advocates is and should remain the authority facilitating the balance between the public authorities and civil society.

It would be wrong to think that such mechanism of human rights protection would be able to solve all the problems in the field, which is the concern of international community and each stat and every person in part.

The chiefs of states and governments of member states reunited at the Warsaw Summit of May 2005 decided to create the Council of Europe Head of States having the mission to study the necessary measures to insure long-term efficiency of controlling

mechanism of the European Convention for Human Rights. The Council of Europe Head of States Report, presented in December 2006, mentions inter alia that the national institutions (mediators, ombudsmen) could contribute considerably to the decreasing of Court's volume of work with the help of Higher Commissioner for Human Rights.

The institution's efficiency depends to great extent on its legal mandate. The need of constitutional regulation of Parliamentary Advocates' activity following the example of European states is opportune. Constitutional and legal modifications will legalize the process of enhancing the Institution of Parliamentary Advocates to exercise the duties of protectors of rights and freedoms of physical persons.

In order to make more efficient the Institution's activity, there were submitted proposals to modify the Law on Parliamentary Advocates and a new regulation and structure has been proposed. And in order to exclude the merging with other non-governmental organizations, it was suggested to change the title from "Centre for Human Rights of Moldova" into "Office of Parliamentary Advocates". There are many Centers currently active in the Republic (Centre for Human Rights of Republican Popular Party, Centre for Child's Right, Law Centre in the territory, etc.) and sometimes the citizens, civil servants and even high officials consider that the Institution is a NGO or that the Parliamentary Advocates are advocates of the Parliament.

On 31st of December 2006, the Institution of Parliamentary Advocates had a total of 37 jobs in the payroll, including 15 jobs in the Baltsi, Cahul, and Comrat. We had 8 vacancies on average during last year.

Lack of personnel, fluctuation movement of personnel and insufficient remuneration of the civil servants who ensure the Parliamentary Advocates' activity are the key barriers in achieving some objectives set by ombudsmen. The present Regulation stipulates two categories of civil servants – specialists and senior specialists. Bearing in mind that the modifications regarding the Centre's duties haven't been operated until present, it is impossible to apply integrally the provisions of Annex No.4 of Law No. 355 on Salary of Budgetary Sector of 23.12.2005 as for the duties and respective grid of salary.

Although the statute of the Centre for Human Rights of Moldova is high being situated on eight position in the Unique Classificator of Public Duties out of first ten public authorities of the state, the remuneration doesn't correspond to this level. As compared to other public authorities of the same level, the salary grid of Centre's civil servants, according to Law No.355, is minimal. These circumstances decrease the Institution's

authority both at national and international levels. For example, in most European states with similar structures, the civil servants and technical staff of the institution have the statute of the structures of Parliament.

Obviously, both in the past and present, there is the issue of the efficiency of the activity of Institution of Parliamentary Advocates. Being an ombudsman institution, the Centre for Human Rights of Moldova tries to settle the conflict between the citizens and public authorities through mediation, by trying to find a solution. The efficiency of this working method is directly proportional to the professional skills and involvement degree of the parties. The Parliamentary Advocates do not and should not have measures of constraints (fines, cancellation of acts, etc., which would limit considerably the independency and impartiality of Parliamentary Advocates). If they use such measures, it would stop being an ombudsman institution.

The State's and society's implication is necessary in order to increase the ombudsman institution's efficiency. One of the priorities would be the respect towards a state human rights protection institution and towards those democratic values it promotes. In these conditions of the Republic of Moldova, the Parliamentary Advocate should have a real weight and not a declarative one. This is the only way to achieve the real role of mediator between the state and civil society, a fact which is understandable in many states of the world, of essential partner of structures authorized by the Council of Europe in the fight for real implementation of human rights, in accordance with the European standards.

Parliamentary support would permit the Institution of Parliamentary Advocates to achieve a more efficient communication between public authorities with executive and legal powers. Certain progress has been registered in the relationship with the executive, but we can't speak of careful interception of the problem at this level.

We shouldn't omit the formal attitude and sometimes the absolute lack of reaction from behalf of Bar of Advocates, Ministry of Education and Youth, Ministry of Home Affairs, City Hall of Chisinau Municipality, Superior Council of Primary and Procuracy General.

An uncommon case happened when due to illegal actions of border guards, the Parliamentary Advocates missed the study visit at the European Institute of Ombudsmen organized in cooperation with Council of Europe and Austrian Government. The Parliamentary Advocates do not exclude the future lack of interest of international organizations towards the national institute of ombudsman.

Consequently, the paternalist attitude and nihilism towards the authority and statute of institute of ombudsman is inadmissible. The ignorance of Parliamentary Advocates' notification, which is reprovable practices in a democratic state, should be completely uprooted.

The efficiency of the institution depends to great extent to its awareness. In this sense, although progresses have been registered, we can't boast with considerable achievements because the means used by the institution are modest. It is welcomed when the mass media notifies the widest awareness of the activity of Centre for Human Rights.

As for general volume of activity it could be appreciated as expression of a slight improvement compared to 2005.

In global figures this activity is reflected as follows: 1715 citizens were in audience; 1913 petitions were registered; 25 notifications on reinstatement in rights have been submitted based on Article 24 of Law on Parliamentary Advocates, and 8 notifications based on Article 24 of the same Law. 14 suggestions of modification the normative acts have been submitted; the Constitutional Court has been informed two times; 8 points of view have been made on the notifications submitted to the Constitutional Court and 10 on draft normative acts (Annexes).

In the first trimester of the year 2006, Centre for Human Rights of Moldova launched its web-site (www.ombudsman.md), which registered 5060 visits during the described period.

For the sake of the institution's objective to protect human rights and constitutional freedoms of the citizen in its relationships with the public authorities, we tried to introduce a civilized and efficient method petitions' examination, thus, every citizen who comes to the institution can benefit from support, answer or at least an explanation. Besides the issue of peaceful settlement of real problems, we carried out certain activities for the protection of rights of certain categories of population, when the individual complaints were too many in one or another field. Institution's openness to citizens and transparent activity explain annual increase of complaints.

Development of contact with the authorities of public administration would permit the use of some informal procedures of petition settlement and increase of public receptivity towards the Institution of Parliamentary Advocates.

The efforts of Parliamentary Advocates to contribute to the reinstatement in rights are useless when the normative acts currently in force allow the equivocal treatment of the problem. In most cases, in order to remove the deficiencies, the modification of these acts is suggested.

But there are registered cases when the central and local public authorities apply legislation in force following some "explanations" of parliamentary commissions made by the legal direction of the Parliament, which are not always in line with the definition of normative provisions that can generate wrong legal solutions of executing the rule of law. For example, according to the Constitution and provisions of Law on Legal Acts, the official interpretation of legal acts belongs exclusively to the Parliament and is done through law.

The rights and freedoms granted by the Convention for the Protection of Human Rights and Fundamental Freedoms should be observed first of all at national level. National authorities have reaffirmed their responsibility in this field by ratifying Protocol No.14 of the Convention. It should be enhanced the capacity of national legal system for the prevention and compensation of infringed human rights. In this new context, where the accent should be stressed on increasing the level of national protection, the knowledge of persons involved in the execution of legal act shall not be limited only to the internal legal framework and national jurisprudence. It is important the use of knowledge of international law, especially of international acts at which the Republic of Moldova is a party, taking into account the priority of international regulations on fundamental human rights, in case of discordance of internal legislation with the international acts in the field. The jurisprudence of ECHR has a special place.

Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights invites the governments of member states to ensure inter alia the publication of relevant decisions of the case-law of the European Court in the official press or in other sources of mass media used by legal community.

Although the Law No. 173 on Method of Publication and Validation of Official Acts of 06.07.1994 has been modified since 2006, and namely the decisions and provisions of European Court for Human Rights should be published in the Official Monitor of the Republic of Moldova passed in cases when Moldova is a complainant, it is not exercised.

It should be mentioned that one of the grounds of revising the legal decisions, according to the Code of Civil Procedure, is the ascertaining an infringement of human rights and fundamental freedoms by the European Court, and the persons, who haven't participated in the trial but are considered to be injured in their rights through the court decision, conclusion or order, have also the right to submit an application for revisal. Along the same line, the immediate publication of Court decision is also important for these persons.

Member states of Council of Europe have admitted the obligation to adopt general measures as a result of a decision of European Court for Human Rights registered against those. The translation and broadcasting of Court's decision at national level is a procedure fully supported from the very beginning by the Council of Ministers, because the infringement of Convention and Court's jurisprudence is rather due to unwillingness of national authorities to honor their international obligations than to ignorance regarding the European exigencies, especially from behalf of administrative authorities.

## CHILDREN

Assuming the fact the children rights are far away from being completely observed in the wealthy and developed Europe and they are usually first victims of armed conflicts, economic crises, and poverty and especially of budgetary restrictions, the Parliamentary Assembly of Council of Europe adopted the Recommendation No.1286 on European Strategy for Children on 24th January 1996.

The Assembly mentioned that a child is a citizen of present and future society. The society has a long-term responsibility towards children and should recognize the family rights in child's interest. The observance of child's rights, freedoms and needs should be a political priority. This desideratum, as well as gender equality between children and adults will contribute to the maintenance of the agreement between generations and would serve the democracy concept.

Irrespective of the fact either the children grow and develop themselves in biological families or institutions, go or not to school, are healthy or sick, they benefit from a number of rights guaranteed by Moldovan state since 1990 when it adhered to the UN Convention on the Rights of the Child.

The Constitution of the Republic of Moldova obliges the state to ensure a special regime of assistance to children and youth in order to achieve their rights.

Member states of the Council of Europe were impelled to transform the child's rights into a political priority, including through instituting a mediator (ombudsman) for children or other structure which would ensure guarantees of independence and necessary competences for real promotion of child's destiny, accessible entity to public, especially through local couriers. In this context, National Human Rights Action Plan foresaw the examination of the possibility to establish the Institution of Child's Advocate.

Therefore, we are witnesses to more internal and external factors, which grant to state the honour of assumed commitments.

There are three ombudsmen in the Republic of Moldova with general competence. The issue of child's rights is tackled together with other problems not being an exclusive concern. This influences negatively the state of things at the chapter of children's rights promotion. Along the same line, it is inopportune and expensive to repeat the mistakes of many states that initially have established sub-divisions for the promotion of human rights within the National Bureau of Ombudsman, being forced in time to established separate institutions.

The Parliamentary Advocates support the formula of establishing an office of ombudsman with special competence – specialized in children's and youth issues which would be covered by constitutional norms.

There are many advantages for the establishment of an independent and specialized ombudsman institution and, first of all, wide range of activities in this special subject. In the opinion of Parliamentary Advocates, the Ombudsman Office for the Rights of Children and Youth should cover different directions having as monitoring object the situation of pre-school children (including the field of reproductive health, because the child should be protect from the very birth, abandonment, adoption, trusteeship, etc.); schooling children; institutionalized children in conflict with law.

The need to promote the human rights, democracy, and supremacy of Law are approached at the highest international and national levels. United Nation Organization declared the years 2003-2012 – UN Literacy Decade: Education for All, and years 2005-2014 – UN Decade for Education for Sustainable Development aligning its key programmes from the point of human rights promotion.

The analysis undertaken by the Office of Parliamentary Advocates show the fact that children are regarded as simple beneficiaries of rights and beneficiary and assistance actions. Thus, the public opinion, local public authorities omits a new vision on the rights of the child, which assume not only granting rights to children but also their implication in those formulation and exercise.

In 2006 the Parliamentary Advocates notified the Ministry of Education and Youth regarding the modification of secondary curriculum, according to each, starting from studying year 2006-2007, the number of some objects has been reduced, and in order to optimize the studying program, the subjects *Civic Education* and *We and the Law* have transferred into the category of optional objects.

It should be mentioned that one of the objectives of the educational process is the development of student's personality, his/her preparation for an active life, directed to the development of society in conditions of real democracy. Thus, young people shall learn valuable notions from early age, which will develop their civic feeling under democratic society conditions suggesting an effective and responsible behavior in social life. For this purpose, the schooling curriculum should insure, based on flexible and coherent principles, the formation of communicative competences, critical thinking, habits of life, etc., because at this stage of personality development, in the opinion of Parliamentary Advocates, it is very important to introduce some key habits in order to be used as a continuous self-

training instrument during the entire life. These opportunities can be achieved within the objects *Civic Education* and *We and the Law*, which has the purpose to stir up children's interest of knowing and promoting the human rights and fundamental freedoms, dignity, mutual respect and tolerance, supremacy of law – qualities which are important to develop in order to guarantee progresses in society's democratization.

In order to promote the constitutional desideratum, the National Human Rights Action Plan approved by the Parliament of the Republic of Moldova on 24.10.2003, underline the enhancement of human rights awareness, need to modernize the educational programs by harmonizing the national specific with the international standards. Along the same line, the Convention on Fighting against Discrimination in Education of 15.12.1960 (the Republic of Moldova adhered to this through Parliament Decision No.707 of 10.09.91) recommends to participating states to ensure that "… education shall ensure the complete development of human personality and consolidation of human rights and fundamental freedoms observance and that it should favour the understanding, tolerance and friendship…"

In this context, the Parliamentary Advocates are convinced of the correctness of timing inclusion of the abovementioned objects in the pre-university educational program as compulsory objects being thus, appreciated their real contribution in shaping pupil's personality.

Centre for Human Rights of Moldova registered last year several complaints from former graduates of boarder-schools, who invoked issues of social and medical assistance, living conditions, employment, etc.

Becoming concerned of those related by orphanages, the Parliamentary Advocates decided to identify the issues faced by this category of children and to find optimal solutions for their settlement.

During the discussions with pupils from boarder-schools for orphanages, with the directors of these institutions and representatives of trusteeship authorities, there were discovered some facts. But the settlement of every pupil's issue in part is practically impossible, it is imposed the need of an efficient measure for general improving of the situation.

Majority of institutionalized children belong to the category of orphans and children from socio-vulnerable families and only a small rate is from orphans bereaved of both parents (for example, in Cazanesti boarder-school 14 out of 266 children are orphans; Ungheni – 13 out 239; Hincesti – 22 out 447; Baltsi – 22 out 350 etc). In some cases, the

orphanages are supported by relatives, have a place to live after graduation, have the possibility to continue their lyceum and university studies. The situation of those bereaved of relatives and parents are very difficult.

