



REPORT

**ON THE OBSERVANCE OF HUMAN
RIGHTS AND FREEDOMS
IN THE REPUBLIC OF MOLDOVA
IN 2018**

CHISINAU, 2019

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PREFACE

The year 2018 was an important year for the field of human rights at national and international level.

The international community marked the 70th anniversary of the Universal Declaration of Human Rights and human rights defenders - 20 years from the adoption of the UN Declaration on Human Rights Defenders, 25 years from the adoption of the Paris Principles, which set the international standards for the functioning of national human rights institutions.

At the same time, at the national level it is necessary to note the fact of marking of the 20th anniversary of the establishment of the National Human Rights Protection Institute of the Republic of Moldova, currently the Office of the People's Advocate, as well as its accreditation with the „A” status by the Subcommittee for Accreditation of the Global Alliance of National Human Rights Institutions.

In 2018 the Republic of Moldova was visited by the United Nations Special Rapporteur on the Status of Human Rights Defenders, Michel Forst, and the OSCE Representative on Freedom of the Media, Harlem Désir.

This Report reflects the views expressed by them, but also by other dignitaries, European and international officials, of national experts the overall state of affairs in the field of human rights observance in our country in 2018. The report also contains the People's Advocate's estimates on the developments in the field of human rights in the Republic of Moldova.

The overall assessment is that, despite a number of efforts made by the authorities, the situation in the field of human rights has not improved, and some areas have even worsened. Thus, we can talk about a continuing degradation of the state of affairs in terms of access to justice, freedom of expression, observance of the rights of detainees, the right to vote and to be elected, the right to health care. The People's Advocate's findings are also confirmed by the citizens, who expressed their views in a poll conducted last year, at the request of the Office of the People's Advocate, for assessing the perceptions on the observance of human rights in the Republic of Moldova.

When drawing up the Report, were taken into account both the conclusions reached by the People's Advocate following the monitoring of the human rights situation last year, the more sensitive segments on the observance of certain rights enshrined in the Constitution of the country, as well as on the observance of the rights of certain categories of persons, such as those with disabilities and human rights defenders.

The report contains five chapters. The first chapter refers to the observance of human rights and includes several paragraphs: Right to a fair trial, Individual freedom and personal security; The right to vote and the right to be elected, Freedom of expression, Freedom of assembly, Right to health protection, Right to social assistance and protection, Situation of human rights defenders in the Republic of Moldova, Observance of the rights of people with disabilities, Observance of human rights and freedoms in administrative-territorial settlements on the left bank of Dniester river and Bender municipality (Transnistria). Chapter II reflects the state of affairs on the observance of the rights of the child, and Chapter III reflects the developments related to torture prevention. Chapter IV covers the situation on human rights education and the activity of promotion of human rights and fundamental freedoms of the Office of the People's Advocate and Chapter V includes data on the work of the Office of the People's Advocate. The novelty of this Report is addressing human rights defenders' issues, on human rights education.

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People's Advocate

ACCREDITATION OF THE OFFICE OF THE PEOPLE'S ADVOCATE WITH „A” STATUS

In 2018, the Office of the People's Advocate (Ombudsman) was accredited with the „A” status by the Office of the Global Alliance of National Human Rights Institutions (GANHRI), which represents the recognition of the compliance of the Ombudsman's Institution from the Republic of Moldova with the Principles of Paris, a document that includes the basic standards for the functioning of national human rights institutions.

The accreditation of a national human rights institution (NHRI) with „A” status is an international appreciation, of the credibility, performance, professionalism, the fact that it is seen as a worthwhile partner that can be treated with consideration by the authorities, civil society, people.

The „A” status provides a national human rights institution (NHRI) with the opportunity to engage fully in the activity of various international and regional human rights structures, including through the use of the right to vote.

A National Human Rights Institution (NHRI) accredited with the „A” status can cooperate very closely with the United Nations structures, in particular the Human Rights Council, by participating in its sessions and presenting messages on any agenda item, written and oral statements, including video, or documents relevant to the issues in question.

The representatives of a national human rights institution (NHRI) with „A” status may use the platform of UN Human Rights Council sessions on special procedures and the EPU to present their views and draw the attention of the international community to human rights issues. Also, collaboration with UN committees is more consistent, enhancing the role and possibilities of engaging in the work of international ombudsmen organizations.

Upon re-accreditation of the Office of the People's Advocate, consideration was given to the institution's and the authorities' compliance with the recommendations made by the Accreditation Subcommittee in 2009 when the Center for Human Rights was then accredited with the „B” status, which implies partial compliance with the Principles of Paris.

In 2009, GANHRI's Accreditation Subcommittee objected to the founding law of the institution and on its functionality. Appreciating the „efforts made by the Office of the People's Advocate (OPA) to implement the 2009 recommendations, increasing the capacity to promote and protect human rights in collaboration with civil society representatives, and recognizing the political challenges and economic context in which it operates,” the

Accreditation Subcommittee (ASC) proposed in 2018 that the institution be re-accredited with A status¹.

Accreditation Subcommittee (ASC) welcomed the adoption of the Law number 52, the founding law of the Office of the People's Advocate, expressing the hope that after re-accreditation with „A” status, the Ombudsman's Institution from Moldova will take the necessary steps to continue to increase its efficiency and independence, in line with the Paris Principles and recommendations made in the 2018 assessment.

In order to further enhance the effectiveness of the Office of the People's Advocate, the Accreditation Subcommittee (ASC) has also made some recommendations that the institution, the authorities are going to meet. These relate to the process of selecting and appointing the People's Advocate, ensuring pluralism and diversity in the Ombudsman's team, adequate funding of the Office of the People's Advocate (OPA), cooperation with the international human rights system.

Thus, the Accreditation Subcommittee (ASC) encouraged the Office of the People's Advocate (OPA) to continue to promote the amendment to the Law number 52 for establishing the condition for the People's Advocate to be appointed by the Parliament with the absolute majority of votes based on a transparent and participatory process. The Accreditation Subcommittee (ASC) further encouraged the Office of the People's Advocate (OPA) to promote the idea of including in the founding law of the requirement that the Ombudsman's team be broadly reflected on all segments of the Moldovan society.

The Accreditation Subcommittee (ASC) urged the Office of the People's Advocate (OPA) to continue to advocate for an adequate funding to effectively carry out its mandate, including the Mechanism for the Prevention of torture. The Accreditation Subcommittee (ASC) stressed that in order to guarantee independence and capacity to freely determine its priorities and to function effectively, a national human rights institution must be provided with an adequate level of funding.

In particular, adequate funding must, at a reasonable level, gradually and progressively improve the operational work of the institution and the fulfillment of its mandate, it is mentioned in the recommendations of the Subcommittee.

The Accreditation Subcommittee (ASC) has acknowledged that the Office of the People's Advocate has stepped up its collaboration with structures in the international human rights system and encouraged the institution to strengthen its capacity to do so by advocating additional resources.

¹<https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20May%202018%20-%20ENGLISH.pdf>

The Accreditation Subcommittee (ASC) noted that monitoring the observance of human rights and collaborating with the human rights institutions / structures in the international human rights system, in particular the Human Rights Council and its mechanisms (special procedures and EPU), UN committees, can become a national institution protection of human rights an effective tool in promoting and protecting human rights at national level.

The Office of the People's Advocate has also been urged to continue to monitor independently the implementation of the National Human Rights Action Plan by the government in cooperation with other human rights structures including civil society, but also to undertake systematic and rigorous follow-up activities the fulfillment of its recommendations, promotion and advocacy for the implementation of its recommendations and findings, the protection of those whose rights have been violated.

At the same time, public authorities have been called upon to respond in due time to the recommendations of the Office of the People's Advocate and to provide, where appropriate, detailed information on the practical and systematic measures taken to comply with the Ombudsman's recommendations.

OBLIGATIONS OF THE STATE ON THE OBSERVANCE OF HUMAN RIGHTS

International law is a body of laws governing the conduct of States and the relations between them.

There are two sources of international law:

- agreements between States known under the generic name of Treaties
- customary law.

The treaties are negotiated by states and provide for the legal obligations of the states to each other. They link only those states that become parties to the Treaties, through processes known as „accession” and „ratification”.

• **Accession** is a unique process by which a state accepts the obligations of a treaty and becomes a state party to it.

• **Ratification** is the second one in a two-stage process. The first step is the *signing* whereby a state indicates its intention to become a party to a treaty at some point in the future and undertakes not to act in the meantime in a way that would undermine the implementation of the treaty. Following the ratification of the second phase, the State accepts all the obligations of the treaty and is fully related to its provisions.

Upon accession or ratification, a state becomes party to a treaty. A treaty links only the States Parties to it, and a State Party has obligations only towards other States Parties, and not to States not party to the Treaty.

The States Parties have three main obligations that have been defined in the human rights treaties:

- **the obligation to observe;**
- **the obligation to protect;**
- **the obligation to achieve.**

The obligation to observe requires the State to ensure that none of its officials acts to violate human rights or the obligations contained in that treaty.

The obligation to protect requires the State to take action to ensure that no one violates the terms of a human rights treaty (parties / third parties).