The situation of "social orphans" is also difficult. The decreasing of social prestige of the family, poor economic situation of families, lack of living conditions and massive migration of population, the number of children born outside a marriage and the increased number of parents having antisocial behavior are main causes of the spreading of the "social orphans" phenomenon.

After graduation of boarder-schools, children face a number of problems which are difficult to be faced by their own. In the opinion of some representatives of UNICEF, the school doesn't prepare the children to face the risks and challenges of every day life focusing mainly on knowledge and less on the development of skills that would allow them to cope independently. This is one of the most acute problems, alongside with the lack of living place and impossibility of being employed.

Many continue their studies in polyvalent or handicraft schools in the respective localities and learn 2-3 professions in order to extend the time being in those institutions because are offered living space and food. However, they cannot find a permanent job, because the learned professions are not useful or the wage is too small.

According to the directors of educational institutions, many graduates prefer to work abroad rather in their country for a minor salary. Some of them commit offences and go to prison.

In accordance with the data offered by Centre for Human Rights of Moldova, the number of graduates of residential institutions who benefited from information and conciliation services grew in 2006 ( in 2005 – 54 persons; 2006 - 156 persons). With the help of National Agency for Employment, 73 persons found jobs.

Employment of orphanages and children without parental care – graduates of boarder-schools is difficult due to many factors: lack of financial resources for maintaining themselves during education; lack of mentors in schools; minimal possibilities of employment from the age of 16; small salaries that do not cover the costs of renting an apartment, food and cloth.

Although legislation in force stipulates the right of orphans and children without parental care to living space, they cannot exercise this because of its lack. In 2004, Council of Chisinau Municipality approved the Action Program Orphanages and Children without Parental Care for 2004-2007, which stipulates the allocation of financial means for social apartments for this category of children. As for 08.08.06, 102 orphanages residents from

Chisinau needed living space. As well, 5 young families (who take care of children) and 4 single mothers were registered at the Municipal Direction for the Protection of the Rights of the Child.

The local public authorities do not address the problem of living space of graduates of boarder-schools in the raions of the republic. Representatives of tutelage authorities affirmed that no cases of offering a living space or a land plot for construction have been registered.

In this situation, children look own solutions to the issue of living place. In some cases they form groups of several persons and rent an apartment, in other cases they live in basements, they work in households for food and shelter. These are temporary solutions and the insurance with living space is still one of the main problems, a fact confirmed by growing number of complaints of graduates of boarder-school to Parliamentary Advocates.

Bearing in mind the constitutional desideratum, according to which state lyceum, professional and high education shall be accessible to everyone based on merits, some directors of boarder-schools consider opportune the creation of lyceums in the locality where there are board-schools a fact that would facilitate the accessibility of children to lyceum schools and would expand the possibility to study in high educational institutions. It would be logical for some lyceums to have 'social apartments' for graduates of boarder-schools who want to continue their education.

In the opinion of some directors of boarder-schools, it would be welcomed the creation of shelters for this category of children in the localities where they graduate taking into account the persistent problem of ensuring the graduates with living spaces.

The living conditions of orphanages and children without parental care before their graduation, i.e. before 16 years, do not permit them to continue their lyceum studies. Even the most gifted and skilled graduates of gymnasiums are deprived of real possibility to continue their education because of lack of maintenance.

In this situation the Parliamentary Advocates certify an infringement of constitutional norms according to which all the concerns regarding the maintenance, training and education of orphanages and children without parental care shall be covered by the state and society.

A number of issues faced by the administrations of boarder-schools in ensuring the orphanages and children without parental care with optimal living conditions have been identified in the territory. Many directors affirmed that the budgetary financial sources cover only about 65- 70% of needs. Sometimes the cloths and footwear for children are

offered by NGOs or charity missions. Some schools were repaired, including the sanitary blocks, the boilers houses were built with the support of foreign and local economic agents. Many schools from raional centers and Chisinau Municipality benefit from extra budgetary financial support or donations. The schools from peripheries and villages have a more difficult situation.

In order to ensure the continuity of the education process, it is necessary to re-equip the reading hall with new furniture, to complete the book funds, etc; to equip the schools with modern equipment such as computers; to complete with didactic materials – 'Pupil's notebook', which is a working book for manuals for Physics, Biology, English Language objects; maps, books of plates, dictionaries, etc.

The most stringent issues for some schools are to organize summer vacation for children, to transport the children to visit their parents or other relatives. Even if most institutions have own transport, this is practically not used due to its obsolete or lack of petrol. Some pupils travel home with the kindness of buses' or microbuses' drivers, who agree to transport them free of charge. In this context, the children's transportation should be free of charge.

Another issue is lack of medical staff, psychologists (most specialists activate per hours), prompt assistance medicine.

The schools placed outside the raion centers have difficulties to conclude identity cards for 16 years children. Although the identity cards shall be issued free of charge, there are additional expenses, which are not covered by the budget, like blood tests, transportation of children to the hospitals and Centers of Population Registration and Documentation.

There were registered cases when the blood tests were charged. The Parliamentary Advocates were informed by the competent authorities that the blood tests are made based on director's request with a list of children's names. Parliamentary Advocates consider that free of charge blood tests from the orphanages and children without parental care should be stipulated through normative acts that regulate the medical service provisions.

The analysis made with the help of the directors of boarder-schools and representatives of trusteeships has allowed the identification of some solutions for improving the situation of institutionalized children and graduates of boarder-schools.

Some specialists support the idea of transforming the residential schools in general schools, a fact that would decrease the difference between orphanages or children without parental care and those brought up in the family.

It is known that this category of children is not ready to earn their living; on the contrary, they are used to receive everything free of charge. A symbolic amount of money like ‘pocket money’ would teach them to manage their financial sources and would prepare them for independent life.

It is necessary to elaborate a new Regulation on Minor Trusteeship Organization that would regulate the conditions of organizing and implementing the activities of trusteeship authorization on the protection of the rights and legal interests of minor children, including of orphanages and children without parental care, would set the responsibilities of trusteeship organization and tutors/curators.

In the opinion of specialists, the trusteeship authorities should activate as independent authorities unsubordinated to ministries or departments. Thus, the independency and objectivity degree of fulfilling the duties would be increased. It is very stringent the lack of the number of specialists in human rights issues within the territorial directions of education and youth, including psychologists, jurists and social assistances. At present, there is only one specialist in each raion who participates in trials, solves problems regarding the trusteeship, guardianship, adoption, etc.

It should be expressly regulated the definition ‘child without parental care’, who is more disfavored than ‘orphanage’, the implementation of some regulations on the compulsorily appointment of a legal representative for minor child by parents during their absence (for example, abroad) and the adoption of Law regarding the Child in Difficulty.

The modification and completion of the Code on Administrative Contraventions that would stipulate parents’ responsibility for not fulfilling the obligations for education, training and care would be welcomed and useful.

In the same context, it is opportune the elaboration of a mechanism of legalizing the labour abroad that would permit the parents to visit systematically their children and to keep in touch without the risk to lose their job overseas.

In the opinion of directors, it would be welcomed the establishment of paid services for children whose parents are abroad. It is important to inform the trusteeship authorities about the leaving abroad, and these may place the children in the boarder-school but with the payment of official taxes. Most parents who have placed the children in residential institutions send money to their relatives, grandparents, neighbors for additional care. However, the children are practically at state’s maintenance alongside with the orphanages and children without parental care.

Along the same line, it would be welcomed a better receptivity from the public authorities regarding the children’s problems, especially of local public administration

which is much familiarized with the situation. It should act very promptly to different initiatives and applications submitted at local level.

An example of this is the petition of an imprisoned citizen, who has manifested his concern about the destiny of his minor children. During the investigations, the Parliamentary Advocates have requested the help of authorities in finding out the minors. It was discovered that the children were studying at the local lyceum being grown up by their grandmothers because their mother left them. At the same time, it was ascertain that the children were without trusteeship and one of the children had no birth certificate.

Although the legislation in force stipulates expressly that certain territorial authorities are responsible by the protection of children's rights, these have undertook measures towards those two minor children only after the notification of Parliamentary Advocates. Therefore, the local authorities should understand better the real situation in the territory, should fulfill more responsibly the legal duties on providing the primary services and collaborating for the settlement of social difficulty cases.

Unfortunately, the problem of secondary school abandon as a result of emigration of labour force abroad is very stringent at present.

According to the information provided by the Municipal Direction for the Protection of the Rights of the Child, the number of legal procedures instituted on behalf of children without parental care, cases of denying parental rights and living place for minors haven't decreased.

The increased number of cases on denying parental rights has been conditioned, first of all, by decreased living conditions, increased unemployment rate, and least but not last the extension of migration process of citizens looking for an income abroad, this being as well a cause for divorce and the abovementioned suits.

Once the phenomena of migration labour abroad have been increased, the number of unexecuted decisions has increased, as those for alimony. This issue is mostly not solved.

The migrational flow of the population abroad has increased and the minor children are the first who suffer because are deprived by their breadwinner. Article 48 of the Constitution of the Republic of Moldova stipulates expressly the duties of parents to ensure their children's upbringing and education.

Mass migration of the population represents a factor that generates the appearance of social problems like the destabilization of family institution, child's non-adoption into the society, increase of juvenile criminality, etc.

Referring to institutional capacities enhancement and development, the establishment of the Ministry for Social, Family and Child's Protection is very welcomed. It is very opportune the establishment of specialized public services for the protection of child in the raions, where the following personnel should be involved: social assistant, psychologist, legal expert, doctor, other specialists – collaborators for determined period of time, for example, translator for deaf and dumb children, internet for immigrants' children, etc.

The Government of the Republic of Moldova with the support of UNICEF and European Union (Tacis) Development of Integrated Social Services for Vulnerable Families and Children at Risk Project has initiated the reform of residential assistance system for vulnerable families and children at risk, its goal being the reduction of number of children that grow and develop separately in the family. In the opinion of the Ministry of Education and Youth, this thing can be achieved through the natural or extended reintegration of children placed in boarders or children's home in the family, i.e. through the prevention of children's institutionalization.

The statistics show that about 85 % of the children from residential institutions have one or both parents alive. According to last data, about 10350 children live and study in such institutions.

The reform stipulates that some residential institutions would be transformed in communitarian centers and other, although being supported, will have a smaller number of children who would benefit from better conditions. As well the reform stipulates the establishment and development of new communitarian services for the protection of children and vulnerable families.

It should be mentioned that the opinions on the implementation of residential reforms have been divided. Thus, the directors of residential institutions consider that the establishment of institutions alternative to those of institutionalization for the reintegration and rehabilitation of children at risk is not the optimal solution for those, because very often the reintegration of child in his biological family (as an alternative service), which is usually unsuited to ensure the child with a decent standard of living and adequate education (sometimes the parents are those at risk) can have an unfavorable impact on his/her personality.

Therefore, the promotion and development of alternative institutions shall imply first of all the implementation of adequate education at the level of understanding the obligations of persons responsible for child's caring and education.

Another major problem mentioned in the Report of Centre for Human Rights of Moldova is the lack of pre-schooling units in rural sector.

According to the information submitted by the Ministry of Education and Youth (September 2006), the following localities lacked pre-schooling institutions: Anenii Noi Raion (8 villages), Briceni Raion (9 villages), Cahul Raion (5 villages), Calarasi Raion (10 villages), Cantemir Raion (5 villages), Causeni Raion (7 villages), Criuleni Raion (5 villages), Cimislia Raion (12 villages), Donduseni Raion (1 village), Drochia Raion (4 villages), Dubasari Raion (2 villages), Edinets Raion (8 villages), Falesti Raion (18 villages), Floresti Raion (12 villages), Glodeni Raion (11 villages), Hincesti Raion (4 villages), Ialoveni Raion (3 villages), Leova Raion (8 villages), Ocnitsa Raion (13 villages), Orhei Raion (18 villages), Nisporeni Raion (10 villages), Rezina Raion (10 villages), Riscani Raion (12 villages), Sîngerei Raion (19 villages), Soroca Raion (23 villages), Soldanesti (2 villages), Stefan Voda Raion (1 village), Taraclia Raion (7 villages), Telenesti Raion (15 villages), Ungheni Raion (10 villages).

The following are the localities were the pre-schooling institutions do not function due to demolition/privatization: Anenii Noi Raion (1 privatized institution), Cahul Raion (3 institutions closed since 1991), Calarasi Raion (8 institutions – deteriorated since 1996; 6 institutions – since 1992 are privatized as living space, shop, bakery), Causeni Raion (6 institutions); Cimislia Raion (7 deteriorated institutions); Criuleni Raion (2 privatized institutions with value rate); Donduseni Raion (7 institutions under capital reparation); Drochia Raion (12 institutions since 1987, decreased number of children; 2 demolished institutions); Dubasari Raion (6 institutions - from 1958-1988); Edinets (6 privatized institutions); Falesti Raion (2 demolished institutions; 2 are stand-by; 2 churches; 1 privatized); Floresti (19 institutions need to be repaired; 1 privatized under living space); Glodeni Raion (1 demolished); Hincesti Raion (8 rented; 2 churches; 2 libraries; 4 living houses); Ialoveni Raion (6 privatized institutions, living houses; 4 under reparation); Leova Raion (1 institution); Nisporeni Raion (7 institutions are under capital reparation since 1996); Ocnitsa Raion (13 institutions; 2 demolished due to lack of financing); Orhei Raion (4 don't work; 3 were sold and are under trial); Rezina Raion (10 institutions do not function; 5 are demolished; 5 are rented); Riscani Raion (12 institutions are rented, living space); Singerei Raion (3 privatized; 2 demolished); Soroca Raion (4 institutions privatized); Straseni Raion (3 institutions, as living space; 1 church); Soldanesti Raion (2 privatized institutions, living space); Stefan Voda Raion (1 sold and privatized; 9 need

reparations); Taraclia Raion (1 capital reparation); Telenesti Raion (1 capital reparation); Ungheni Raion (1 privatized); ATU Gagauzia (2 under capital reparation).