The obligation to achieve requires the State to take positive action to ensure that everyone in its jurisdiction is in a position to fully enjoy the rights recognized in the Treaty.

Each treaty has its own monitoring mechanism that promotes the fulfillment of treaty obligations by the Contracting Parties.

The functions of the monitoring mechanisms are set by each treaty apart and they differ from the treaty to the treaty, but in general the monitoring mechanisms have the following functions:

- to promote the ratification and implementation of the Treaty;
- to receive regular reports from States Parties and to examine the States Parties on the basis of these reports;
- to issue recommendations to States Parties on the interpretation and implementation of the Treaty;
- receiving and delivering opinions on individual complaints about breach of the treaty if the State Party has accepted this competence of the Commission;
- organizing days of general discussion on issues arising from the treaty.

Monitoring mechanisms are legal, technical bodies, and not political bodies. Their members are independent human rights experts working on a voluntary basis. They are not representatives of the state and cannot be guided by governments or by anyone else.

Thus, the recommendations which are issued by the mechanisms for monitoring the level of implementation of the treaty provisions to which the State is a party, although they have the status of a „recommendation”, are practically binding, as it results from the obligations assumed by the State by the ratification of a treaty human rights.

In the context of these, the People's Advocate draws the attention of the authorities to analyze and make every effort to implement the recommendations issued by the monitoring mechanisms under the human rights treaties to which the Republic of Moldova is a party. These recommendations refer to the shortcomings and arrears our country has on the implementation of treaties that our country has ratified and committed to respect and achieve them.

I. OBSERVANCE OF HUMAN RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2018

RIGHT TO A FAIR TRIAL

The situation in the field of observance of the right to a fair trial demonstrates that during 2018 no essential progress has been registered to contribute to the effective realization of this right. We have found that the process of developing a legal framework to combat phenomena such as hate crimes has stalled, that there are situations in which some mechanisms that should ensure the realization of this fundamental right are not properly enforced and are therefore recorded violations of the fundamental right in question. At the same time, the state of affairs in the field of justice remains an essential issue.

The right of the person to a fair trial is guaranteed in Articles 8, 10 and 11 of the Universal Declaration of Human Rights, Article 14 of the Covenant on Civil and Political Rights, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 13 of the UN Convention on the Rights of Persons with Disabilities.

The provisions of this right are also found in Articles 20, 21, 26 of the Constitution of the Republic of Moldova. These articles regulate free access to justice, the presumption of innocence and the right to defense.

Essential elements of the right to a fair trial are the fairness, within a reasonable time, by an independent and impartial tribunal established by law, respecting the right to privacy, the principle of presumption of innocence, the right to defense, including the provision of free legal assistance, as well as other procedural rights designed to contribute to the realization of this right.

In the Report on observance of human rights and freedoms in the Republic of Moldova in 2017, the People's Advocate forwarded several recommendations to the authorities to help solve the problems identified for the mentioned reference period and through which the state would contribute to the realization of the right to a trial fair:

- Continuation of the efforts to reform the justice system to ensure its accessibility, independence, efficiency, transparency and integrity;
- Taking firm action to implement the recommendations of regional and international human rights protection bodies that relate to the justice system and have been exposed above;
- Adoption of comprehensive legislation to incriminate hate crimes, in line with the UN Convention on the Elimination of Racial Discrimination;

- Implementing programs to increase legal awareness of the population, especially of vulnerable groups.

The People's Advocate recalls the recommendations of the UN committees in the context of ensuring the realization of the right to a fair trial. Among the most relevant recommendations are listed the strengthening of the capacity of the judiciary system to respond to corruption acts and to ensure effective protection of victims of corruption, their lawyers, anti-corruption activists, denouncers and witnesses.²

At the same time, the State is encouraged to take concrete and effective measures to ensure the right to a fair administration of justice, in accordance with Article 14 of the Covenant and General Comment Number 32 (2007) on the right to equality before the courts and tribunals, and to a fair trial; sufficient remuneration for judges, ensuring a sufficiently long mandate to guarantee the independence and integrity of the court; ensuring an immediate, thorough, independent and impartial investigation into all allegations of infringement and bringing to justice those responsible, including the officials of the judicial bodies involved in this process; ensuring de jure and de facto protection of judges from any sanctions or retaliation for unpopular judgments.³

Another important aspect which appears in the international recommendations is the fight against hate speech, namely by amending Article 346 of the Criminal Code so that it fully complies with Article 4 of the UN Convention on the Elimination of All Forms of Racial Discrimination, and that this amended Article to be implemented to prosecute incidents of hate speech; to adopt comprehensive legislation to incriminate hate criminal offences and to ensure that such legislation complies with the Convention and that racial motivation is listed as an aggravating circumstance; to ensure that all incidents of hate crime and hate speech are investigated and prosecuted and that offenders are punished without regard to their official status; to provide data on the number of hate crimes and cases of reported hate speech, criminal prosecution, convictions and compensation to victims; to strengthen the role of prosecutors in supporting victims of racial discrimination for reporting violations.⁴

As can be seen, the previous recommendations of the People's Advocate are largely convergent with the recommendations of international human rights bodies.

The right to a fair trial is also found in the Objectives of Sustainable Development, Objective 16 on Peace, Justice and Strong Institutions.

²UN Committee on Economic, Social and Cultural Rights;

³UN Committee on Civil and Political Rights;

⁴UN Committee on Racial Discrimination, recalling its General Recommendation Number 35 (2013) on combating racist hate speech;

During 2018, as a result of examining applications, hearing people and information appeared in the media, several issues were identified that refer to the violation of the right to a fair trial.

The most frequently cited issue remains the **delay in examining** both civil and criminal **causes**. The petitioners most often invoke the disagreement with the length of the case examination, which sometimes reaches 24 - 36 months due to frequent delays. These delays are caused by the lack of defendants in examining the case and the announcement of the defendants wanted (in search); the lack of witnesses in the trial and the lack of the injured party in the examination of the cases, as these persons are often gone abroad.

Another issue that has been raised remains the delay in the enforcement of the court decisions remaining final on the payment of the maintenance allowance for minors.

Causes invoked by bailiffs for non-execution of these enforceable documents are: lack of debtor from permanent residence and impossibility for bailiffs to find and establish where the debtor is located. In most cases, debtors go abroad to work. Thus, the bailiffs are in a position to suspend the execution of the court decision until the debtor is found or until his return to the country. At the same time, according to the explanation given by the bailiffs, in such situations a debt is formed to pay the alimony that is paid by the debtor upon his return to the country.

Another problem is the official non-employment of the debtor in the workplace and the refusal to pay the alimony due to the lack of financial sources. And in such situations a debt is formed to pay the maintenance pension (alimony) that is collected when debtors are placed in seasonal work and when knowing about the need to pay these debts, the debtors still show a responsible attitude.

The issue of the quality of legal aid guaranteed by the State is also referred to.

The People's Advocate is concerned that further appeals are being made in which state-guaranteed legal aid seekers report situations when, due to lack of defense and defense strategy, expire legal terms in which they have the opportunity to defend their rights and legal interests. The fact that detainees do not have the possibility to independently choose another defender, or to announce in close proximity to the court the absence of the defender, worsens even more the situation of these persons.

Given that people seeking a state-guaranteed lawyer services are low-income, socially vulnerable or at risk, the People's Advocate considers it of the utmost importance that the designated defender should act with the utmost diligence and promptness in the performance of his / her functional responsibilities in order to ensure respect for human rights and freedoms in the process of granting state-guaranteed legal assistance.

The People's Advocate considers it imperative to strengthen the mechanism for monitoring the activity of lawyers appointed to provide state-guaranteed legal assistance as well as quality control of the services rendered. In this context, it is necessary to involve the Union of Lawyers more actively in order to solve this problem.

The jurisprudence of the European Court of Human Rights demonstrates that States have been repeatedly sentenced by Article 6 by the ECHR for failing to provide legal assistance in particular when the lawyer was appointed *ex officio*. The court on those occasions, *inter alia*, has estimated: „Designating a lawyer to represent a party does not in itself ensure the effectiveness of legal aid.” In the case of *Bertuzzi v. France*, the ECtHR found violation of Article 6 of the Convention by the fact that the mandatory legal assistance was not effective, since the appointment of lawyers was a formal one.

Another issue brought to the attention of the People's Advocate by lawyers concerns their access to the Anticorruption Prosecutor's Office, the National Anticorruption Center, the National Anticorruption Center (NAC) isolator, the penitentiaries, etc.

Lawyers complained about the fact that at the entrance to the nominated institutions lawyers are asked to hand over the mobile phone and the bag in which there are working materials. These limitations have been examined from the point of view of observing the right to a fair trial, implicitly to the right of defense.

At a meeting attended by the representatives of the mentioned institutions and the representatives of civil society, most participants confirmed the existence of this problem, noting that often in the process of working with the client, defenders need to access legislation or other relevant information. Respectively, in the absence of access to electronic devices, it becomes more difficult to effectively protect the rights to defense.