Thus, 51 pre-schooling institutions were privatized, 21 – demolished, 119 - rented, 20 - damaged, 12 - sold, 85 need capital reparation.

The Ministry of Education and Youth stated that 109 pre-schooling institutions were reopened during 2003-2006. Out of total number (per republic), 217596 children under pre-schooling age between 1-7 years, only 120463 go to kindergarten.

Hence, only 55.37 % out of total number of children (between 1-7 years) go to pre-schooling institutions.

We would like to mention at the same chapter the incapacity in most cases of public services to ensure the necessary assistance and support for the functioning of pre-schooling institutions.

Centre for Human Rights of Moldova was informed by a group of parents, whose children go to a pre-schooling institution in Chisinau Municipality, that the children's alimentation lacks bread for 2-3 days. It was ascertained that the facts related by the parents were real. Moreover, due to the lack of sugar, the director of the institution was forced to borrow it from the village's shop. The director mentioned that the town hall is the only responsible for this situation because it doesn't conclude contracts with the suppliers in time and doesn't pay for the bread and other food. In the same day, the Parliamentary Advocate had a discussion with the local Mayor, who finally recognized these problems.

Being extremely concerned about the current situation from pre-schooling institutions, the Parliamentary Advocates have informed each other from the office in order to contribute within their competence to the settlement of most stringent problems faced by these institutions. An article published in the mass media through which the collaborators of a pre-schooling institution have invoked existing problems, usual for most public pre-schooling institutions of the republic, hard situation that diminish directly the quality of pre-schooling education served as an incentive.

Alongside with the invoked problems, it should be underlined the minimal remuneration of the personnel of pre-schooling institutions who provide the educational process of the children. It is known the fact that first years of a child are most decisive for shaping his/her personality, for the accumulation of most important general human values.

The employees of pre-schooling educational system hope that the situation would improve with the integral implementation of provisions of the Law on Wage System in the Budgetary Sector No. 355 of 23.12.2005.

## JUSTICE

The Justice consists of a group of institutions through which is executed the legal function. It has the purpose to settle all the conflicts that appear in the social life when the infringement or contestation of rights is registered.

The protection of right would be senseless if it wouldn't be honored by an independent and impartial justice, guarantee of an equitable process.

European integration aspirations of the Republic of Moldova have determined the awareness of need to consolidate the capacities of legal system. In this context, the Parliament, by insuring the implementation of some commitments assumed towards Council of Europe at the chapter of independence and enhancement of legal capacities, have modified some laws that regulates the statute of a judge, legal organization, the activity of Superior Council of Magistracy, Supreme Court of Justice, etc. However, the changes in the legislation are not quite felt in the society and, in the opinion of the Minister of Justice, because the working method hasn't been changed.

The Law on Forced Execution System was adopted. It would set the competence of forced execution, legal state of the personnel, rights and obligations, personal and social guarantees of the legal executor, as well as their responsibility.

At the same time, the Government was forced to solve the problem of the execution of legal decisions given the acute situation in the field and the existing of a great number of unexecuted decisions. According to some data, about 50% of the executory documents are still unexecuted.

Expanded competence of the Procuracy General is a concern for the European Commission, as well as non-execution of decisions of European Court for Human Rights.

However, the continuous reform of the legal system shall be a priority.

Unfortunately, the implemented reforms have not increased the legal system. This is shown by frequent addresses of citizens. The legal system is seen by the population mostly as a barrier in their rights achievement from many reasons:

- Corruption level in the system;
- Limited access to services of qualified advocate;

- Tergiversation of examination of cases;
- Different forms of pressure form judges on the participants in the trial;
- Quality of legal decisions and their non-execution.

About 25% of addresses to the Parliamentary Advocates invoke the issue of free access to justice and the right to an equitable process. The analysis of statistics for the last years (2004-26.2%; 2005-27.7%; 2006-25.7%) show that the measures undertaken to ensure these rights are not enough and confirm the need to continue the legal reform.

During the daily audience at the Centre for Human Rights of Moldova, the citizens invoke very often the disagreement with the legal court decisions. It is natural that within the frame of examining the civil cause, one of the parties will be unhappy of the result of settlement of litigation. But the Parliamentary Advocates and the collaborators of the Centre for Human Rights of Moldova certify very often mistakes in application the legislation, a fact that influences the basis of court decision. But very often these decisions are irrevocable and the citizens do not have the ability to appeal these and the majority of petitioners appeal to ECHR.

Taking into account that the legal power is independent and having no intention to interfere in the implementation of legal act, the Parliamentary Advocates specify in the address to Superior Council of Magistracy and Supreme Court of Justice the discovered mistakes and gaps, ask the verification of some real cases, request the generalization of legal practice in some situations, etc. As far as these institutions will examine superficially the complaints and addresses towards the judges' and courts' activity, the system will not register any improvement of the state of things.

Along the same line, it should be mentioned that last year the Parliamentary Commissions addressed about 175 complaints from the citizens to the Centre for Human Rights of Moldova – most majority referring to the same issue – disagreement with court decision or the quality of legal act. The Institution of Ombudsman is forced to explain that the Parliamentary Advocates have no right to interfere while exercising their duties with court activity, because when exercising the court decision they are independent and subject only to the law, and the issued decision can be controlled or reexamined only in the competent courts in the way settled by the legislation. As a consequence, some of the petitioners express their dissatisfaction for not-solving the problems they face.

Sometimes there is also indignation for the fact that the petition was addressed to the Parliamentary Advocates, the citizens insisting on the examination of their problem by the deputy whom it has been addressed. The petitioners are told every time with patience

the way of solving, competencies of authorized bodies, including the competences of deputies, who have no right to intervene in the process of exercising the justice.

Non-execution of court decisions as in previous years is a stringent problem.

The petitioners invoke very usually the non-execution of court decisions on the non-payment of alimony, collecting of debts, collection of salary arrears, reinstatement in duties, actions of legal executors.

The causes are the same. The debtors are not employed; do not have properties that would be tracked and marketed for paying the debts or are away from home.

Alongside with the increasing of migrational labour phenomena, the number of non-executed decision on maintenance payment has considerably increased. The adhesion of the Republic of Moldova to the National Pensioners Convention would diminish to a great extent the issue.

The execution of some court decisions relates directly to the competence of central and local public administration, economic agents who don't honour their obligations as debtors for reinstatement of creditors in their duties or payment of salaries, retirement compensations.

There are registered cases when the ministries do not execute court decisions on the reinstatement in duties of the employee dismissed illegally and decisions through which the accused is obliged to pay the compensation for the forced absence from work, in case of illegal dismissal.

In this context, the Ministry of Education and Youth is the central public authority which has very severe problems at this chapter. During the examination of complaints regarding the non-execution by the above-mentioned ministry of the court decisions, the Parliamentary Advocates stipulated that the legal executors have undertaken measures of necessary execution but their requirements on decision execution have been ignored. The officials of the minister haven't respond to the submitted complaints, did not issue permits to legal executors in order to enter the building to verify the execution of the executory documents.

In other cases the public authorities (for example, the Ministry of Agriculture and Food Industry, etc.), ignoring immediate court decisions, resort to procedural actions, requesting the suspension or postponing the execution until the examination of appeal application.

Many addresses to Parliamentary Advocates have been generated by actions/inactions of legal executors. In some cases the Parliamentary Advocates are

imposed by the situation to stipulate on the spot that the petitioners are right when invoking the formal attitude of the executors towards their duties.

Respective materials are generalized and transferred to Procuracy for examination. For example, after being in audience with the Parliamentary Advocates the petition of citizen C. has been submitted to criminal procedure according to the provisions of Article 320 paragraph (2) of the Criminal Code.

The implication of law enforcement bodies is insufficient in these cases. There are no operative investigations to set the sources of existence of the debtor; this fact would prove the dodging from court decision execution. But very often the law-enforcement bodies limit at the following ascertaining: the debtor doesn't work or doesn't have patrimony. Respectively, it is not about the intention, but lack of possibilities. Sometimes even the submitted information on creditor about the debtor's income and activity in the field is not taken into consideration. It is very regrettable the practice when the legal executors, by non-utilizing all the methods directed to the execution, shall resort to procedures of changing the sanctions on the basis of Article 26 of the Code of Administrative Contraventions.

During the examination of conditions of provisory detention, the Parliamentary Advocates stipulates very usually the administrative detention arrest of citizens who did not execute the administrative sanction under fine form. There were registered cases of imprisoning the citizens for not paying the tax arrears. Similar cases were addressed by citizens in the addresses to the Centre for Human Rights of Moldova.

It should be mentioned that the legislation in force does not stipulate the mechanism and the procedure of examining the replacement requirement of the fine with the arrest. On the contrary, Chapter 25 of the Code on Administrative Contraventions regulates expressly the procedure of executing the administrative fine, and the Code of Execution stipulates the levers of influencing the legal executor, including the right to submit a complaint to court only when the actions/inactions of the persons consists of contravention elements (non-payment of administrative fine shall not be a contravention).

Analyzing the practice of replacing the fine sanction with administrative arrest, the Parliamentary Advocates conclude that this is a danger for a big number of citizens. In this context, the Government Decision No.1015 of 05.09.2006, through which the regulation on the control of paying the compulsory insurance shares in fix amount has been approved, stipulates the mechanism of identification and administrative sanctioning of citizens who did not pay the insurance rate, including for previous years.

Reporting the percent of compulsory insurance rate in fixed amount to the poor financial situation of many families, especially in the rural sector, the Parliamentary Advocates do not exclude mass imprisonment of the population based on Article 26 paragraph (5) of the Code of Administrative Contraventions.

Centre for Human Rights of Moldova addressed proposals on modifying the legislation, but taking into account the fact that the legal process needs time, it also asked the Superior Council of Magistracy to examine the possibility to intervene in order to prevent the situation of decreasing the human rights of the citizens. Superior Council of Magistracy, at its turn, addressed to the Supreme Court of Justice "to carry out a generalization of legal practice regarding this issue and depending on the results, to react accordingly'.

About 11.9% of the solicitors addressed to the Centre for Human Rights of Moldova last year to benefit from free legal consultancy. Some of them addressed with requests to fill in an application for starting legal procedures, an appeal, to represent the interests in court and are very disappointed of the impossibility to exercise the right of access to justice. The Parliamentary Advocates inform and explain periodically that within their competence they do not exercise and substitute the duties of lawyers.

The petitioners continue to invoke the quality of services provided by lawyers, refusal to grant ex officio legal assistance even in cases stipulated expressly by national legislation. Unfortunately the Bar Advocates has never answered to these notifications or requirements of Parliamentary Advocates either in this year or last years.

Being an independent law institution of civil society, the advocacy has to ensure a qualified legal assistance to physical and natural persons in order to protect their legal rights, freedoms and interests, as well as access to justice.

In the opinion of Parliamentary Advocates, the Bar Council should undertake steps to insure unconditionally the right to protection guaranteed by the Constitution conforming to the legislation in force, including Law on Parliamentary Advocates.

In 2006, the draft Law on State Legal Assistance was passed in the first hearing. It would ensure free and equal access for all persons to qualified legal assistance, especially to disfavored categories. The need of implementation an efficient mechanism on population's access to justice and free legal assistance in the Republic of Moldova has been required a long time ago, but qualitative insurance of these services will require diligence and promptitude from behalf of layers, and the state should create a proper environment and adequate remuneration. At the same time, in the opinion of Parliamentary Advocates,

the mentioned draft law consists of an extremely sophisticated mechanism, with a negative impact on set objectives.

According to Law on Parliamentary Advocates, based on the analysis of data on the infringement of constitutional rights and freedoms of citizens and on the analysis of petitions, the ombudsmen have the right to apply to the Constitutional Court seeking a ruling on the constitutionality of any laws, decisions of Parliament, Decrees of the President of the Republic of Moldova, decisions and orders of the Government, their consistency with generally accepted human rights principles and international law.

Citizens that cannot exercise their constitutional rights as a result of legislation's imperfection but have problems delegated to the Centre for Human Rights of Moldova address very often to Parliamentary Advocates hoping that these would use the above mentioned competences. But in some cases, there is no solution for the reinstatement into the infringed rights. In this context, the following should be mentioned:

According to the Supreme Law of the State, no law or other legal act that contravenes the Constitution has legal power. Laws and other normative acts adopted until 27th of August 1994 shall stay in force if they do not contravene the Constitution.

The Constitutional Court, according to Law No.317 on Constitutional Court of 13.12.1994, Article 31 par.(2), shall control the normative acts that were adopted after the adoption of Constitution, i.e. after 27th of August 1994.

Along the same line, the courts shall appreciate independently the quality of normative acts adopted before 27th of August 1994 and, when necessary, shall apply the Constitution as a legal normative act with direct action.

In situation when the normative act cannot be subject to constitutional control and the Government does not accept the suggested modifications, the court is the only possibility of setting the problem through constitutional norms.

The practice of Centre for Human Rights of Moldova shows that the courts interpret and use differently the right to apply only the legal norms to litigations settlement. Sometimes these do not examine the complaints on contestation of the constitutionality of normative acts by one of the parties; they reject them without any reasons or do not apply directly the Constitution, without presenting a reason.

The Parliamentary Advocates consider that in order to guarantee an efficient protection of human rights through legal mechanisms it should be established an efficient mechanism of excluding the application on normative acts that contravene the Constitution,

but which cannot be subject to constitutionality's control under Law on Constitutional Court, Article 31 paragraph (2).

## DETENTION

In 2006 the number of complaints addressed by detainees has grown considerably, reaching 52.6% (1008 petitioners) out of total number of petitions registered at the Centre for Human Rights of Moldova.

During the daily audience, 239 persons – ex-convicts or relatives of detainees – described detention and hygiene conditions, disapproving the court decisions.

Most complaints were received from the Penitentiary Institution No.13 Chisinau (278), Penitentiary Institution No.18 Branesti (117), Penitentiary Institution No.3 Leova (90), Penitentiary Institution No.15 Cricova (64) etc.

The increased number of complaints has motivated the Parliamentary Advocates to monitor the situation in the penitentiaries.

The following measures to reform the penitentiary system during the last 2 years have been undertaken: capital and current reparations were made in the penitentiaries, the measures of attracting the donors have been intensified, two blocks were constructed with a capacity of 100 beds each in the Penitentiary No.1 of Taraclia, a living block has been reconstructed in Rusca Penitentiary, the anti-TBT treatment has been started based on the strategy DOTS „+" in the Penitentiary No.16 Pruncul, a block with a capacity of 100 beds has been finished in the Penitentiary No.17 of Rezina, as well as the station of filtering the residual waters, medical and canteen blocks of the same hospital have been finished, medical equipment for phybrogastroscopy and encephalography has been procured, specialized literature has been also procured with the support of organizations in order to fill the libraries from the penitentiaries.

On-the-spot verifications made during the year ascertained that the detention conditions have not been improved substantially. There are serious deficiencies regarding the observance of living space norm, water and energy supply, heating during the winter. Sanitary-hygienic state is deplorable, natural illumination and air conditionings are insufficient. The humidity level is very high.

The medical assistance of the detainees is under necessary minimal level. There is an acute lack of medicine, medical equipment and qualified medical personnel. It has been registered an indifferent attitude towards the detainees' request.

It should be mentioned that this state of things is due to lack of financing.

At the request of Parliamentary Advocates, the Ministry of Finance informed that in order to achieve the objectives stipulated in the Penitentiary System Reform Concept for 2004-2013 it is necessary to attract a considerable financial support in total amount of MDL 126.9 mln. for years 2004-2006: MDL 4.2 mln, MDL 8.2 mln. and MDL 12.9 mln, respectively, while the state budgetary possibilities for this period were extremely limited.

The activity of the Department of Penitentiary Institutions was financed through State Budget Law for 2006 in the amount of MDL 93854.2 ths. with an increase of MDL 8322.5 ths compared to 2005. These means should have been managed to cover the entire financial year.

At the stage of elaborating and finalizing the Medium Term Framework Costs for 2007-2009, the Ministry of Finance suggested additional means for 2007 in the amount of MDL 6.3 for improving detention conditions.

At the request of the Ministry of Foreign Affairs and European Integration, the Ministry of Finance should examine the possibility of elaborating a plan for country penitentiary system modernization financed by Council of Europe Development Bank (CEDB), which implementation would favour the achievement of some actions for the improvement at this chapter.

While measures directed to overcome financial difficulties are undertaken, there are issues that depend on human factor – insurance of processual rights of the detainees, personnel training, and establishment of changing conditions towards the detainees.

During the systematic visits to the country penitentiaries, there were registered cases when detainees and personnel's security was jeopardized. The detainees are subject very often to abuses from the part of other detainees. Especially the humiliating treatment of some detainees generates a considerable amount of self-isolation (insurance of security at request).

It was ascertain that the detainees, who in the opinion of some collaborators create problems, are subject to pressure, physical and psychical intimidation. According to the detainees, the relations between them and guarders depend on the personal sympathy of the collaborators of penitentiary institutions. In majority of cases, the convicts who address complaints to different institutions, those that ask insistently for the observance of their

rights, persons that do not want to collaborate with the administration on the basis of information sharing are those who suffer. The detainees who are unpleasant to guards are incarcerated systematically and transferred into the category of persons with increased degree of danger. Consequently, this category of convicts cannot benefit from conditional freedom, paid salary, etc.

There are registered cases of maltreating of convicts in the penitentiary institutions. The Parliamentary Advocates investigated the case of convict P.V., who communicated immediately the violence applied by a collaborator of the penitentiary. Being on the spot, the collaborator of Centre for Human Rights of Moldova ascertain the existence of corporal injures. The Department of Penitentiary Institutions confirmed and set the circumstances of injures provocation. At his address to the Procuracy of Chisinau Municipality to research the maltreatment of convict P.V., the ombudsman was informed that no corporal injures were discovered and no maltreatment was registered and respectively there were no reasons to initiate a legal procedure against the penitentiary's collaborator.

In autumn-winter 2006, Centre for Human Rights of Moldova received 117 complaints from detainees of Penitentiary No.18 Branesti, which described the hostile relations between personnel and convicts. The same problem was mentioned during the discussions with the detainees on the spot. It was referred to the absolute lack of respect towards the detainees, artificial creation of impediments at the achievement of rights of convicts to meetings, severe sanctioning of convicts for most insignificant infringements, maltreatment and insulting of convicts, as well as other sanctions directed to situation destabilization, i.e. instigation of convicts to conflict both between them and penitentiary's personnel.

Even during the discussions between the collaborators of Centre for Human Rights of Moldova with the convicts, verbal interventions of the penitentiary's personnel had a pronounced character of disconsideration. In this sense, the Parliamentary Advocate has underlined the inadmissibility of such behavior from behalf of convicts, especially of their maltreatment.

Many detainees in disciplinary isolation expressed their disagreement with the applied disciplinary measure, this not being proportional to the infringement. At the same time, it was ascertain that the penitentiary administration doesn't observe the provisions of Article 268 par. 4 of the Code of Execution, according to which the complaint on disciplinary sanction under incarceration suspends the execution of sanction and is examined urgently. In conditions when the mechanism of examination of detainees'

complaints does not work, the non-conformation to the abovementioned requirements can be justified in certain cases. The situation of the penitentiaries is under permanent pressure and lacks efficient levers of constraints (in this case incarceration) and can generate negative consequences both for convicts and the penitentiary's personnel. Along the same line, it is necessary to undertake some urgent measures directed to the intensification of the activity of Committee for Complaints by allotting budgetary means, ensuring a headquarter, setting the working procedures and necessary equipment.

In the opinion of Parliamentary Advocates, the current structure of the Committee for Complaints, as well as its presence at the same legal address with the Ministry of Justice diminish the impartiality of this institution. Unfortunately, the opinion of Parliamentary Advocates about the structure of the Committee for Complaints has not been taken into account.

It should be mentioned that this situation in the relations between detainees and personnel is very usual in many penitentiaries from the republic.

During the examination of penitentiaries' situation, the Parliamentary Advocates shall inform the Department of Penitentiary Institutions about the discovered deficiencies by submitting proposals and recommendations on their removal.

At the notifications of Parliamentary Advocates, competent authorities, when they recognize the existence of the problem, shall present information about the undertaken measures in order to improve the detention conditions, but refer very rarely to the relation personnel-detainees. The unwillingness to recognize this existing problem brings concerns.

In this context, the Parliamentary Advocates consider that the administrations of penitentiary institutions should encourage the personnel to change their attitude towards convicts, to show trust, which will reduce not only the risk of new conflicts but also will consolidate the control and security in the penitentiaries. The issue of legal training of the penitentiary's personnel needs a special attention. It was ascertained with regret that some employees do not the provisions of the legislation in the field.

Another very important problem for the detainees is the way of privileged compensation for working days. The Centre for Human Rights of Moldova stated an absolutely different application of legal norms after the validation of Code of Execution. In some penitentiary institutions, provisions of Articles 95 and 98 (par 1) of the Labour Code are applied preferentially while calculating the working days for privileged compensation, including only the week working days (according to the privileged compensation of working days). Other penitentiary institutions apply the provisions of Article 106 of the

Labour Code and namely by including at the calculation of days (according to the privileged compensation of working days) the time actually spent by each convict, including the labour made during holidays and weekends.

Based on the provisions of Article 257 of the Code of Execution, the convicts that do not infringe the detention regime and undertake conscientiously the production volumes have real chances to be released earlier from detention. At the same time, the chances of convicts to use these facilities decrease if the administration of penitentiary institutions does not take into consideration the effective work but does it by the book observing strictly the provisions of Labour Code according to which the working time consists of 8 hours per day, 5 days per week. This situation is more complicated in the conditions when the measure of privileged compensation of working days differs considerably from institution to institution. Analyzing the situation on the spot, discussing with the collaborators of Penitentiary institutions and convicts, the Parliamentary Advocates stated that this problem is very complicated, but important and insisted on urgent elaboration of a regulation at this chapter, which would permit the unification of calculation method of the days according to the privileged compensation for worked days.

In the condition of overpopulation of penitentiaries, the employment of convicts and respectively privileged compensation of working days in accordance with a well-adjusted mechanism would encourage the convicts to have a positive behavior with eventual possibility to be released before the term set through court sentence. At the same time, the employment of good behaving convicts would serve as an example for other convicts.

The issue of guaranteeing the convicts with pensions was acute last year. In order to exclude the discrepancies that limit the guaranteed right of convicts to pensions and in order to avoid some collisions of rule of law, the Ministry of Economy and Trade supported the proposal of Parliamentary Advocates to revise the Law on State Social Insurance Pensions and Law on Pensions for Militaries and Bodyguards and Troops of Internal Bodies in order to harmonize them with the dispositions of Code of Execution. Regretfully, the draft laws elaborated by the Ministry of Health and Social Protection and Ministry of Defense have not been examined.

The Centre for Human Rights of Moldova has remarked many times that since the validation of Code of Execution, persons that exercise the sentence as freedom deprivation were deprived of the possibility to pay the material and/or moral prejudice set through court decision, because the administration of penitentiaries have no legal ground to hold the

respective amounts. This situation appears because of the fact that the executory title shall be issued to the creditor by first instance, according to provisions of Article 17, par. 1 of Code of Execution. Respectively, the executory titles are de facto with the creditors or court executors.

It should be mentioned that in order to benefit from some facilities regarding the possibility to be released or to reduce the punishment term, the convict should repair integrally the damages caused by the offence for which he/she is punished.

The abovementioned situation impedes the application of amnesty and conditional release before term.

In this context, Parliamentary Advocates proposed the revision and completion of Article 17 of Code of Execution with regulations according to which the executory title issued by the court should be transferred to ex officio execution. In April 2006, the Ministry of Justice presented to Parliamentary Advocates a draft law on the respective modification but until now the modifications were not included, a fact that do not diminish the flow of complaints from convicts.

2001 citizens were released from detention in 2006. Their social adaptation is still difficult. Due to a number of causes, the educational goal and further social reintegration are achieved only in part. In order to insure a successful social reintegration of ex-convicts, it is needed a collaboration between the socio-educational service within the penitentiary institutions and services of social reintegration (probation), which at their turn should focus on communitarian social institutions.

According to statistics, over 50% of ex-convicts commit offenses repeatedly and end up again in the detention places. These persons are very frequently in the situation when they do not have home, meal, and job and due to these they prefer to go back to the penitentiaries where they have a roof and a meal.

An important role in the achievement of the re-socialization process of the criminals has labour, moral and legal education, general training, individual work and restorative justice. Although such stipulations exist in the legal acts, their functionality is legging behind. Involving the convict in labour, as well as his general and/or professional training should be achieved only within the possibilities; human (highly qualified professional persons) and financial resources are insufficient; psychological and social assistance (very important in the re-socialization process) are at the primary level. The present mechanism

of delinquents' re-socialization doesn't ensure their re-education and reorientation to a conform behavior.

Within the reform of penitentiary system, in order to re-socialize the convicts and their preparation for an honest life in the society, the Department of Penitentiary Institution approved the Program on Preparedness for Release from Detention „PROSOCIAL" through the order No. 36 of 20.03.2006. According to this program, with 6 months before the release, the convicts are involved in different activities with the purpose to promote a correct style of life in the society, training of persons in tackling issues that appear once they are released from prison and their future successful reintegration in the society.

At present the statistics show that the Department of Penitentiary Institutions registers minimal results because other institutions block the reintegration of ex-convicts in the society. The economic agents and employment agencies are very often reticent when employing persons with criminal record.

However, according to data offered by the National Agency for Employment, in 2006, the territorial agencies for employment registered 220 persons released from detention, including 14 women. The territorial agencies employed 61 persons, out of which 11 women and the persons who couldn't employ after detention benefited from allowances for integration and professional reintegration.

According to the director of one of the territorial agencies for employment, 29 persons that served their sentence and were registered at Employment Agency received monthly indemnities. Unfortunately, only two persons were employed out of 29. Most ex-convicts are waiting for 2-3 months and then they disappear without any explanation. Although many persons from this category have average and sometimes high studies most economic agents do not want to employ them.

The Republic of Moldova registers community's indifference towards penal reform. The mass media approaches very vaguely the problem of re-socialization; there are no activities of promoting the communitarian interest to find efficient solutions at this chapter. Social re-integration of convicts can be considered a more complex component because the social statute of the reintegrated person depends on its success.

In other words, along the establishment of imprisonment conditions of convicts, in accordance with the provisions of Minimal Standard of Detention, the issues of employees of penitentiary system also need State's attention.

A priority condition for overcoming the difficulties faced by the penitentiary system would be the multilateral settlement of personnel's problems.

In the opinion of some heads of penitentiaries, non objective treatment of the issues of penitentiary system by press and electronic mass media leads to the formation of an wrong opinion and creation of a negative image of the activity of entire system, in general and of personnel, in particular.

According to data of the Department of Penitentiary Institutions, only about 20% of collaborators of penitentiary system are insured with living space, the majority of personnel being forced to rent apartments. A big number of the collaborators of penitentiary system live in other localities and their commuting to work needs considerable transport expenses. The provisions of Law on Penitentiary System according to which the collaborators that do not have living space have the right to refund the costs for renting are not observed. This situation generates the personnel fluctuation. At the moment, there are 123 vacancies for officers and 276 vacancies for sub-officer.

Another case of the personnel deficit would be the instable emotive-psychologist environment, permanent contact with HIV, TBT and other diseases infected detainees. Thus, during 2005 and 2006 there were registered 12 and respectively 9 consecutive cases of TBT infection of collaborators of penitentiaries, including women. In order to avoid the infection of the personnel, the following measures has been undertaken lately to redress the situation: the air-conditioning systems with negative pressure have been installed in Penitentiary No. 13 Chisinau and Penitentiary No. 16 Pruncul; the works regarding the planning of air-conditioning system in the medical unit of the Penitentiary No.17 Rezina have been finished; bactericide lamps have been installed in the penitentiary hospitals and criminal investigation isolators; vacuum and individual protection masks have been distributed.

Some penitentiaries forwarded the information that during the searching procedures no protection measures have been used to minimize the risk of infections (leather or latex gloves, masks). The cause is the insufficiency of financial means.