At the same time, the problem was mentioned of access to Penitentiary Number 13 because of the operating schedule of this detention facility. The working schedule of Penitentiary Number 13 is from 08.00 a.m. to 05.00 p.m., with a break between 12.00 a.m. and 01.00 p.m., but lawyers have access only between 09.00 a.m. - 11.30 a.m. and 01.30 p.m. - 04.45 p.m.

The Administration of Penitentiary Number 13 explained that according to the Internal Rules of Procedure of Penitentiary Number 13, the institution has the status of criminal prosecution isolator, institution with closed regime. In such institutions detainees are called twice a day in the morning and evening and, if necessary, at any hour. At 08.00 a.m., the morning call begins at the same time, in all three blocks of regime where the shift workers are present, who transmit those who receive the posts, regime specialists, security, heads of the sector, collaborators of the medical service registered for the given blocks. In order to

prevent, detect and combat the mistreatment of detainees by other detainees, timely provision of medical assistance, timely isolation of detainees requiring personal security, as well as to detect and prevent intentional destruction of the cells inventory, in the morning and evening call, all detainees are removed and aligned in front of the cells except for physically disabled prisoners.

Another problem faced by lawyers is the limitation of lawyers' immediate access to their clients and the lack of offices for lawyers' meetings with detainees.

The administration of the Penitentiary number 13 has confirmed the existence of this problem, and explains that it is impossible to give the lawyers an immediate meeting with their clients, because of the lack of offices for meetings of the detainees with the lawyers and the impossibility to arrange new offices for the meetings because of the lack of free space in the penitentiary building, which is an edifice with obsolete architecture and little adapted to the needs of a penitentiary with such capacity and of the penitentiary and.

The People's Advocate points out that the removal of unjustified barriers to the execution of the functions of lawyers is a prerequisite for ensuring the realization of the fundamental right to a fair trial of all parties to the process to the full exercise of their procedural rights

The People's Advocate was notified about the delay in the examination of the requests from the detainees regarding the granting of permissions for the meeting by the courts.

Examining the complaints, the People's Advocate found that applications for permission to meet are examined with the examination of the merits of the case. Given the fact that the hearing of the case is often postponed, quite often, neither are examined the applications for the right to meet. In this case, there are cases when the adjournment of court sessions lasted more than one year, and the detained person did not enjoy the right to meet during this period.

The People's Advocate considers that the applications for the permission to meet are not related to the substance of the criminal case in which the detained person is investigated, for which reason their examination should not be related to the substantive examination of the criminal case.

In this context, the People's Advocate forwarded to the Ministry of Justice the proposal to amend the provisions of Article 342 of the Code of Criminal Procedure, points 279 and 504 of the Statute of execution of punishment by condemned persons⁵. The People's Advocate called for a clear regulation of the court's examination procedure for applications

⁵Approved by Government Decision number 583/2006

from the detainees requesting the provision of short and long-term meetings as well as therapeutic, surgical, psychiatric and dental care for them.

There remains a problem - providing free linguistic assistance in the justice system. Judges, prosecutors, prosecuting officers, probation officers, bailiffs cumulate procedural quality as interpreter / translator in the procedures they have in management. Contrary to the obligations of Article 6 of the ECHR, law enforcement officials refuse to provide independent and impartial linguistic assistance to those who do not know the state language, or they arrogate their role as interpreter / translator in the cumulation with the basic function.

During the year 2018, the Constitutional Court set out on issues related to the right to a fair trial.

Thus, by the Decision number 31 of 29.11.2018 on the access of the injured party and his / her representative to the materials of the criminal investigation. According to that decision, in order to ensure the observance of the right to a fair trial, victims of torture and their representatives must have access to all the criminal case materials during the criminal prosecution, unless the access in question can be restricted by the prosecutor, through a reasoned order if the following conditions are met cumulatively: (i) the restriction is set for a reasonable period of time; (ii) the restriction concerns only certain procedural acts and (iii) there is a risk that full access to the criminal case material will prejudice the conduct of criminal prosecution⁶.

At the same time, the Constitutional Court declared unconstitutional the Article 178 paragraph (3) of the Code of Criminal Procedure on the failure to regulate the maximum duration for which the obligation not to leave the country may be ordered. As a result of the changes made, the duration of the preventive measures (the obligation not to leave the settlement or the obligation not to leave the country) may not exceed 60 days and, as the case may be, can only be prolonged with motivation.

The Secretary General of the Council of Europe in his 2018 Report on the State of Democracy, Human Rights and the Rule of Law states that „in the Republic of Moldova further efforts are needed to strengthen the efficiency and impartiality of the judiciary system, and to restore public confidence. The Superior Council of Magistracy faced criticism regarding its composition and functioning. Its decisions need to provide sufficient

⁶ Decision of the Constitutional Court on the objection of unconstitutionality of some provisions of the Criminal Code and the Code of Criminal Procedure (access of the injured party and his / her representative to the criminal investigation materials) (Notification number 113g/2018) number 31 of 29.11.2018;

guarantees of objectivity and transparency, especially with regard to the recruitment, promotion and disciplinary liability of judges”⁷.

The new policy document to ensure continuity of reform in the justice sector⁸ was not adopted, despite the fact that the authorities mentioned the need to develop such a policy document, and in November 2017 a new concept of the Justice Sector Development Strategy 2019 - 2022 was presented.

At the beginning of 2018, the Minister of Justice presented the concept document (called „Little Reform of the Justice”) containing strategic directions and priority actions in judicial reform⁹.

Reform priorities include, among other things: the reform of the judiciary staff and the assessment of the integrity of all judges, the restructuring of the judicial system (completion of the judicial map reform) and the strengthening of mechanisms for the accountability of judges and the independence of the judiciary system.

During the implementation of the strategic directions for action announced in early 2018, amendments were made to the provisions on disciplinary liability of judges,¹⁰ designed to streamline the procedure for examining disciplinary deviations and enhance the role of the judicial inspection. The Government has also promoted a bill that substantially amends a number of provisions on the quality of court rulings, explanatory judgments of the Supreme Court of Justice, unification of judicial practice, ensuring the publicity of court hearings¹¹.

In the same context, amendments were made to the Code of Contraventions¹² which simplifies the procedure for examining a number of contraventions that will increase the efficiency and transparency of the contravention process¹³. By establishing the mechanisms for simplified examination of the contraventional cause and the conclusion of the collaboration agreement between the investigating agent or the prosecutor, and the offender who recognizes his / her guilt it is being pursued the solving of the contravention process in an optimal and predictable term.

⁷http://kirp.pl/wp-content/uploads/2018/08/2018.08.28_democracy-human-rights-and-the-rule-of-law-report.-coe.pdf, page 15;

⁸ <http://www.justice.gov.md/pview.php?l=ro&id=31>;

⁹ <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=3808>;

¹⁰ Law on amending the Law number 178/2014 on the disciplinary liability of judges number 136 of 19.07.2018;

¹¹This draft law (bill) was approved in the first reading by the Parliament of the Republic of Moldova <http://parlament.md/ProcesulLegislativ/Proiectedeacteleislative/tabid/61/LegislativId/4351/language/ro-RO/Default.aspx>;

¹² Law on the Amendment of Some Legislative Acts, number 159 of 12.10.2018;

¹³ <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=3923>;

Modernization of the Civil Code and of the related framework¹⁴, carried out within the same strategic directions, aims to eliminate the contradictions between the legal norms and the regulatory doubling, by repealing and recoding the laws¹⁵. The changes include new concepts and institutions designed to contribute to a more accurate and predictable civil legislation.

The People's Advocate warns that even in the reference year, the legislature did not adopt comprehensive legislation criminalizing hate crimes, in line with the provisions of the UN Convention on the Elimination of Racial Discrimination.

It is worth mentioning that for the implementation of international human rights recommendations, the Government has drafted a package of laws on crimes based on hate and bias and presented it to the Parliament of the Republic of Moldova.

Based on the information available on the official website of the Parliament of the Republic of Moldova, according to the report of the Legal Commission, Appointments and Immunities of December 01, 2016, with the majority vote of the members, it was decided to propose to the Parliament for consideration and adoption the Draft Law number 277 of 20.06.2016 in first reading and merging it for the second reading with the Draft Law number 301 of 01.07.2016.

Meanwhile, in 2018, several declarations / cases appeared in the public sphere with a hint of incitement to hate against different groups were in the spotlight of the People's Advocate. These declarations have been condemned by the People's Advocate and human rights organizations who have asked the Prosecutor's Office to investigate and react promptly.

Taking into account the deficiencies declared by the law enforcement bodies in the sanctioning of such cases, the People's Advocate addressed to the Legislature the inclusion of this package of laws in Parliament's working agenda as a matter of priority in order to be able to be examined until the end of his mandate.

The statistical data of the European Court of Human Rights shows that during the period 1959 - 2018¹⁶, the Court found 164 violations by the Republic of Moldova of Article 6 of the Convention, of which 6 violations in 2018¹⁷.

In 2018, the European Court established the violation of Article 6 of the Convention by the Republic of Moldova in the cases: *Goremichin, Topal, Sultan, Pavlovici, Ciolacu*.

¹⁴ The Law on the Modernization of the Civil Code and the amendment of some legislative acts number 133 of 15.11.2018 (in force on March 1, 2019);

¹⁵ <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=3897> ;

¹⁶ https://www.echr.coe.int/Documents/Stats_violation_1959_2018_ENG.pdf

¹⁷ https://www.echr.coe.int/Documents/Stats_violation_2018_ENG.pdf

In these cases, the European Court found problems on the admission of a late appeal; retrospectively applying a substantive law without convincingly justifying this fact; the refusal of the Supreme Court of Justice, by mistake, to examine the applicant's appeal; non-execution within a reasonable time of the court decision¹⁸.

In the context of the above, we find that the problems related to the realization of right to a fair trial are mostly due to the non-compliance of the existing legal framework. Another issue related to this fundamental right is the adoption of a legal framework that complies with the provisions of the international treaties to which the State is a party, such as the UN Convention on the Elimination of Racial Discrimination, including the recommendations of international human rights protection mechanisms. But the most serious issue remains to be an effective, impartial, independent and inclusive justice system.

RECOMMENDATIONS

The People's Advocate reiterates his recommendations:

- Continuation of the efforts to reform the justice system to ensure its accessibility, independence, efficiency, transparency and integrity;
- Taking firm action to implement the recommendations of regional and international human rights organizations that relate to the justice system and have been exposed above;
- Adoption of a comprehensive legislation to incriminate hate crimes in line with the provisions of the UN Convention on the Elimination of Racial Discrimination.

¹⁸<http://crjm.org/wp-content/uploads/2019/01/NA-CEDO-2018-fin.pdf>

INDIVIDUAL FREEDOM AND PERSONAL SECURITY

During 2018 there were no significant developments on the respect for the individual's freedom and safety, the specific problem remains to be the excessive application of preventive arrest. However, we note some state efforts to develop and implement alternative measures for preventive detention, by using a number of modern technologies, which we consider to be a positive aspect.

This right is governed by Article 9 of the Universal Declaration of Human Rights, Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 9 of the Covenant on Civil and Political Rights and Article 14 of the Convention on the Rights of Persons with Disabilities.

The fundamental right to freedom and the security of the person is provided by Article 25 of the Constitution of the Republic of Moldova, which states that „(1) *Individual freedom and personal security are inviolable. (2) The search, detention or arrest of a person is only permitted in the cases and with the procedure provided by the law. (3) Detention may not exceed 72 hours. (4) The arrest is based on a mandate issued by a judge for a maximum term of 30 days. An appeal may be lodged on the legality of the mandate, under the law, in the hierarchically superior court. The term of the arrest may be extended only by the judge or by the court, according to the law, up to 12 months. (5) The detained or arrested person is immediately informed of the reasons for detention or arrest, and the accusation - in the shortest possible time; the reasons for the detention and the accusation are brought to the attention only in the presence of a lawyer elected or appointed ex officio. (6) The release of the arrested or detained is compulsory if the reasons for the retention or arrest have disappeared.*”

The right to freedom and security of the person is also provided by the Sustainable Development Objective number 16: Peace, justice and strong institutions. Promoting peaceful societies and inclusive societies for sustainable development, ensuring access to justice for all and creating effective, responsible and inclusive institutions at all levels. The objectives include reducing all forms of violence; putting end to violence against children and child trafficking; promoting the rule of law and justice for all; reducing financial flows and illicit arms, corruption and bribery; developing efficient institutions; taking part in decision-making at all levels; a legal identity for all.

The rules on the application of preventive arrest, the conditions of deployment and measures to prevent abuse are also contained in the Recommendation of the Committee of

Ministers of the Council of Europe, Rec (2006) 13 on investigation in the state of preventive arrest. According to the said document, the preventive arrest of persons suspected of committing the criminal offense should be an exception rather than a rule. In separate cases, preventive arrest must be applied only in strictly necessary cases and as a last resort and should not be applied as a punishment measure. In order to avoid inappropriate enforcement of preventive arrest, the widest possible range of alternatives, less restrictive measures relating to the behavior of the person suspected of committing the criminal offence must be accessible.

Thus, preventive arrest must be an exception to the right to liberty and security and should be applied in cases where certain evidence is provided, accompanied by arguments, which would certainly confirm the likelihood of actions by suspected persons. The arrest is an exceptional measure. As a result, arrest may be ordered only in certain cases and only for certain reasons, which must be shown in a concrete and convincing manner in the decision of the body which orders it.

In the Report on the observance of human rights and freedoms in the Republic of Moldova in 2017, the People's Advocate submitted to the authority's recommendations for ensuring the individual's freedom and safety. The mentioned recommendations refer to the review of the practice of alternative measures application of the preventive arrest, so that it can be applied as an exceptional measure; and the increase in the professional competence of the judiciary system in order to improve the motivation of decisions taken by the courts in the cases of the application of the preventive arrest measure.

Regarding individual freedom and personal security, the Republic of Moldova received recommendations from international human rights organizations.

Thus, the UN Committee on Civil and Political Rights argues that the State party should adapt its legislation and practice to Article 9 of the Covenant, taking into account the general comment of the Committee number 35 (2014) on individual freedom and personal security in which the Committee considers 48 hours as a whole to be enough time for arrested persons to be brought to court.

At the same time, the UN Committee on the Rights of Persons with Disabilities urges the State Party to review and abolish the legal provisions that legitimize forced incarceration and non-consensual psychiatric treatment on grounds of deficiency; to take all legal and other measures necessary to stop the deprivation of liberty of persons with disabilities based on a real or perceived deficiency. The preventive arrest measure continues to be a problem for the justice of the Republic of Moldova. In recent years, several studies have shown that

most of the steps to prolong the preventive arrest have not been accompanied by relevant evidence, however most of them are accepted in court.

Regretfully, the People's Advocate notes that these recommendations have not been implemented.

One of the most serious issues of the observance of individual freedom and security is the excessive application of preventive arrest. This issue has been addressed much more closely with the investigation of the Braguta case. In order to remedy the problem of excessive application of preventive arrest, the Government approved new legal provisions that would contribute to the development of alternative measures.

Thus, on 11.07.2018¹⁹, the Government has approved a series of amendments and additions to the Regulation on electronic monitoring of persons, aimed at ensuring the compliance of the regulations in the field and streamlining the electronic monitoring process²⁰.

It will thus be possible to more effectively monitor electronically the persons in respect of whom a preventive measure is taken in the form of home arrest or the obligation not to leave the town or country by means of a special device consisting of a special bracelet or a mobile device. At the same time, the project includes the consequences of the deterioration of the electronic equipment by the persons to whom a preventive measure has been applied.

The implementation and development of the electronic monitoring system in the Republic of Moldova offers social, economic and legal advantages, such as: depopulation of penitentiaries and diminishing social exclusion, reduction of the negative influences of the prison, as well as of the maintenance expenses of the convicts in penitentiaries. The effectiveness of the application of electronic monitoring is justified by the fact that it also applies as an alternative to detention, being a form of supervision of the probation conditions that ensure the maintenance of the person in the community.

On January 16, 2018, the Superior Council of Magistracy ordered the Judicial Inspection to verify the activity of the courts in the part related to the enforcement of the preventive measures of arrest and home arrest for the period January 01, 2017 – December 31, 2017, with the presentation of the generalized results in an Informative note.

¹⁹ Decision of the Government of the Republic of Moldova on the amendment and completion of the Regulation on electronic monitoring of persons, Number 654 of 11.07.2018;

²⁰ <http://www.justice.gov.md/libview.php?l=ro&idc=4&id=4008>;

On April 25, 2018, the Superior Council of Magistracy issued the Decision number 218/11²¹ on the Informative Note of the Judicial Inspection presented at the SCM (Superior Council of Magistracy) meeting. The Decision states that „the courts should take measures in the future to avoid excessive and unjustified use of preventive arrest in such a way that preventive arrest is, as the law provides, a last resort, absolutely exceptional. The layout of the preventive arrest should be substantiated and not just based on general findings.

The Plenary of the Council notes that the law provides for a number of alternatives to the measure of preventive arrest, including house arrest, judicial control and judicial control on bail, they are rarely used, therefore judges are advised on the need to comply with current legislation on the application of preventive measures to arrest and house arrest by the courts”.

On June 26, 2018, over 100 lawyers organized a protest in front of Chisinau Court of Appeal. The protest comes as a reaction against the excessive practice of preventive arrest application by the courts. According to the Council of the Advocates' Union, the practice of requesting and authorizing the preventive arrest measure has been transformed into a formality „without the institutions requesting and applying it justifying the impossibility of applying non-deprivation of liberty measures”.

The People's Advocate expressed his support for this lawyer's protest action and stated that he supported the efforts to encourage courts to comply with the provisions of national law on the application of preventive measures in the form of arrest and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms²².

After the amendment by Law number 179 of 26.07.2018 of the Article 185 of the Code of Criminal Procedure, the Constitutional Court declared as unconstitutional the text „and in the case of criminal offences that have been committed without the application of physical or psychological constraint, have not resulted in damage to the life and health of the person or were not committed by an organized criminal group or by a criminal organization, the accused, the defendant did not recognize blame in committing the criminal offense” from paragraph (1) of the Article 185. The Constitutional Court has found that the contested provision leads to an unjustified restriction of the right to liberty and security, the right to remain silent, circumvents the presumption of innocence and is therefore contrary to Articles 21 and 25 of the Constitution²³.