Being placed on the territory of Transnistria and unwilling to collaborate with local authorities, the Penitentiary institutions from Bender are in a very critical situation. Alongside with the problems of living space insurance and increased number of employees infected with TBT, the penitentiary No. 8 is disconnected from the central electricity, heating, water supply and canalization.

During their day-to-day activity, the collaborators of penitentiaries are subject to the danger to be aggressed by convicts. Such cases exist, but most of them are not mentioned. The lack of special equipment and connection sources during the service can increase the

danger. At the moment, the only security measure for the collaborators of penitentiary system is the protection of data on their residence.

In this context, it is imposed the need to equip the penitentiaries with modern means of surveillance of the detainees and discovery of the prohibited objects and substances.

During 2006, the Parliamentary Advocates tried hardly to solve the issue of recalculating the pensions for the pensioners of the Ministry of Domestic affairs, ex-collaborators of penitentiary institutions who activated in the penitentiary system until 28.12.1995, when the Direction of penitentiary institutions was transferred under the Ministry of Justice.

Taking into account that the salaries in the ministries are different, respectively the amount of recalculated pensions for the pensioners of the ministers is different. Ex-collaborators of penitentiary system, who benefited from pensions until 1996 in the amount of 420 persons are at a lower social protection level as compared to ex-collaborators of penitentiary system that benefited from pensions within the Ministry of Justice. This problem was solved after a more than one year of common collaboration through the Government Decision No.1486 of 27 December 2006.

Once the Law No. 355 of 23.12.2005 on the Salary System of Budgetary Sector has entered into force, the problem of salary for civil employees form penitentiary system has become very acute. The addresses collected by the Centre for Human Rights of Moldova and Government of the Republic of Moldova, as well as information offered by the directors of penitentiary institutions show that the salary of this category of employees has been considerably diminished. Contrary to the Law No.355 on the Payment of Wage Differences in cases when after the application of this law, the main salaries, including the bonuses and supplements, will be smaller than the previous, the calculation and payment of difference wasn't made in 2006. In the conditions when the penitentiary system lacks specialists, especially doctors, teachers, qualified psychologists, the problem of adequate payment of civil employees are especially important.

The inadequate imprisonment conditions – overcrowded, unsatisfied sanitary-hygienically conditions, malnutrition, and unsatisfactory medical assistance were problems addressed to the Centre for Human Rights of Moldova by the detainees in 2006. Many petitions received at this chapter stipulated the inadequate behavior of collaborators and administration of these institutions.

The situation from the preventive detention isolators placed within the raion police station and that of Chisinau Municipality was a subject addressed by Parliamentary Advocates in the previous years.

In 2004 the situation at this chapter was examined and synthesized in the Report on the Observance of and Insurance with Rights to Physical and Mental Integrity, to Freedom and Security in the Preventive Detention Isolators within the Ministry of Domestic Affairs of the Republic of Moldova" elaborated and presented in the Parliament.

During 2005, the Parliamentary Advocates notified the Ministry of Internal Affairs about the cases of infringing the rights of detainees in the isolators of Hincesti, Comrat and Cahul.

In the same year, the Parliamentary Advocates made on the spot verifications in the temporary detention isolators of Orhei, Calarasi, Anenii Noi, and Causeni. Although the situation has been slightly improved during the last two years: establishment of natural illumination, small reparations, air-conditioning, walking yards, etc., however, there is no isolator at present that corresponds to the minimal standards of detention. The main vulnerable points, usual for most isolators from the republic, are the lack or quality of drinking water, condition of sanitary blocks, lack of mattresses and bedclothes, and sanitary rooms.

Alongside with the irregularities of detention conditions, there were registered cases of interrogation within the criminal cases during the execution of sentence as administrative arrest.

The offenders declare that they were not informed about the reasons of being arrested, including the right to have a defender and to appeal the court decision.

The detainees mention in the discussions that they are maltreated by the policemen during the arrest, they are accused with crimes they didn't committed but under physical and mental pressure, they are forced to admit. The violent actions are committed very often to persons previously accused, suspected of committing crimes.

Lack of libraries or at least Criminal Code, Code of Criminal Procedure and Code of Administrative Contraventions, lack of radio and everyday press is an infringement of Minimal Standards of Detention and does not allow the exercise of rights to information and defence. In these conditions, the exercise of detainees' rights depends on discreet behavior of criminal investigation and justice.

While being under police custody, the detainees don't have possibility to fill in complaints because they are banned to do this. If the person doesn't have a lawyer, he/she

cannot prove the application of torture because the visible sighs of violence disappear before he/she is transferred to the penitentiary and some doctors of penitentiary institutions are not willing to examine objectively the detainee's state and to register the discovered injures.

Examination of these petitions is extremely difficult and doesn't show any anticipated results form many reasons. The Parliamentary Advocates consider that the torture is indirectly encouraged by the deprivation of detainees of the right to medical check-up after the imprisonment in the isolators. These persons are practically deprived of the possibility to prove the maltreatment by the policemen, despite the fact that according to international norms, namely the authority holding the custody should prove the lack of torture. Some preliminary investigative judges, who are mostly ex prosecutors or policemen, dissimulate on purpose the maltreating cases by not-examining the health of detainees brought before court.

In most cases, the petitioners address to Centre for Human Rights of Moldova too late after the event, in other cases the notifications and notes of Parliamentary Advocates are examined formally or even are totally ignored by the police stations or MIA.

Thus, many addresses were submitted to the Ministry of Internal Affairs, which requested the examination of facts mentioned by the petitioners or instituting an internal investigation. The ministry either doesn't answer to the complaints or answer that the 'facts have not been proved', 'no infringements or derivations from the legislation currently in force committed by the policemen have been stated'. Despite these kinds of answers, there were registered cases when at the request of Parliamentary Advocates, the Procuracy General has started or reopened the criminal investigation against the police collaborators. In some cases the Procuracy haven't implied on principle in the examination of invoked circumstance.

The attitude of MIA towards the maltreating cases, especially when these cases are supported with medical certificates or medical-legal expertise tests is very concerning. Centre for Human Rights of Moldova registered some complaints on cruel maltreating of policemen by enclosing the respective confirmations. Regretfully, the Ministry of Internal Affairs has not reacted promptly in these cases (petitions of citizens F.; G. etc.).

A classical case is that of detaining some citizens of Edinet town in the preventive detention isolator of the General Police Commissariat without being charged with anything during several days in order to get the information about the location of their relative, who was suspected of murder.

Although the Parliamentary Advocates submitted the respective information to authorized authorities, and the case has been also discussed in republican press, there was no reaction of responsible institution.

There are registered cases when the citizens address Parliamentary Advocates applications on repealing the complaints requesting the canceling of investigation due to intimidation from the police.

The existence of torture phenomena in the Republic of Moldova was ascertained at state level and the issues of observing the legal provisions in the activity of criminal prosecution to prevent and fight torture phenomena, observance the legislation on fundamental human rights while applying the processual measures of constraints – holding and preventive arrest – are being appreciated as unsatisfactory.

Although, the European Commission Report on European Union – Moldova Action Plan stipulates that "maltreating of persons under police custody still remains a major problem being aggravated by the increased number of addresses as a result of unsuccessful use of methods alternative to preventive arrest and also because of salary and remuneration system of policemen based on the number of solved crimes".

The analysis of criminal causes instrumented by the prosecutors towards the police collaborators has shown that they admit actions that are beyond their rights and duties, they unfounded use force and violence, torture the arrested persons on the following bases: finding out the evidence through illegal methods; showing their superiority towards the victims of their actions and ignoring the general behaving rules; abusive and wrong application of legislation and duties; other mean reasons.

Procuracy General has registered cases when the suspected persons were set up with administrative files to force the court to apply the administrative arrest, a fact that increases the possibility of applying the illegal methods and pressure on persons in order to declare guilty of charge.

The cases on the admission of power abuse or torture by the collaborators of MIA investigated by the Procuracy do not reflect generally de facto situation, especially during the application of processual measures of constraints – detaining and preventive arrest.

The addresses of citizens to Centre for Human Rights of Moldova refer to abusive actions of policemen, force application and maltreating. The Parliamentary Advocates consider that due to lack of some attitude towards the torture phenomena within the prosecution bodies, this shall not be addressed and respectively the infringement of

citizens' rights would continue and the number of addresses to the European Court for Human Rights would increase.

It is imposed as well the speeding-up of some issues among which the transmission of temporary detention isolators from the subordination of Ministry of Internal Affairs under the subordination of Ministry of Justice; establishment of mechanism of independent compulsory medical check-up of persons brought into the preventive detention isolators; more exigent selection of personnel in order to exclude the employment of law-educated and irresponsible persons in the Ministry of Internal Affairs; modification of professional training programs of the police collaborators and personnel of temporary detention isolators in order to decrease the percentage of application of methods forbidden by the investigation and shaping their behavior towards the observance of detainees' rights and their human dignity; reintroduction of assistant witness during the criminal investigation.

It would be welcomed if the electronic and written mass-media institutes permanent headings that would approach the torture phenomenon.

Alongside with the infringement of the right to physical and mental integrity, individual freedom and personal security, non-observance of presumption of innocence had become regretfully very wide phenomena. The observance of this principle faces serious difficulties in the Republic of Moldova.

Broadcasting the press-releases of criminal persecution, which show openly the identity of arrested person at the national TV and the mass media has become normal. The arrest of some persons is transformed sometimes in sensational events when it is made by a big number of armed collaborators of criminal investigation bodies.

In other words, TV channels never broadcast information about the termination of criminal investigation or citizens' discharging, players of events broadcasted before.

It should be mentioned that the Parliamentary Advocates have address since 2004 to the directors of TV channels of the Republic invoking the forbiddance of broadcasting the information in the form that influences the observance of constitutional right of the person, particularly, presumption of innocence guaranteed by the Supreme Law of the State and international acts to which the Republic of Moldova is a Party. Regretfully, the situation is the same and the phenomenon has increased.

The ombudsmen appealed to the Coordinating Council of Audiovisual in its quality as responsible authority for the implementation and observance of Code of Audiovisual and warrant of the protection of public interest in the field of audiovisual communication to react promptly in the notified situations.

As a part of monitoring activity of state institutions for socio-vulnerable persons, Parliamentary Advocates checked the detention conditions at the Shelter for Homeless Persons and Beggars of the General Police Commissariat of Chisinau Municipality.

The Shelter having a legal statute as specialized institutions has been active on the basis of a regulation approved by the General Police Commissariat of Chisinau Municipality on 15.09.2005 as a structure of the Ministry of Internal Affairs. Based on the provisions of the regulation, the shelter detainees also citizens of the Republic of Moldova, who are beggars or homeless, as well as persons without identity apart from foreign citizens, who are illegal residents on the territory of the Republic of Moldova. The placement of Moldovan citizens in the shelter is done without their permission or agreement, these being arrested during control raids of public places, including streets, basements, thermal networks, roofs by the policemen.

As a result of the undertaken control, there were discovered many deficiencies and gaps in the activity of this unit, including normative and institutional-organizational lacunas that have a negative impact on the detainees.

In order to conclude we would like to stress that the detention conditions of the Shelter are more inferior then the Minimum Detention Standards approved by UNO in 1955 and can be qualified as inhuman and degrading treatment. The detainees are kept in these conditions for days being deprived from freedom for homelessness and beggaring or lack of identity cards facts that are not administrative offences or crimes.

The placement of persons in the Shelter is made on the basis of the Decision on administrative arrest made according to Article 13 par. (7) of Police Law and based on the report of police collaborator who arrested the respective person approved by the Chief of the Shelter. The arrest for a period less than 10 days is sanctioned by the prosecutor of Chisinau Municipality in accordance with Article 249 par. (1) of Code on Administrative Contraventions.

According to the Register of Persons placed in the shelter, it holds daily many persons, some of them being placed repeatedly.

The existent legal framework doesn't stipulate regulations at this chapter, therefore, the isolation of citizens in the Shelter is a flagrant infringement of fundamental human rights and freedoms stipulated in Articles 24, 25, 27, 28 of the Constitution of the Republic of Moldova and Articles 3, 5, 8, and Article 2 of the Protocol No.4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Parliamentary Advocates stated that the Shelter for Homeless Persons and Beggars is used sometimes by the prosecution units as place for detaining suspects of crimes when they don't have an arrest mandate issued by the prosecution judge. The arrested citizens are transported in the boots and transmitted to collaborators on receipts. Centre for Human Rights of Moldova informed the authorized bodies repeatedly about these infringements but it still continues to receive petitions from citizens.

In the opinion of Parliamentary Advocates, it is necessary to change the situation by regulating the activities of these institutions through law offering them a new conceptual statute – Shelter based on the principle of free agreement.

These persons need effective support from the state, assistance at obtaining the identity cards, socio-psychological assistance, training or professional reorientation, and support at employment.

While examining the problems regarding the Shelter, the Ministry of Internal Affairs submitted to the Parliamentary Commission for Human Rights the information about the structure of personnel, Shelter's capacity, procedure of placement the arrested persons and has invoked the need to transfer the Shelter for Homeless Persons and Beggars under the Ministry of Justice.

Parliamentary Advocates consider this decision as undesirable taking into account that these citizens cannot be treated as criminals or offenders. In this context, the personnel of these institutions should not be military, a fact that cannot be excluded when transmitting the Shelter under the Ministry of Justice.

In Parliamentary Advocates' opinion, more rational placement of this institution would be the Ministry of Social Protection, Family and Child but taking into account the opportunity of pluridimensional service of this category of citizens, the best choice would be the transmission under the local public authority with state budget support.

## FREEDOM OF MEETING, OPINION AND EXPRESSION

The Parliamentary Advocates were informed during the last two years about the infringement of some rights and freedoms which haven't been invoked previously – freedom of conscience, freedom of opinion and expression, freedom of meeting – that is a guarantee of political pluralism, an evidence of democratic character of the state.

It should be mentioned that the opinion is not expressed only through mass information campaigns but also through meetings, demonstrations, other procedures and manifestations. People have the need to meet together to share their opinions, to express their individual and collective attitude towards certain problems they face or that are stringent in the society in order to make more sensible the public opinion and authorities, to protect and support the social initiatives, etc.