²¹ <https://www.csm.md/files/Hotaririle/2018/11/218-11.pdf>;

²² <http://old.ombudsman.md/ro/content/avocatul-poporului-sustine-pozitia-avocatilor-referitor-la-aplicarea-excesiva-arestului> ;

²³ Decision on the Control of the Constitutionality of Certain Provisions of Article 185 of the Code of Criminal Procedure (*preventive arrest if the person has not admitted guilt about committing the alleged criminal*

Therefore, the text declared unconstitutional was excluded by the Law number 213 of 25.10.2018 for the amendment of the Code of Criminal Procedure.

Recently, the European Court of Human Rights in *Sirenco v. Moldova* case²⁴ found the violation of Article 5 §3 (the reasonableness of detention) of the European Convention on Human Rights. The Court noted that detention was applied to punish and discourage antisocial behavior, and this does not justify indulgent manifestation that could encourage antisocial behavior and could affect the trust of the population in the force bodies. In this context, the Court considers it necessary to reiterate that the purpose of preventive detention under Article 5, paragraph (3) of the Convention is to promote the interests of justice by bringing the suspect before the competent body and not punishing him.

In 2018, the European Court found violation of Article 5 of the Convention by the Republic of Moldova in the cases *Pasa, Goremichin, Miron, Dogotar, Litschauer, Matasaru and Savitchi, Cucu and others, Ceaicovschi, Cotet, Secrieru, Iurcovschi and others* cases.

In these cases, the European Court found problems concerning detention in arrest against the national law; arbitrary detention in the Clinical Hospital of Psychiatry; the lack of a legally predictable ground for arrest for maintaining an erotic video chat; unlawful detention and the granting of inadequate compensation for unlawful detention; insufficient motivation for arrest; failure to grant access to materials submitted by the prosecutor to justify the arrest; excessive review term of the request to revoke the arrest; the lack of an effective remedy for violation of Article 5.

In the context of the above, we find that the observance of the individual's freedom and safety of the person is conditioned by the development of alternative measures of preventive arrest, but also by the way in which the national courts understand the importance of applying alternative measures to the detriment of the application of preventive detention, which must remain, as all human rights standards provide, an exceptional measure.

RECOMMENDATIONS:

The People's Advocate reiterates his earlier recommendations urging the state:

- To apply alternative measures to preventive arrest in such a way that this to be applied as an exceptional measure;
- To develop alternative measures to preventive arrest;

offence) (Notifications number 130g/2018, number 133g/2018, number 134a/2018 and number 143g/2018) number 27 o 30.10.2018;
²⁴ [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2252053/15%22\],%22itemid%22:\[%22001-189167%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2252053/15%22],%22itemid%22:[%22001-189167%22]});

- To enhance the professional competence of the judiciary system in order to improve the motivation of the decisions adopted.

LEGAL STATUS OF FOREIGN CITIZENS AND OF STATELESS PERSONS

Article 19 of the Constitution of the Republic of Moldova stipulates that foreign citizens and stateless persons have the same rights and duties as the citizens of the Republic of Moldova, with the exceptions established by the law.

At the same time, under Article 18 of the Law on the People's Advocate (Ombudsman), his attributions extend to „individuals, irrespective of their nationality, age, gender, political affiliation or religious convictions, who live permanently, are or have temporarily been in the territory of the country whose rights and freedoms are presumed to have been violated by the Republic of Moldova”.

As a result, the People's Advocate intervened in the case of the group of people of Turkish origin from the administration of the Moldovan-Turkish Theoretical Lyceum „Orizont” expelled by the Moldovan authorities under the pretext of threats to national security.

The People's Advocate, Mihail, condemned the decision in question because, in his opinion, this action was flagrantly debunked by the international commitments on respect for human rights assumed by the Republic of Moldova, mainly by acceding to the Convention for the Protection of Human Rights and Fundamental Freedoms; the UN Convention against Torture and Other Treatments; the Convention relating to the Status of Refugees, signed at Geneva on July 28, 1951.

The information appeared in the public space gave grounds to assume that the legal provisions stipulated in the Constitution of the Republic of Moldova (Article 19), Law number 270 of 18.12.2008 on asylum in the Republic of Moldova; Law number 200 of 16.07.2010 on the regime of foreigners in the Republic of Moldova have not been observed.

In the opinion made public by the People's Advocate on the subject concerned, but also in the note subsequently sent to the President of Parliament, reference is made to Article 1 of the European Convention on Human Rights, which obliges states to guarantee the rights provided for by it to „any person under their jurisdiction”. These people also include foreigners. A State which is a signatory of the Convention is responsible, under Article 1, for all actions and omissions of its bodies, irrespective of whether the act or omission was the consequence of a national law or the need to comply with international legal obligations. Although the Convention does not guarantee the right to asylum, the expelling State is obliged to refrain from alienation of a person who is at risk of death or ill-treatment in the State of destination.

The People's Advocate argued his position by referring to the ECtHR case-law. Thus, in the case of *Soering v. The United Kingdom*, (July 7, 1989), the European Court of Human Rights has ruled for the first time that a state's liability can be committed if it decides to expel a person who may suffer ill-treatment in the country of destination.

The Convention for the Protection of Human Rights and Fundamental Freedoms absolutely prohibits any form of return of a person who might be exposed to a real risk of treatment contrary to Article 2 and 3 of the ECHR, was mentioned in the opinion of the People's Advocate.

The European Court of Human Rights has also exposed its position in cases where there is a real risk that a person suspected or convicted of terrorism is subjected to ill-treatment in another State, stating that the prohibition on return to that country is absolute regardless of offenses committed previously or by its behavior (*Case Saadi v. Italy*, ECHR 2008).

Also, according to the Law on Aliens' Regime in the Republic of Moldova number 200 of 16.07.2010, the decision on the declaration of the alien's undesirable person shall be brought to the knowledge of the competent authority for foreigners so that it can appeal to the court „within 5 working days from the date of its communication”.

The People's Advocate did not contest the fact that the State, on the basis of a well-established public international law principle and without prejudice to the commitments assumed under the international treaties, has the right to control the entry, stay and removal of aliens from their territories. However, this does not mean that aliens who are legally or even illegally in the territory of a state cannot rely at least on some of the rights and freedoms guaranteed by the Convention and / or its additional protocols.

In this context, the State authorities are obliged, before taking an expulsion decision, to thoroughly analyze the risks to which the person may be subjected and the consequences of his expulsion.

In Turkey, however, the risk for people expelled to be subjected to torture, inhuman and degrading treatment is imminent, according to multiple international reports²⁵, mentioned the People's Advocate.

The People's Advocate recently submitted to Parliament his conclusions on international norms and standards that are applied in similar situations. According to the Paris Principles, consultation of public authorities in the field of human rights is one of the

²⁵https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fTUR%2fCO%2f4&Lang=ru,
<https://www.coe.int/en/web/cpt/turkey>

possibilities for cooperation and interaction of a national institution for the protection of human rights with public authorities. This is also stipulated in the Belgrade Principles²⁶, which establish cooperation relations between national human rights institutions and Parliaments.

THE RIGHT TO VOTE AND THE RIGHT TO BE ELECTED

Achieving the right to vote and the right to be elected was marked by the improvement of the legal framework for some vulnerable groups. At the same time, the development partners and the international and regional human rights protection bodies, besides the appreciation of the positive evolution of the legal framework, have also criticized the invalidation of the local elections in Chisinau municipality, but also the modification of the electoral system.

The right to vote and the right to be elected is provided in Article 21 of the Universal Declaration of Human Rights, Article 25 of the International Covenant on Civil and Political Rights, Article 29 of the UN Convention on the Rights of Persons with Disabilities, and Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women.

The right to vote and the right to be elected is guaranteed by the Constitution of the Republic of Moldova by the provisions of Article 38. In accordance with constitutional provisions „(1) *The will of the people shall constitute the basis of the State power. This will be expressed by free elections which are periodically conducted by way of a universal, equal, direct, secret and freely expressed ballot.* (2) *The citizens of the Republic of Moldova having attained the age of 18 on or by the voting day inclusively are entitled to vote, except for the persons banned from voting by the law.* (3) *The right to stand for election is guaranteed to all citizens of the Republic of Moldova enjoying the right to vote, according to the law.*”

In 2016, the UN Special Rapporteur on the Rights of Persons with Disabilities visited the Republic of Moldova. As a result of this mission, the Special Rapporteur has produced a report on the situation of observance of the rights of persons with disabilities in our country.

²⁶ <https://nhri.ohchr.org/EN/Themes/Portuguese/DocumentsPage/Belgrade%20Principles%20Final.pdf>

In his findings, the Special Rapporteur notes that under Article 29 of the Convention, persons with disabilities have the right to participate in political and public life, and governments are obliged to ensure the accessibility of all voting procedures, facilities and material.