The resonance of this issue, as well as the main significance of the right to free meeting in establishing a democratic community has determined the Parliamentary Advocates to investigate how to observe and ensure freedom of meetings in the Republic of Moldova.

While monitoring the situation on observance the freedom of meeting, the previous declarations on holding meetings submitted to the Mayoralty of Chisinau Municipality, Comrat, Cahul and Balts Town Halls have been systematized; some files examined by the Appeal Court of Chisinau regarding the rejection of issuing the permission to meeting by the local public administration have been studied.

It was ascertained that the number of previous declarations on meeting submitted to Chisinau Mayoralty has increased lately considerably.

Although certain progress has been registered, the establishment of state of things at this chapter is far from being satisfactory taking into account the restrictions on exercising the freedom of meetings by the local public authorities, which actually manage the exercise of this constitutional right.

These examinations have stressed out some gaps and imperfections of the legislation in force, cases of applying the legal norms which in the opinion of Parliamentary Advocates infringe de facto exercise of freedom of meetings.

Although the law stipulates expressly cases that do not authorize the manifestations, public authorities refuse often to authorize the meetings by invoking subjective excuses

such as: neglecting the term for submission the previous application; the required place is already given to other meeting; central authorities plan to organize meetings in the same period; the claims are already satisfied through the adoption of an administrative act; peaceful organization of the meeting are not satisfied; the need to organize the meeting is not justified; etc.

A large number of reasons for rejecting the authorization of meetings invoked by Chisinau Municipality have no legal support. According to the provisions of Law No.560 on Organization and Running the Meetings, 'decision on the rejection to issue the authorization for meeting should be well grounded'. Contrary to these requirements, most refusals to issue an authorization are based on the listing of articles of Law No.560 without any argumentation.

Although the Constitution of the Republic of Moldova guarantees expressly the freedom of meeting, it is obvious the dependence of the organizer on the discretional behavior of local public administration's representative, especially, when the preliminary declarations on the organization of some meetings that refers implicitly to the activity of the local public administration are examined.

It should be mentioned that the authorization regime of meetings stipulated by the legislation in force allows any meeting with a 15-days notification, a fact that excludes the organization of spontaneous meetings. The procedure of obtaining the authorization is very difficult contrary to the mechanism of simple information on the intention to organize a meeting stipulated by the international standards.

There are cases mentioned in the mass-media regarding the excess of duties by the police collaborators who interfere abusively in the exercise of freedom of meeting. There are registered cases when the police collaborators undertake ungrounded drastic actions (for example, for administrative arrest of participants in the meeting), ignoring the provisions of Article 23 of Law on Organization and Running Meetings, according to which the police decisional units can intervene only in cases when the meeting lose the peaceful and civilized character.

At this chapter, the Parliamentary Advocates state that the legislation in force which regulates the way of organizing and running the meetings is not known and observed in the Republic of Moldova; the legislation is old and it is imposed the elaboration of a new legal act in the field; local public administration entities are vested actually with practicing the justice being authorized with the right to appreciate the solidity of evidence to authorize or refuse the meeting; there are no clear and transparent regulations that would ensure the predictable way of police acting during the organization of meetings.

In order to guarantee the exercise of the right to peaceful meetings it is opportune the elaboration of a new law draft on the organization and running of meetings, according to unanimously recognized international and regional standards, including the OSCE principles regarding the freedom of meeting by initiating an exchange of opinions regarding this chapter and previous consulting of the civil society. The democratic solutions will contribute beneficially to the maturity level of the society.

The observance of human rights and legality is an inherent condition for rule of law consolidation, prevention of abuses, consolidation of justice spirit both in the conscience of authorization and each citizen. Among the fundamental rights of the citizen, the freedom of expression and opinion has a special relevance because without these the democracy has no success. This fact should motivate the special approach of problems that can infringe this right.

According to Article 32 of the Constitution, all citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible. Likewise shall be forbidden and prosecuted the investigations to sedition, war, aggression, ethnic, racial or religious hatred, the incitement to discrimination, territorial separatism, public violence or other actions threatening constitutional order.

The examination of some cases at this chapter, especially that of citizen N. who staked out the premises of an institution within the central public administration, forced the Parliamentary Advocates to conclude on the observance of constitutional right to freedom of opinion and expression in the Republic of Moldova.

According to the legislation in force, the police collaborators has the objective to protect the honour, dignity, rights, freedoms, interests of citizens; to organize their activity on the legality, humanity and social equity principles. No restrictions of the citizens' rights and freedoms are admitted, except for the way and method set by the legislation. Citizens have the rights to receive explanations on the restrictions of their rights and freedoms from the police collaborators.

Contrary to legal norms, the policemen show an uncivilized behavior, they do not rush to present themselves, to inform the person about the grounds of the intervention, etc. In the best case, they inform the citizen that he/she has no right to protest and require the authorization for meting issued by the Chisinau Municipality, after which they hold the persons and bring them to the police, where fill in police records for committing administrative contraventions (ill-will insubordination to the legal decision or requirement

of the police collaborator; infringement of the legislation regarding the organization and running of meetings; resistance to the policemen; insulting the police collaborator; etc.).

The investigations show that in these situations the policemen have no reprimands regarding their behavior; they use insulting words and apply physical force. The citizens are detained in temporary detention isolators for many hours or even days before they are brought before court. Sometime, the court examines superficially the materials by applying administrative punishment and not setting the circumstances and person's guilty, by not ensuring the right to defence.

The reference of public order bodies to the Law on Organization and Running of Meetings has no relevance, because the actions of the person who stake out by herself are not falling under the incidence of this law, because it doesn't regulate the uni-personal organization of protest actions.

Before approaching the person who stake out by herself, the policeman should have determined if through its actions, the person defamed the state or instigated to war, aggression, etc., all these being registered and submitted further to court as evidence. If these circumstances are missing, the approach of that person by the policemen lacks any legal ground, because it is not the case of a meeting stipulated in Article 40 of the Constitution with all respective procedures and consequences stipulated by law. In these cases, the person is protected by constitutional norms that guarantee the freedom of expression and freedom of movement – Articles 27, 32 of the Constitution.

The arrest in these cases and holding in temporary detention isolators infringe the rights guaranteed by the Constitution of the Republic of Moldova, European Convention for the Protection of Human Rights and Fundamental Freedoms and Universal Declaration of Human Rights and is in the opinion of Parliamentary Advocates, abusive actions liable to criminal responsibility which at the moment are not covered by the legal bodies.

As an example of infringement of constitutional right to freedom of expression and opinion is the case of pupil C. investigated by Parliamentary Advocates, who is a collaborator at „Asta-DA" youth newspaper and who during the opinion poll on the introduction of the subject Integrated history has initiated the inquiry of 6-12 forms pupils of the lyceum. The young lady was invited to the Raion Direction of Education of Causeni and threaten with expulsion because as she was told such actions contravene the lyceum's regulation.

During the on-spot examination, it was ascertained that the pupil still study in that lyceum, and the expulsion problem has not been discussed by the lyceum, this being just an unreasonable action of intimidation of the inspector of Direction of Education.

According to the findings, it was stated a situation which resulted from the unjustified behavior of the collaborator of the direction, which contravene generally-accepted principles necessary into a democratic society. Expressing their profound indignation on the action method of raion educational authorities, the Parliamentary Advocates have appreciated the abovementioned as over-zealous, assumption of some duties that exceed the competences stipulated by the legislation in force, actions that influenced negatively the pupils having stressing consequences especially on the pupil C.

Parliamentary Advocates notified the Education Direction of Causeni for future exclusion of similar situations that would diminish children's rights of freedom of expression, freedom to information and exercise of other fundamental rights and freedoms.

In the Progress Report for Moldova, a document that underlines the opinion of European Commission regarding the way how Moldova has succeed to honour during February 2005-November 2006 the commitments assumed under EU-Moldova Action Plan, among which there are efficient exercise of human rights, including the improvement of situation on freedom of mass media, these problems being on the top of the list.

In the activity directed to fulfilling the needs of citizens to access to information, freedom of opinion and expression – fundamental rights and freedoms guaranteed by the Constitution of the Republic of Moldova – broadcasting should contribute to "… ensuring the political and social pluralism, cultural, language and religion, information, education and public's diversification…" as indispensable factors in the democratization process of the society. At their turn, state authorities should ensure the broadcasting with adequate conditions for proper functioning in order to exercise the guaranteed rights and freedoms of the citizens.

The Audiovisual Code was adopted in 2006 but it has brought controversial discussions and appreciations from behalf of local and international experts before its adoption.

In the opinion of some international experts, the Audiovisual Code has many positive elements but it has also gaps which are as follows: excessive tendency to control politically the radio-television public service; appointment system of Coordinator Council of Audiovisual; lack of local public institutions of audiovisual; etc.

Some national experts in the field of mass-media consider that while elaborating and promoting the Audiovisual Code, the police maker has not collaborated with civil society, has not taken into account the recommendations submitted in the institutional aspect and especially in the attitude towards the local public audiovisual.

Parliamentary Advocates share the viewpoint of those that consider that the exclusion of local public broadcasts is a regressive step and thus, regrettable.

In order to achieve the provisions of Audiovisual Code, there were opened municipal stations Antena C and Euro TV, which as well have brought contradictory opinions and appreciations. The respective municipal stations were repeatedly accused by some policy makers who have an editorial policy for certain persons (lacking such contestations from the part of authorized body – CCA); a fact that has influenced the opinion that namely this was the main cause not to include the local public broadcast in the law. Parliamentary Advocates consider that neither the authors of the draft law nor the policy maker or the executive explained clearly the reasons for renouncing to local public broadcasts.

In the opinion of Parliamentary Advocates, the activity of local public broadcasts is an additional source of information of the population and their lack cannot be qualified as a positive factor in ensuring the constitutional right of citizens to information and expression. In the situation when the mass media market of the Republic of Moldova cannot offer yet an alternative to local public broadcasts, the state shall ensure conditions for the achievement of constitutional right to information.

The Law on Completing Article 16 of Civil Code was adopted in the same period, which has specified the appreciation criteria of quantum of moral prejudice caused as a result of information broadcasting. The legal norm doesn't set the maximum reimbursement, vesting the court with this authority, a principle that is not supported by affirmations and conclusions of many representatives of associative sector, especially by those who promote the free access to information, freedom of opinion and expression.

Parliamentary Advocates agree that the norm in its current adopted ratification is democratic but taking into account the presumption that our society is only at the beginning of the democratization consolidation, there is also the danger of applying some sanctions to mass media institution for materials with critical context or value analysis, which could lead at their insolvency. The practice of last years confirms these concerns.

Freedom House Study shows inter alia that the freedom of the press in Moldova is unsatisfactory. The Republic of Moldova places on 146 place in the top of freedom of the press.

## PRIVATE PROPERTY

Serious infringement of the property right has continued in the previous year. By the end of 2006, the Republic of Moldova has undergone 24 sentences at ECHR for infringing this right.

European Convention on Human Rights guarantees the property right because the right to dispose of personal belongings is a fundamental traditional element of the property right. In order to be harmonized with ECHR, the deprivation of property should have a public utility purpose and should observe the conditions stipulated by the law and general principles of the international law.

In the Republic of Moldova, the property right and its protection are guaranteed by the Constitution.

In this context, the current method of paying the indexation for money deposits of the citizens to Bank of Savings can be considered an infringement of guaranteed right and doesn't correspond totally to the concept of European right on property regime and constitutional requirements.

Generalizing the petitions regarding the indexation of money deposited in the Bank of Savings, the Parliamentary Advocates submitted in 2004 suggestions to operate modifications in the Regulation on Indexation and Way of Paying the Indexation for Money Deposited into the Bank of Savings, according to which the elder persons would benefit from the integral indexation of money deposits.

Knowing the need for creating the necessary conditions for increasing the living standard of citizens, including of elders who enjoy all human rights to the same extent as all members of the society, the Parliament of the Republic of Moldova has submitted at the end of 2006 the draft law on Completing Article 5 of Law No.1530 of 12.12.2002 on Money Indexation of Citizens Deposited in the Bank of Savings, according to which the depositors who reached the age of 90 years have the right to integral reimbursement of money.

Without doubts, the suggested changes will have a positive effect on elder depositors, who are still alive.

At the same time, according to Global Human Development Report for 2006 presented on 9$^{th}$ November 2006 in Chisinau by UNDP, the Republic of Moldova has a life expectancy of 68.1 years. Poverty and low quality of main social services, families with only one parent and elders are the causes of high mortality rate. In this context,

Parliamentary Advocates insist to take into account the life expectancy of the citizens of the Republic of Moldova while discussing the modifications planed by the policy maker.

Another aspect of ensuring the observance of the property right and its protection is the indexation of money deposits of foreign citizens (ex-citizens of the Republic of Moldova) in the Bank of Savings.

Law on Indexation of Money Deposits of Citizens to Bank of Savings No. 1530 of 12.12.2002 stipulates State's obligations towards the citizens of the Republic of Moldova as for January 2, 1992 and sets main principles on indexation, quantum and payment method of indexed amounts. Article 2 of the abovementioned law stipulates expressly the indexation of money deposits for citizens of the Republic of Moldova.

Infringement of property right was invoked by ex-citizens of the Republic of Moldova, who benefited from the indexation and who obtained the citizenship of other state and cannot benefit from the payment of indexed amount due to existence of provisions of law No.1530, which stipulates expressly that only the citizens of the Republic of Moldova are subjects of the law.

In this situation, the citizens who benefit from indexation and who lived and worked on the territory of the Republic of Moldova but have become citizens of other states during the last years are deprived of the possibility to enjoy the money deposited in the Bank of Savings, being thus, deprived of the property right guaranteed by the Constitution.

In this context, the Parliamentary Advocates consider necessary the modification of Law No.1530 of 12.12.2002 on Indexation of Money Deposited in the Bank of Savings, according to which the citizens who got the citizenship of other state (beneficiaries of indexation) can benefit as well from the integral indexation of money deposits.