During the 2014 parliamentary elections in the Republic of Moldova, the Central Electoral Commission piloted a series of measures to make voting procedures accessible to people with disabilities, for example by installing ramps at polling stations, availability of ballot papers in Braille language, as well as engaging people with disabilities as members of election observation teams. Support was also provided to make local general elections accessible to people with disabilities, such as the installation of private voting booths.

The Special Rapporteur has welcomed these initiatives and encouraged the Government to implement measures to make polling stations and voting procedures accessible to all types of elections as these measures are a prerequisite for people with disabilities to exercise their right to vote.

However, the Special Rapporteur noted that further efforts are needed to ensure that people with intellectual and psychosocial disabilities have the right to choose and be elected as part of their wider efforts to recognize the legal capacity of people with disabilities.

In this context, the People's Advocate reminds of the decision of the Constitutional Court of the Republic of Moldova to declare the unconstitutionality of Article 13 paragraph (1) letter (b) of the Electoral Code restricting the right to vote for persons declared to be incapacitated. The Court noted in its Decision „since the prohibition on the exercise of the right to vote was automatically and indiscriminately applied in the old legislation, in the absence of a substantiated assessment by a court on the capacity to vote of persons with mental disabilities, the contested provision is contrary to the provisions of Article 38 of the Constitution, which guarantees the right to vote and the right to be elected”²⁷.

Although, through its decision, the Constitutional Court has succeeded in restoring a fundamental right of persons with disabilities, which is obviously a positive development in the field of human rights, yet the People's Advocate considers that this initiative should have belonged to the authorities, especially in the context of the recommendations of the UN Special Rapporteur on the Rights of Persons with Disabilities.

As a result of the amendments made by the Law number 238 of 08.11.2018, in force as of 30.12.2018, article 13 paragraph 1) letter (b) of the Electoral Code establishes restrictions only for persons without the right to vote through the final decision of court. The

²⁷ Decision of the Constitutional Court on the objection of unconstitutionality of Article 13 paragraph (1) letter b) of the Electoral Code (*Notification Number 105g/2018*) number 25 of 11.10.2018;

People's Advocate appreciates the state's efforts on the implementation and honoring the obligations assumed by the Republic of Moldova by ratifying the UN Convention on the Rights of Persons with Disabilities and endorsed the changes in question.

After the substantial changes in the Electoral Code²⁸, regarding the parliamentary elections, for the first time in the history of the Republic of Moldova, Parliament will be elected on the basis of the mixed electoral system.

The latest amendments to the Electoral Code have been made²⁹ on the eve of the beginning of the electoral period for the parliamentary elections on December 10, 2018, which entered into force after that date. Respectively, electoral agitation was allowed on election day and the previous one.

Changes introduced into electoral law have prompted the parliamentary elections of February 24, 2019 to take place under conditions other than previous elections.

Despite these national achievements in harmonizing the legal framework, development partners and regional human rights mechanisms voiced their concerns about ensuring the right to vote and the right to be elected.

Thus, the Parliamentary Assembly of the Council of Europe (PACE) expressed, in a written statement³⁰, its deep concern about the degradation of basic democratic standards in the Republic of Moldova, namely the rule of law, democracy, the independence of the judiciary system and the freedom of the press, as well as the harassment of the opposition.

PACE invited the Government of Chisinau to respect the vote expressed by the citizens of Chisinau in the municipal elections, as respected by the national and local authorities and the international observers, as it reflects the will of the voters.

PACE also called for electoral law to be adjusted and aligned with the main proposals and recommendations of the OSCE / ODIHR and Venice Commission on electoral reform, warning that „there is a risk that in the current electoral system, elections will not be recognized by international organizations”.

Meanwhile, the members of the Parliamentary Assembly of the Council of Europe have asked the Government of Chisinau to create conditions for the citizens of the Republic of Moldova living abroad to express their right to vote in future parliamentary elections.

The problem of deficiencies in the right to vote by citizens of the Republic of Moldova abroad was approached by the People's Advocate after the presidential election in 2016. The

²⁸ Law on amending and completing some legislative acts, number 154 of July 20, 2017;

²⁹ Law for the amendment of some normative acts, number 268 of 23.11.2018, in force on 14.12.2018;

³⁰ Written statement, number 664, document 14648. of October 11, 2018;

<https://cotidianul.md/2018/10/12/pace-expresses-concern-over-degradation-of-democratic-values-in-moldova-says-parliamentary-elections-might-not-be-recognized/>

People's Advocate stated that the authorities failed to fulfill the positive obligations for ensuring the effective exercise by the Moldovans of the diaspora of the right to vote and recommended to the authorities to provide effective mechanisms for the plenary exercise of this right³¹.

The limitation of the constitutional right to vote of citizens abroad was mentioned by the Constitutional Court in its Decision number 34 / 2016, which adopted an address to the Parliament requesting to review the voting mechanism abroad as well as the introduction of additional criteria for the calculation of the number and geographical distribution of polling stations abroad in order to effectively ensure the right to vote of citizens abroad (points 103-141).

In this context, the People's Advocate considered that some regulations in the electoral legislation are restricting the right of citizens of the Republic of Moldova living abroad to exercise their right to vote on the basis of the principle of universality and equality, namely the phrase „in the polling sections established outside the Republic of Moldova” contained in Article 58, paragraph (3), letter c) of the Electoral Code. According to the mentioned provisions, the exercise of this right by the citizens of the Republic of Moldova who are abroad is possible only on the basis of the passport or the sailor's book.

In order to clarify the exercise of the right to vote by the citizens of the Republic of Moldova who are abroad, the People's Advocate has submitted to the Constitutional Court the Notification on the constitutionality control of the stated phrase.

In the opinion of the People's Advocate, this implicit rule forbids the citizens of the Republic of Moldova to vote in the polling sections (stations) abroad with identity cards, temporary identity cards (as citizens vote at home) or with ballot papers or expired passports.

The Ombudsman also considered it important to exercise the control of the constitutionality of Article 58 paragraph (3) of the Electoral Code insofar as this forbids voting based on expired identity documents but which allows the voter to be identified in the State Electoral Register (RSA).

Any restriction on electoral rights should not be such as to exclude some people or groups of people from participating in the political life of the country. The People's Advocate considered that the requirement of exclusive presentation of the passport or seafarers' (sailor's) book for the exercise of the right to vote by citizens abroad is disproportionate, or the attainment of the legitimate aim pursued - the confirmation of the citizenship and eligibility of electors in RSA can be done with any identity act, including

³¹ http://ombudsman.md/wp-content/uploads/2018/10/raport-ombudsman_2016.pdf;

expired. He also noted that voters were virtually admitted to each election based on the decisions of the Central Electoral Commission³² properly checked by courts, to vote based on expired identity papers.

By the decision of January 14, 2019, the Constitutional Court declared the notification inadmissible.³³

The People's Advocate, recalling that, in ruling on the importance of the right to vote in a democratic society, the European Court underlined that in the XXIst century, in a democratic state, the right to vote should not be a privilege of restricted categories of persons but a good of the whole society, and the presumption should operate in favor of its recognition in the case of as many people as possible (see, to that effect „*Mathieu-Mohin and Clerfayt v. Belgium*, March 3, 1987, § 51; and *Hirst v. the United Kingdom [number 2]*, October 6, 2006, §59). Otherwise, the democratic legitimacy of the legislative body elected in this way and that of the laws adopted by it would be undermined³⁴.

However, the European Court has established that the notion of „implicit limitation”, which stems from Article 3 of Additional Protocol Number 1³⁵, is of particular importance for determining the legitimacy of the aims pursued when imposing restrictions on the rights guaranteed by this article (see *the case Mathieu-Mohin and Clerfayt*, cited above, §52). The conditions under which the right to vote and the right to candidate for election may not limit these rights to the extent that their very essence is affected. These conditions must also meet the requirements of equality and the means used to achieve the legitimate aim must not be disproportionate (see, for example „*the case Mathieu-Mohin and Clerfayt*, cited above, §52).

The People's Advocate appreciates the efforts to harmonize the legal framework to ensure the participation of all members of the society in the decision-making process in line with international standards, and in particular the provisions of the UN Convention on the Rights of Persons with Disabilities.

However, the People's Advocate considers that the authorities should draw the necessary attention and make every effort to meet the recommendations of development partners and international and regional human rights protection mechanisms.

³² See in the context the Instruction on the Particularities of Participation in the Parliamentary and Presidential Elections, approved by the Decision of the CEC (Central Electoral Commission) number 2258 of 06.03.2009, by the Decision of the CEC (Central Electoral Commission) number 3484 of August 26, 2010, by the Decision of the CEC (Central Electoral Commission) number 3817 of 12.11.2010, by the Decision of the CEC (Central Electoral Commission) number 2954 of 18.01.2014, by the Decision of the CEC (Central Electoral Commission) number 390 of 14.10.2016, all on voting within the elections based on identity documents with expired validity term;

³³ Constitutional Court Decision number 5 of January 14, 2019;

<http://www.constcourt.md/ccdocview.php?l=ro&tip=decizii&docid=587>;

³⁴ See *Hirst [number 2]*, cited above, §62;

³⁵ The right to free elections;

RECOMMENDATIONS:

The People's Advocate recommends that the authorities take into account the development partners' recommendations on the right to vote.