In the addresses to Parliamentary Advocates, the citizens describe the problem of incommodities created due to the placement of different services at the basement of living premises, in the adapted spaces, which initial destination was the living space. The problem is mentioned mostly by the residents of Chisinau Municipality. The Institution of Parliamentary Advocates has investigated some cases on the legality of organizing gyms, tailor's, cafes, etc. at the basement of premises requesting in case of need the contest of local administration, police station, Fire Department, Centre of Preventive Medicine. It should be mentioned that except for local administration, there were some interventions within the vested authority setting infringements and sanctioning the guilty persons.

A separate situation was registered in the activity of local administrations that do not exercise the efficient control on the ways of changing the destination of premises and as

a result of addresses of Parliamentary Advocates, do not undertake measures necessary to set the conflicts between the tenants and owners of commercial spaces. Especially, it should be mentioned the local administration of Botanica sector.

The office and living premises construction has been increased during the last years. Every commercial society that starts the construction wishes for a certainty to receive land plots in the Chisinau Municipality or in other sectors of the city for an increased interest for the city.

The population receives without doubt alternatives for solving the living space problems through the construction of new living premises. At the same time, the insurance with living space of one category of citizens is made in the detriment of other category of citizens. There are frequent cases when the construction starts in the yards of living blocks, on the playing grounds, by destroying or removing the green spaces around the buildings, by cutting the trees and limiting the access to yards. In some cases, after the intervention of Parliamentary Advocates and implication of responsible bodies, the constructions were stopped.

The number of addresses that invoke the problems regarding the unauthorized construction and lack of strictness control has increased. Natural persons start the construction without having the necessary acts, including the construction authorizations and execution plans, creating thus, impediments and incommodities to neighbors. In many cases the local public authorities don't want to intervene in settling these kinds of problems or their interventions have no effect on the conflict settlement.

Another aspect of this problem is the beginning of constructions without the preliminary consulting of citizens that live in the neighboring buildings. However, there is a number of normative acts at this chapter that regulates the consulting procedure of the population in the process of elaboration and approval of documents on territory and urban planning: Law on Urban and Territory Planning Principles, Government Decision No. 360 of 18.04.1997 on the approval of Regulation on Urban Certificate and Construction Authorization or Construction and Territorial Planning Abolition, Government Decision No.951 of 14.10.1997 on approval of Regulation on Consulting the Population while elaborating and approving the documents on urban and territory planning. According to thee normative acts, the responsibility for consulting the population lays on local public authorities vested with the approval of the respective package of documents. These issues are settled by the Mayoralty of Chisinau Municipality.

Another issue mentioned by the petitioners refers to the way of giving the land plots for construction of tenement-houses, which are not premises, transferal of land plots afferent to building in the urban area into private property.

According to Article 8 of the Regulation on the Way of Transmitting of Land Plots Afferent to Building in the Urban Area into Private Property when the tenement is being under common property, local public administration will transfer the land plot into the common property by mentioning the ideal share of each owner, which is proportional to the shares on tenant. The issue arises when the owners of plots want to privatize or require the authorities of public administration to transfer them into private property for which is necessary the approval of neighbors notary certified. Since no normative act in force consists of express regulations at this chapter, the Mayoralty of Chisinau Municipality proceeds differently in different cases – sometimes the construction certificates are issued without the notary approval of neighbors, sometimes – only with the consent of neighbors. Mayoralty of Chisinau Municipality practices the authorization of construction without taking into account the neighboring right and observance of minimal distances towards the neighbor properties. Thee operations generate frequently disputes between citizens.

In order to start a new construction it is usually necessary to demolish some private properties of citizens or of municipal property. The compensation offered by commercial societies to citizens whose property would be expropriated, in these cases, is net inferior to the prices on real estate market. There are cases when the agreement of citizens to move to another living space is obtained through intimidations and frightening.

The situation is more complicated when the citizens are evacuated from the municipal property. In these cases, the Mayoralty of Chisinau Municipality adopts decisions on renting certain spaces to commercial firms that are obliged to provide the tenants with living spaces in accordance with the Code on Tenants.

As per all notifications of Parliamentary Advocates on these issues, the Mayoralty of Chisinau Municipality informs that the obligation to ensure with living space the citizens who are going to be evacuated is vested with the tenants omitting the own responsibility to ensure the control of fulfilling the adopted decisions.

Lack of any control at this chapter of the Mayoralty of Chisinau Municipality generates numerous litigations between citizens and commercial societies that received certain spaces. There were registered cases when citizens were left without anything, a well-known phenomena for Rascani sector of the capital.

Once the new security rules on removing the risk of liquid explosive transportation in force since November 6, 2006 for all passengers who departure from EU airports have been introduced, the quantity of liquids that can be transported through the border has been limited. But these norms do not limit the quantities of liquids that can be procured from the overseas shops and packed in transparent plastic bags with opening/closing element.

Although the Republic of Moldova doesn't fall under the incidence of these rules, the passengers that departure from Chisinau airport with stopover in EU countries should conform to the abovementioned requirements. According to the addresses received by the Centre for Human Rights of Moldova results that the liquid goods, which are not packed in the plastic transparent bags, procured by the passengers in the free trade zone of Chisinau Airport, shall be confiscated in the stopover airports.

Taking into account that the majority of international routs from Chisinau Airport are made with stopover in European airports, respectively, the number of passengers that could suffer is quite large.

In this situation, Parliamentary Advocates have noticed an infringement of property right that could be avoided on the condition when duty-free shops would pack the liquids according to European Union's requirements and have requested the Ministry of Economy and Trade, State Company International Chisinau Airport and duty-free operators in International Chisinau Airport to undertake urgent measures that would protect citizens' property.

The Parliamentary Advocates were informed that the new rules on liquids transportation would have a compulsory character for International Chisinau Airport since 1 March 2007 and the duty-free operators shall conform to.

Reimbursing the worth of goods of political repression victims is still an acute issue of deported persons. In the addresses to the Parliamentary Advocates, the petitioners claim the non-execution of court decisions on the compensation of confiscated properties. During the examination of this category of petitions, it was ascertained that the execution of court decision is impossible because the local budgets have no financial cover.

Although there were adopted modifications to the Law on the Rehabilitation of Political Repression Victims that foresee the cession of properties and compensation of property value that cannot be done by supporting the costs from the local and state budgets, Parliamentary Advocates consider that these will not function adequately and promptly because of the austerity of local budgets and lack of respective mechanism. It should be

mentioned that Republic of Moldova was sentenced several times at ECHR for non-executing the decisions of property concession of repressed persons.

Another irremediable situation is that of persons that cannot present documents attesting the confiscation, nationalization of goods or their withdrawal from possession due to archives devastation and lack of other legal evidence.

For example, there is no possibility to restore the documents on patrimony registration for those that had properties in Pererita and Cocieri villages, because the archives were destroyed in fire in '50-60 of last century. It might be a similar problem in other localities of the Republic of Moldova.

From the addresses received by the Centre for Human Rights of Moldova from rural localities, we can state that there are some infringements at the chapter of offering land plots to the new families from the state reserves for construction, annexes and gardening.

Town halls refuse to offer land plots for house construction for remarried citizens.

The refusal is made on the basis of "new family" definition interpreted by Legal Commission for Appointments and Immunities at the beginning of 2005, according to which a new family, in the meaning of land Code, should meet the following conditions – non-approval of repeated marriages of spouses, lack of living space property, including plots around the house, annexes, and gardens.

The refusal of local authorities is not only against the express norm of Land Code, but also infringes the constitutional rights of citizens stipulated in Articles 46, 49 and 50, according to which the State shall be obliged to grant a special assistance regime to young people and shall facilitate through different measures, including economic, the family formation and fulfilling of its obligations, and last but not least, it contravenes Government strategic programs elaborated to achieve the abovementioned constitutional desiderata and directed to the creation of attractive conditions, especially for new families, to live in villages and contribute to rural sector development.

In some cases local public administration accept in the virtue of their obligations in insuring citizens' right to a decent standard of living to grant land plot for construction, but their decisions are being disapproved by territorial administrative bodies of the Ministry of Local Public Administration as a result of defining 'new family' in Article 11 of Land Code.

In the opinion of Parliamentary Advocates, definition of this notion should start from the provisions of Articles 48-49 of the Constitution and the object of regulating the mentioned organic law – land relations.

Many deponents of Guineia Commercial Bank and Intercapital Concern have addressed to the Centre for Human Rights of Moldova invoking the infringement of constitutional rights, including the property right.

The petitioners have appreciated as inadequate the actions/inactions of some decisional factors and state authority vested with the function to enhance the legality and to protect the rule of law, to carry out the authorization, supervision and regulation of financial institutions in both the complaints addressed to Parliamentary Advocates and collective complaint addressed to the Special Commission for control and monitoring the refunding process of money deposits of deponents at Guineia Commercial Bank and Intercapital Concern established through Parliament Decision No.9 of 09.02.2006.

It should be mentioned that deponents of Guineia Commercial Bank have been trying without any success to request the state institutions to settle their problem. Another concern of Parliamentary Advocates is that a great number of deponents of Guineia Commercial Bank and Intercapital Concern died already (according to petitioners, there are 400 deceased deponents from Guineia Commercial Bank and 700 deceased deponents from Intercapital Concern) and didn't benefit from the reimbursement of deposited amounts and 90% of deponents of Intercapital Concern who are still alive are elders and disabled persons, i.e. social-vulnerable persons.

Appreciating positively the efforts of authorities in settling the problem, especially, establishment of Special Commission, during their discussions with Parliamentary Advocates, the deponents requested to take into account the common view on the possibility to redress the situation – paying the arrears from budgetary means at least partially in 2006 (by modifying the 2006 Budget Law and possible inclusion of arrears in 2007 Budget Law) with further regression of prejudice caused by culpable persons.

In their address to the Commission, the Parliamentary Advocates requested to take into account this proposal while identifying the optimal solutions for mentioned issue.

Special Commission for control and monitoring the refunding process of money deposits of deponents at Guineia Commercial Bank and Intercapital Concern considers that the proposal on paying the arrears from budgetary means could create an inadmissible precedent in the society through which the State would assume the financial obligations of some public financial institutions.

In order to guarantee the deposits of natural and physical persons from banks authorized by National Bank of Moldova, the Law on Guaranteeing the Deposits of Natural and Physical Persons in the Banking System was adopted in 2003 that stipulates the

establishment of Deposit Guarantee Fund, the guarantee threshold being MDL 4500. This Law has no effect on deponents of Guineia Commercial Bank and Intercapital Concern and the problem is still unsolved.

In this context, the Parliamentary Advocates welcome the need to establish a mechanism of state ensuring the deposits in financial institutions.

The fiscal authorities have initiated in 2005 the collection of real estate tax from the tenants of non-privatized apartments, a fact that has generated many addresses of the citizens. According to the collaborators of fiscal bodies, the modifications made to the Fiscal Code have served as legal ground for these actions, according to which the persons who live in non-privatized space and pay monthly rent for using the tenant and owners of real estate have been subjected to the tax.

The operated modifications had a negative impact on the respective category of persons that use currently about 8% of total living fund.

Insistent approach of this issue by the petitioners has motivated the Parliamentary Advocates to address in September 20005 to the Parliament of the Republic of Moldova the proposal to modify Article (277 1) lit. b) of Fiscal Code.

Along the same line, taking into account that the fiscal authorities while collecting the real estate tax for 2005 have not applied the respective law on natural persons – tenants on non-privatized apartments, the Parliamentary Advocates addressed to administrative contentious court requesting the prohibition of collection of real estate tax for 2005 from the tenants of non-privatized apartments and to remove the made infringements.

In order to conform to the decision of the Supreme Court of Justice of March 2, 2006, on the basis of session Minutes of Collegiums of the Ministry of Finance of the Republic of Moldova No.11/3 of 25 August 2006, and taking into account the explanation made by the Commission for Economic Policy, Budget, and Finance of the Parliament of the Republic of Moldova No. 827 of November 1, 2006, the State Tax Inspectorate has elaborated and sent on 13 November 2006 a decision on insuring the cancellation of calculated amounts, including of calculated fees on the real estate tax for tenants of non-privatized apartments to all territorial inspectorates.

Although the court satisfied the requirements of Parliamentary Advocates, we are still worried about the fact that the decision of the Supreme Court of Justice was executed only on 13 November and only after the session of the Collegiums of the Ministry of Finance as a result of elaboration of explanations made by the Parliamentary Commission for Economic Policy, Budget and Finance. In this context, it is not understandable the delay

of executing the decision if it is final and no authority can have an influence on it. Or, this fact doubts the practical application of constitutional principle of separation and collaboration of power in the Republic of Moldova.

## SOCIAL ASSISTANCE AND PROTECTION

Although the economy of the Republic of Moldova from the recent years, from experts' appreciations, has registered a certain evolution and poverty reduction, the exercise of social rights of citizens is still one of the most difficult problems of the country.

In 2006 the Centre for Human Rights of Moldova registered 367 addresses at the chapter of social assistance and protection.

Complaints in this filed refer mostly to the quantum of allocations and state social payments, the method of calculating the state social insurance pensions, re-calculation of pensions for pensioners who continue to work after retirement. The number of addresses regarding the quotation length in the public service has increased.

Based on the problems seized by the citizens, the Parliamentary Advocates consider that it is necessary to regulate the norms of pensioning as well as way to modify the system of calculating the pension.

More and more citizens address to the Parliamentary Advocates invoking the infringement of the right to a decent standard of living guaranteed by the Constitution and international acts in the field of human rights. We would like to state that there is a social inequity and decrease of living standard of the population, especially of socio-vulnerable strata in the Republic of Moldova. The increase of inflation rate, tariffs and prices on energetic resources and locative-communal services affect the population income decreasing essentially the impact of salary growth and social payments ensured from the budget.

The Parliamentary Advocates are concerned about the situation in the field of degree of invalidity. According to Centre for Fighting Economic Crimes and Corruption, about 20% of invalids of the Republic of Moldova got an invalid degree in an illegal or incorrect manner. During last year, the employees of CFECC red-handed many civil servants of medical life expertise system, who were claiming huge amounts of money for setting an unlimited invalidity degree to very serious ill persons. In the opinion of Parliamentary Advocates, many citizens who without doubt need to be included in the invalidity degree due to the reduction of vital capacities of the body have suffered from this illegal attribution of invalidity degree cases.

The complaints of petitioners show that the persons with severe vital capacities of the body should make a periodical medical re-examination (annual). Moreover, during the

periodical re-examination it is attested an ungrounded decreasing of the invalidity degree set before.

Parliamentary Advocates consider that once the Regulation of the Republican Council of Medical Life Expertise is approved (Government Decision No.688 of 20.06.2006) and it is transferred from the subordination of National House of Social Insurance into the autonomous public institution that administrates and manages the public system of social insurance, these tendencies would stop.

At the same time, it should be stressed that after the modification of Article 24 of Law on Government and Establishment of the Ministry of Social Protection, Family and Child and the Ministry of Health, the place of Republican Council of Medical Life Expertise is being unknown. In the opinion of Parliamentary Advocates it would be very opportune that the only state institution with plenipotential authorizations in the field of medical life expertise to become a public institution, with national autonomous interest and transferred under the subordination of the Ministry of Health.

As for the completion of Article 4 par. (4) of Law on Compulsory Medical Insurance of 01 January 2007, the Government is obliged to assure the persons that take care of 1st – degree invalid child at home or 1st-degree invalid from childhood under 18 years old. But the issue of persons that take care of 1st degree invalids older than 18 years old is still unsolved.

Along the same line, in the virtue of arbitrary character, the persons who take care of invalids of 2nd and 3rd degree, whose physical condition hasn't been improved after the decreasing the respective degree of invalidity, are in many cases left outside the State's protection.

During the examination of an address of a group of pensioners from the Republican Asylum of Elders and Invalids of Chisinau Municipality, the Centre for Human Rights of Moldova has investigated some fields of activities of this social assistance institution under the subordination of the Ministry of Health and Social Protection of the Republic of Moldova.

It was ascertain some gaps regarding the institution's activity during on spot visit.

The existence of some difficulties of economic order shall not acquit the state from the obligation to identify necessary solutions to achieve the fundamental rights of the person. Along the same line, it is necessary an effort to ensure a decent living to beneficiaries of social assistance institutions of the country.

Monitoring Report of the Republican Asylum for Invalids and Pensioners of Chisinau Municipality with respective recommendations was submitted to the Government. Parliamentary Advocates hope that the underlined issues will impulse the activities directed to improvement of situation in all similar institutions.

Centre for Human Rights of Moldova has examined the issue of dismissal of 198 employees of Society of Blinds Enterprise of the Republic of Moldova: Chisinau "Luminitehnica" SRL SOM, Soroca "Munca invalizilor" SRL SOM, Basarabeasca "Ambas-Fier" SRL SOM, Baltsi "Optimist Etern" SRL SOM, Orhei SRL SOM, Varnița "Capaxolid".

Society of Blinds is a public organization created in order to protect and promote civil, economic, cultural and social rights of citizens with deficiencies, as well as their social rehabilitation through labour. The Society of Blinds is a legal person.

According to the President of the Society of Blinds, the dismissal of employees from the abovementioned enterprises has a temporary character. The reasons for adopting the decision of organized dismissal was excessive obsolescent equipment (about 95%), lack of circulated means and lack of state orders.

The created situation could be redressed by adopting certain legal acts that would stipulate the insurance of invalids with permanent jobs. Especially, it would be welcomed the stimulation of employers to create a certain number of working places for blind persons.

There were procured new equipment for "Lumintehnica" and "Optimist Etern". Re-equipment of enterprises will allow the increase of their profitableness.

Parliamentary Advocates consider that generally the settlement of the issue to maintain and insurance of blind persons with new jobs assume a prompt financial support of the state directed to re-equipment of enterprises within the Society of Blinds. A special attention should be paid to the selection of managers of these enterprises, because as it was set in the Decision of Court of Accounts No.2 of 21.01.2006, a part of budgetary means and fiscal incentives were used inefficiently by certain managers.

It should be mentioned that the blinds are a specific category that needs a special protection. In this context, the provisions of Article 51 of the Constitution that stipulate that the disabled persons shall enjoy a special form of protection from the whole of the society are relevant. The State shall ensure that normal conditions exist for medical treatment and rehabilitation, education, training and social integration of disabled persons.

Compared to other categories of socio-vulnerable persons, the persons with disabilities depend entirely on state social assistance institution. Although compared to last years the quantum of money quantum to state social insurance has been increased for this category of persons, however, the increases are insignificant and do not ensure completely the settlement of issues faced by this category of citizens.

It should be underlined that the success of social integration of disabled persons depends first of al on the collaboration of all institutions responsible for social protection, their legal and special education.

The modifications of Article 82 let. i) of Labour Code that institute the possibility of dismissing the persons at the retirement age entered into force on 2 June 2006. These provisions have provoked a negative social reaction and a flow of addresses to the Centre for Human Rights of Moldova.

Taking into account that through the operation of these modifications it was infringed one of the fundamental human rights guaranteed by the Constitution and namely equality of citizens before law limiting thus the rights in the field of labour and social protection, the Parliamentary Advocates have submitted to the Constitutional Court an address on the constitutional control of this norm.

Through Law No.269 of 28 July 2006, the norm of Labour Code contested in the address of Parliamentary Advocates has been essentially modified resulting into an another context and the Constitutional Court decided that the address should be returned without being examined.

Although the discriminatory norm, according to which it was introduced a new reason to cancel the labour contract in circumstances that do not depend on the willing of parties (retirement of employee for age pension or length of service or retirement due to pension right to length of service or age limit) has been modified, some circumstances of it have negatively influenced the rights of citizens because there were no solutions for the consumption cases in those 2 months of applying the previous norm, the dismissed persons being deprived of the possibility to appeal. Out of about 100 persons who invoked the right to labour during the audiences, most of them referred to the consequences of canceling the individual labour contract in accordance with Article 82 let. i) of Labour Code, whose situation has not been addressed after the revision of these provisions.

In 2005 the Parliamentary Advocates addressed to the Parliament the suggestion to complete the legal frame currently in force with norms of social protection which would

extend on persons who became invalids from childhood as a result of war or military conflict. At present, children who were involuntary in the battle field and who had to suffer as a result of a war or armed conflicts in peace time lack a part of facilities granted to other categories of persons who have suffered in the same period due to their inclusion in the invalidity degree with the definition of 'invalids from childhood'.

Taking into account the need to elaborate some economic-financial information regarding the number of persons, the respective budget to argument the legal proposal and need of involving more central and local bodies according to provisions of Article 131 of the Constitution, the Parliament submitted the proposal to the Government, Ministry of Health and Social Protection approving the suggestion of Parliamentary Advocates, has elaborated and presented for examination and comment the draft Law on Modification and Completion of some Legal Acts in order to protect socially the persons (including children) who didn't participated in battles, whose invalidity appeared as a result of battles during the Second World War or fights during peace or their consequences.

According to preventive calculation of this draft law, the number of persons (including children) that didn't participated in battles, whose invalidity appeared as a result of these events is as follows: 17 persons, out of which 3 persons are 1st degree invalids, 11 persons are 2nd degree invalids, 2 persons are 3rd degree invalids and one person doesn't have invalidity.

The implementation of draft law needs additional financial resources in the amount of MDL 84 228 annually for payment of monthly state allocations, money compensations in exchange of medical treatment once per year and nominative compensation of communal utilities. An amount of MDL 104 628 is needed annually for paying monthly state allocations, medical treatment once per two years and nominative compensations for utilities.

The draft law wasn't supported by the Ministry of Finance due to lack of financial resources, this category of invalids being outside the special protection of the State.

The regulation on paying the pensions set in the public system of state social insurance was adopted through Government Decision No. 929 of 15.08.2006. According to the provisions of paragraph 19 of the regulation, the payment of pension through the financial institution shall be made on the basis of written application submitted by the beneficiary for the current year. When the mentioned term expires it is necessary to submit a new application at the social insurance body. In the opinion of Parliamentary Advocates, the annual submission of application on pension through financial institution and namely

the need to attach annually the package of documents create formal and ungrounded impediments during the execution of the right to pension.

At present, the Republic of Moldova doesn't have a legal basis to set the minimum of existence and its use in the promotion process of social policies.

According to data presented in Statistic Annual Book of the Republic of Moldova, 2006, the value of minimum of existence in 2005 was on average MDL 771.7 per person per month. The average size of existence is conditioned by the price evolution on products included in the food basket and weight of costs for non-alimentary basket (non-alimentary goods and services), which is calculated on the basis of real structure of consuming costs of the population, according to the examination of household budgets. For improving the social assistance system it is imposed urgent elaboration of Law on Minimum of Existence that should be used as a bench mark of the living level. Or, namely the minimum of existence would be an indicator to appreciate the living standard of citizens in the country, and in practice – for promoting social state policies.

**ANNEXES:**

**Annex No. 1**
**Global statistic**

| | **2003** | **2004** | **2005** | **2006** |
|---|---|---|---|---|
| **Petitions** | 1215 | 1201 | 1270 | 1913 |
| **Audience** | 1420 | 1519 | 1776 | 1715 |
| **Notes** (according to Article 27 of Law No.1349) | 35 | 24 | 27 | 25 |
| **Notifications** (according to Article 28 of Law 1349) | 9 | 4 | 4 | 8 |
| **Notifications** (Constitutional Court) | 2 | 4 | 2 | 2 |
| **Law suits** | 2 | 2 | 2 | 5 |

**Annex No.2**
**Subject-matters of complaints**

| **Subject-matter** | **2003** | **2004** | **2005** | **2006** |
|---|---|---|---|---|
| **Free access to justice** | 423 | 353 | 432 | 585 |
| **Private property** | 122 | 98 | 92 | 137 |
| **Security and personal dignity** | 199 | 249 | 264 | 481 |
| **Free access to information** | 94 | 107 | 178 | 254 |
| **Family life** | 11 | 16 | 24 | 13 |
| **Right to labour** | 43 | 25 | 35 | 58 |
| **Right to social assistance and protection** | 229 | 135 | 146 | 149 |
| **Right to healthier environment** | 4 | 6 | 5 | 19 |
| **Right to health protection** | 15 | 30 | 25 | 49 |
| **Right to defence** | 12 | 36 | 18 | 16 |
| **Free movement** | 15 | 8 | 16 | 25 |
| **Intimate and private life** | 17 | 6 | 11 | 12 |
| **Right to education** | 4 | 6 | 2 | 8 |
| **Right to complain** | 10 | 17 | 6 | 4 |
| **Personal liberties** | 9 | 4 | 4 | 12 |
| **Right to citizenship** | 7 | 5 | 9 | 4 |
| **Right to administration** | 3 | 1 | 1 | 1 |

| | | | | |
|---|---|---|---|---|
| **Other** | | | | 86 |
| **TOTAL** | **1217** | **1102** | **1271** | **1913** |

**Annex No.3**
**Subject-matter during the audience**

| Subject-matter | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| **Free access to justice** | 370 | 411 | 339 | 436 |
| **Private property** | 268 | 329 | 369 | 233 |
| **Security and personal dignity** | 66 | 54 | 111 | 333 |
| **Free access to information** | 103 | 148 | 352 | 269 |
| **Family life** | 23 | 35 | 41 | 17 |
| **Right to labour** | 101 | 121 | 132 | 101 |
| **Right to social assistance and protection** | 331 | 267 | 273 | 218 |
| **Right to healthier environment** | 2 | 9 | 3 | 13 |
| **Right to health protection** | 8 | 18 | 17 | 15 |
| **Right to defence** | 10 | 5 | 12 | 19 |
| **Free movement** | 29 | 26 | 52 | 27 |
| **Intimate and private life** | 38 | 18 | 22 | 24 |
| **Right to education** | 12 | 19 | 7 | 0 |
| **Right to complain** | 34 | 29 | 15 | 2 |
| **Personal liberties** | 13 | 10 | 3 | 2 |
| **Right to citizenship** | 10 | 17 | 12 | 5 |
| **Right to administration** | 4 | 1 | 5 | 1 |
| **TOTAL** | **1422** | **1519** | **1766** | **1715** |

**Annex No.4**
**Categories of complainers**

| CATEGORIES | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| **Employed** | 312 | 196 | 293 | 478 |
| **Pensioner** | 154 | 114 | 135 | 214 |
| **Invalid** | 64 | 52 | 85 | 72 |
| **Detained** | 520 | 559 | 658 | 1008 |
| **Non-employed** | 114 | 142 | 87 | 115 |
| **Student** | 5 | 2 | 2 | 6 |
| **Farmer** | 0 | 0 | 0 | 2 |

| | | | | |
|---|---|---|---|---|
| **Unemployed** | 17 | 9 | 0 | 4 |
| **Owner** | 15 | 0 | 0 | 2 |
| **Rehabilitated** | 5 | 2 | 6 | 3 |
| **Civil servant** | 9 | 1 | 0 | 1 |
| **Deputy** | 0 | 0 | 0 | 1 |
| **Pupil** | 0 | 2 | 5 | 3 |
| **Military** | 2 | 0 | 0 | 1 |
| **Other** | 0 | 0 | 0 | 3 |
| **TOTAL** | **1217** | **1102** | **1271** | **1913** |

**Annex No.5**
**Categories of complainers addressed in audience**

| CATEGORIES | 2003 | 2004 | 2005 | 2006 |
|---|---|---|---|---|
| **Employed** | 460 | 552 | 815 | 821 |
| **Pensioner** | 392 | 371 | 328 | 264 |
| **Invalid** | 116 | 113 | 167 | 87 |
| **Detained** | 2 | 6 | 48 | 239 |
| **Non-employed** | 230 | 302 | 268 | 179 |
| **Student** | 21 | 20 | 17 | 15 |
| **Farmer** | 2 | 2 | 5 | 3 |
| **Unemployed** | 95 | 119 | 93 | 88 |
| **Owner** | 48 | 21 | 17 | 3 |
| **Rehabilitated** | 8 | 2 | 1 | 6 |
| **Civil servant** | 43 | 6 | 2 | 7 |
| **Pupil** | 4 | 5 | 5 | 0 |
| **Military** | 1 | 0 | 0 | 0 |
| **Other** | 0 | 0 | 0 | 0 |
| **TOTAL** | **1422** | **1519** | **1766** | **1715** |