FREEDOM OF EXPRESSION

Freedom of expression includes freedom of opinion and the freedom to receive or communicate information or ideas without the interference of public authorities and without taking into account the borders. Individuals have the right to say their point of view, even if their opinions are offensive or shocking for others - provided they do not incite violence or hate. Freedom of expression, supported by a diversity of independent media, allows citizens to make informed choices and ensure that power representatives take into account their major interests.

The European Court of Human Rights has repeatedly stated that freedom of expression „is one of the essential foundations of a democratic society and a basic condition for its progress towards democracy, the political process and the development of every human being” that „the mass-media plays a prominent role in a state governed by the rule of law”³⁶.

On the basis of his own observations, the synthesis of views expressed by national and international experts, European and international dignitaries, the People's Advocate found that in 2018 the state of affairs regarding respect for the right to free expression has not improved.

The year 2018 was marked by hate speech in the public space, by attacks on mass-media and lack of adequate responses from relevant institutions, restrictions imposed on journalists for access to events and some information of public interest. There have been more cases of manipulation³⁷ of the information and the distribution of counterfeits. The editorial independence of the mass media continued to be affected by the pressure exerted by mass media owners, political or commercial interests.

³⁶ Castells v. Spain, April 23, 1992; Prager and Oberschlick v. Austria, April 26, 1995.

³⁷ A Monitoring Report of the Independent Journalism Center conducted between October and December 2018 found that all 12 monitored mass media institutions admitted at least one manipulation technique and the majority showed their predilection for a political party: <http://www.media-azi.md/ro/stiri/raport-cji-mai-multe-institu%C8%9Bii-media-autohtone-transmit-%C8%99tiri-politizate-cu-etichet%C4%83ri-%C8%99i>

People's Advocate's opinions coincide with those of the mass media community³⁸, of European officials³⁹ and international⁴⁰.

On the other hand, the results of the sociological study „Perceptions on the observance of human rights in the Republic of Moldova, carried out in the autumn of 2018 at the order of the Office of the People's Advocate, attest to the maintenance of the state of affairs in 2016 when a similar poll was conducted. Like then, 62.8% of respondents consider that the journalist's right to free expression is not respected. In 2018 fewer respondents than in 2016 believed that the right to free public expression is respected (41.7% in 2016 and 38.4% in 2018). At the same time, respondents' perception of the right to receive information from public authorities improved in 2018: 44.2% in 2018 compared to 2016 (29.3%).

In the reference period and in early 2019, the European Court of Human Rights adopted two decisions relating to previous ECHR appeals against the violation of Article 10 of the ECHR.

In 2018, the European Court of Human Rights condemned the authorities of the Republic of Moldova in the case of Guja v. Republic of Moldova for violating Article 10 of the European Convention. The case concerns the applicant's allegation of continued violation of his right to freedom of expression after the whistle-blowing incident, despite the decision of the Grand Chamber in his favor. Another conviction for the violation of Article 10 of the ECHR was pronounced on January 15, 2019 in Matasaru v. Moldova case. Anatol Matasaru was sanctioned with imprisonment for the obscene protest in front of the prosecutor's office. The ECtHR found that sanctioning the applicant with the imprisonment for hooliganism (Article 287 of the Criminal Code) is contrary to the freedom of expression guaranteed by Article 10 of the European Convention on Human Rights. The ECtHR established that freedom of expression is applicable in this situation even if the protest was obscene. The ECtHR noted that no judge had examined the proportionality of the sanction

³⁸In the Resolution of the Mass Media Forum of the Republic of Moldova, edition 2018, it is noted „the degradation of mass media freedoms in the year 2018; the worsening of the journalists' activity conditions, manifested by the decrease of the transparency degree of the public institutions and the limitation of the access to certain categories of public interest information; intensifying cases of intimidation and harassment of journalists in connection with their professional activity, as well as the lack of an adequate response to these cases from the part of public institutions”: <http://api.md/news/view/en-resolution-of-the-2018-media-forum-of-the-republic-of-moldova-1910>

³⁹ In the EU Parliament's resolution on the implementation of the EU-Moldova Action Plan of November 2018, the European deputies voiced their concern about the attested regression on the mass media and advertising market, the weakening of independent media bodies. The EU has repeatedly expressed its concern about the deterioration of democratic standards by increasing the number of human rights violations specifically targeting independent judges, journalists and political opponents.
https://ru.scribd.com/document/393190046/Rezolutia-PE-la-adresa-Moldovei#fullscreen&from_embed

⁴⁰ In his Statement on the Visit to the Republic of Moldova in June 2018, the UN Rapporteur on the Status of Human Rights Defenders expresses his concern about the regress in the mass media freedom and independence.

applied with freedom of expression. The most severe punishment - prison, which has been suspended for three years - has been applied. According to the judges of the European Court, this sanction has a discouraging effect on the manifestation of freedom of expression not only in relation to the applicant, but also with other persons.

The mass media situation

In 2018, the Moldovan mass media sector continued to face the same challenges as in previous years: a partially outdated legal framework; the monopolization of media institutions by some political groups; attacks and intimidation against journalists; unfair competition on the advertising market; the limited independence of the broadcasting regulatory authority.

Compared to 2017, the country has lowered its position in the 2018 press freedom list, produced annually by the „Reporters Without Borders”. Republic of Moldova ranks 81 among 180 countries.

„Mass media in Moldova are diverse but extremely polarized, as is the country itself, characterized by the chronic instability and excessive influence of the oligarchs. The editorial policy of the main media sources is in close ties with the affairs and political interests of the owners”, the Reporters Without Borders (RWB) official website, which produced the Index.

In 2018, as in recent years, mass media representatives have been targeted by attacks and pressures from politicians or public figures.

This has also been noted by the United Nations Special Rapporteur on the status of human rights defenders, Michel Forst who, in the statement on the visit to the Republic of Moldova from June 25 to 29, 2018, referred to cases of intimidation, threats to the representatives of the media community, including on defamation accusations and criminal charges, especially for investigative journalists. He was concerned about the fact that „journalists are victims of denigration campaigns” and „they are confronted with restrictions on access to information”. The UN Special Rapporteur called on the authorities to ensure that the media and NGOs have more free access to publicly important information, including information on court hearings on social resonance cases, or policy.

The People's Advocate has monitored the state of affairs in which the mass media work and has intervened in several situations where journalists have been targeted by attacks and intimidation⁴¹.

⁴¹<http://ombudsman.md/ro/content/avocatul-poporului-condamna-orice-manifestari-de-ura-si-intoleranta-mesaje-cu-caracter>;
<http://ombudsman.md/ro/content/avocatul-poporului-mihail-cotorobai-considera-inadmisibile-orice-tentative-de-intimidare>;

The People's Advocate has considered threatening messages to journalists as particularly dangerous and unacceptable. In addition to intimidating political opponents and journalists for criticism, inciting to violence against individuals or groups of people, it propagates certain stereotypes and generates hate and division among people.

The People's Advocate asked the Prosecutor General to examine the circumstances of the case and to take the appropriate attitude of the gravity, but an order for refusal was issued in the start of the criminal prosecution on the ground that „*the acts committed are not provided by the criminal law as a criminal offence*”.

This circumstance has prompted the People's Advocate to send a repeated demarche on the subject, requesting the Prosecutor's Office to take the necessary measures to persecute and intimidate journalists for criticism. In the repeated demarche addressed to the Prosecutor General, the People's Advocate invoked international norms and standards in the field, which the Republic of Moldova committed to respect. Thus, in the Recommendation of the CoE Committee of Ministers - **CM/Rec(2016)4[1]** of April 30, 2014 on the protection and security of journalists and other media actors⁴², the Member States are called upon to fulfill their positive obligations to protect journalists and other media from any form of attack and impunity in accordance with the European Convention on Human Rights and the case law of the European Court of Human Rights.

The Ombudsman also addressed a demarche to the President of Parliament with the request for a priority examination, until the end of the mandate of the deputies of the XXth legislature, of the package of laws on hate crimes and bias, which was voted in 2016 in the first reading.

Deputies disregarded the People's Advocate Recommendations, and the Chisinau municipality Prosecutor's Office rejected the request lodged against the ordinance not to initiate the criminal case on the given subject. In the reply of the Prosecutor's Office, it is said that the People's Advocate's allegations regarding the „intimidation of journalists for criticism do not fall within the juridical-criminal construction of Article 180¹ of the Criminal Code” (Deliberate prevention of mass media activity or intimidation for criticism).

The People's Advocate mentions that the impunity for intimidation and violence actions, harassment of journalists, failure to enforce the law of liability for this kind of

<http://ombudsman.md/ro/content/mihail-cotorobai-dreptul-de-protecta-libertatea-de-opinie-si-libertatea-de-primi-sau;>

<http://ombudsman.md/ro/content/comunicat-de-presa-31;>

⁴² „Attacks and intimidation of journalists and other media players inevitably have the effect of creating a state of fear which seriously affects the freedom of expression. This effect is all the more powerful as the prevalence of attacks and intimidation is aggravated by a culture of legal impunity for their authors. Such a culture of legal impunity is an indicator of endemic abuse on human rights”.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9#_ftn1

action contributes otherwise to the formation of an opinion according to which such behavior is acceptable, contributes to a general atmosphere of intolerance and fear and can act as an incentive for new cases of violence and even retaliation.

The People's Advocate reiterates that thus the impunity for intimidation and threats against journalists can affect the freedom of expression and freedom of the press and calls on the authorities to comply with international rules and standards on the protection and safety of journalists.

In this respect, the United Nations Human Rights Council Resolution of September 27, 2018, number 39 / 6 on „Journalists' Security”, calls on Member States to develop and implement strategies to combat impunity for attacks and violence against journalists.

The People's Advocate recommends urgent adoption of draft laws set on hate crimes and bias, emphasizing that the criminal law aimed at combating hate speech must be clear and precise to allow individuals to regulate their behavior and show appropriate behavior to the guarantees of freedom of expression, in accordance with Article 10.2 of the Convention.

At the same time, we appreciate some actions taken by the authorities to create an environment conducive to mass media activity, particularly in terms of improving the legal framework.

In the framework of a Joint Project of the European Union and the Council of Europe „Promoting Mass Media Freedom and Pluralism in the Republic of Moldova”, which ended at the end of 2018, four of the eight projects drawn up by the members of the working group specifically created for this purpose in June 2017 were adopted. In the final reading were adopted the Audiovisual Media Services Code of the Republic of Moldova, the National Mass Media Development Concept in the Republic of Moldova, the Law on attracting foreign investments in the field of film production and other audiovisual works, and the Information Security Concept of the Republic of Moldova.

In the first reading, was adopted the Law on Advertising, such as the draft amending and completing several laws, including the Law on Access to Information, the Law on Freedom of Expression, the Law on the Protection of Personal Data.

Visiting our country in November of the last year, OSCE Representative for Freedom of the Press, Harlem Désir, remarked that Moldova's involvement in a massive reform process of mass media law, strongly encouraging the authorities to use this opportunity to foster an environment conducive to the development of a free and pluralistic media landscape.

The OSCE official urged the authorities to examine the challenges for mass media freedom and pluralism, driven by the high degree of concentration of mass media ownership

that is detrimental to the diversity of voices and the development of independent mass media. Harlem Désir said that fair competition rules are needed in the media market, including funding and access to commercial advertising⁴³.

Ensuring a favorable environment for the mass media independently is a major challenge for all democracies, underlines also the Secretary General of the Council of Europe, **Thorbjørn Jagland**. The European official also emphasizes that government influence and strong commercial interests must be constrained by appropriate laws, practices and by a general approach and democratic culture that fosters freedom of expression - for the mass media to be able to cope with attempts to be controlled. However, a significant number of Member States fail to effectively impose their anti-concentration laws, mentions **Thorbjørn Jagland**.⁴⁴

In this context, the People's Advocate stresses that the Republic of Moldova has not yet managed to create the effective anti-concentration legal framework and to ensure real transparency of the property market in order to protect the public debate in democratic societies, in accordance with European and international norms. The People's Advocate urges the authorities to follow the recommendations of the Council of Europe, the UN and the OSCE structures to make plurality more effective and strengthen the independence of the media, noting that in March 2018, the Committee of Ministers of the Council of Europe updated the CoE standards in this area by adopting the Recommendation CM / Rec (2018) 1 on pluralism and transparency of mass media ownership⁴⁵.

The People's Advocate appreciates the drafting and voting in the first reading of the draft law (bill) on advertising which could prevent and combat the cartelization of the media and advertising-related market, and urges the authorities to adopt this law as a whole following proper consultation with civil society and in line with European and international traditions. The same principle is to be applied to the finalization of projects and the adoption of amendments and additions to the Law on Access to Information, the Law on Freedom of Expression, the Law on the Protection of Personal Data.

Access to information

The importance of ensuring decision-making transparency and the access of citizens and journalists to information of public interest is indisputable. Civil society representatives have the right to monitor the actions of their leaders and to engage in full and open debate

⁴³ Press release on the visit to the Republic of Moldova of the OSCE Representative for Freedom of Expression: <https://www.osce.org/ro/representative-on-freedom-of-media/404879>

⁴⁴ Report of the Secretary General of the Council of Europe, **Thorbjørn Jagland**, „Status of democracy, the rule of law and human rights in 2018”

⁴⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13

on these actions. These ones must be able to assess the performance of the government, a conditional fact upon access to information on the state of the economy, social systems and other issues of public interest. Good governance is open to the general public.

In 2018, the state of affairs on access to information has also not improved. Individuals, journalists or civil society representatives continue to encounter the same difficulties in obtaining information of public interest, such as the difficult procedure for obtaining information; non-compliance by public servants with the legal terms for offering it; partial disclosure of the requested information or failure to submit it; application of the law on petitions in cases of request for information; the refusal to disclose information on the grounds of the protection of personal data or because it would present a state secret.

The People's Advocate has addressed the issues in question and made recommendations for removing them in his reports of 2016 and 2017⁴⁶, which in general have not been met.

In support of the People's Advocate's opinion are also the results of some research conducted by the Center for Policies and Reforms (CPR) conducted in 2018, which shows that about one-third of the journalists' requests for information remain unanswered, a request in two receives a refusal to provide the requested information on the grounds of the protection of personal data (or, eventually, commercial secret), for a large part of the requests the answers are formal and elusive⁴⁷. The CPR experts and also mass media representatives also noticed the excessive bureaucracy of the process, the failure to comply with the legal terms of 15 working days, the need to return with repeated requests for the same information, the „unfriendly” attitude towards the press, the unjustified invocation of the Law on Petition, which indicates 30 working days as the deadline for reply.

As a result of the examination of the journalists' request from the Journalistic Investigation Center, the People's Advocate identified other difficulties encountered by the journalists in obtaining information of public interest. Thus, information is not provided if the request is sent in electronic format and does not have an electronic signature⁴⁸, because, in accordance with Article 15 of the Law on Access to Information number 982 of 11.05.2000, written requests for access to information are registered in accordance with the

⁴⁶ Report on the observance of human rights and fundamental freedoms in the Republic of Moldova in 2016, page 31.

Report on the observance of human rights and fundamental freedoms in the Republic of Moldova in 2017, pages 21, 22, 24.

⁴⁷ <https://cpr.md/2018/07/03/accesul-la-informatii-in-moldova-drumul-anevoios-in-cautarea-dreptatii-prin-judecati-si-nu-numai/>

⁴⁸ The Journalists from the Journalism Investigation Center have asked the Supreme Court of Justice to confirm / refute whether or not the CSJ (Supreme Court of Justice) is equipped with a Skoda model or not, with an indication of the registration number, caught outside the service hours around a supermarket, as well as the comments on its use in other interests than those of service.

legislation on registers and petitioning. At the same time, the Law on Petition number 190 of 19.07.1994, in Article 5 stipulates that the petition in electronic form must correspond to the requirements related to the electronic document, including the application of the digital signature.

At the same time, the examination of requests for access to information provides for a simpler examination procedure, and the imposition of the condition of applying the electronic signature on the ones sent in electronic format complicates the procedure for obtaining information.

On 19.07.2018 the Parliament adopted a new Administrative Code, which will enter into force on 01.04.2019. Then the Law on Petition number 190/1994 and the Law on administrative contentious number 793/2000 will be abrogated. But also in the new regulatory framework it is maintained that the request submitted in electronic form must correspond to the requirements set for an electronic document⁴⁹.

The People's Advocate reiterates in this order of ideas the imperative necessity of rallying the Law on Access to Information, in particular Article 15 within it, at European and international standards. The Ombudsman will monitor the process of adopting the new law on access to information which is currently in the process of elaboration and will make the rigorous proposals to simplify the procedure of access to information and the exclusion of the requirement to equate it with the conditions set for the examination of a petition.

The case under consideration concerns information of public interest requested by investigative journalists. Thus, according to ECHR case law, authorities should provide the journalists with the required information if they carry out their „Watchdog” mission to publicize information that is of public interest.

In the Magyar Helsinki Bizottság case, the Court establishes four „threshold criteria” to better define the circumstances in which refusal of access to information is an interference in a given cause (§ 156):

- a. Purpose of the information requested: contribution to a public debate;
- b. Nature of requested information: nature of public interest;
- c. Role of the applicant: social supervisors as „*watchdog*” and others;
- d. Whether the information is ready and available to public authorities.

In the case of Magyar Helsinki Bizottság v. Hungary, in November 2016, the Court also gave general guidelines for the definition of the notion of public interest. Thus, „the public interest relates to issues that affect the public to such an extent that it can legitimately show interest in them that attract its attention or which concern it to a significant extent (...)

⁴⁹ Administrative Code of the Republic of Moldova number 116 of 19.07.2018, Articles 72, 75.

matters that can generate considerable controversy, which refers to an important social issue or involves a problem about which the public would have an interest in being informed.”

Access to information is deemed necessary for the Court if „its retention would impede or affect the exercise by that person of his right to freedom of expression (...), including the freedom to receive and transmit information and ideas”.

OSCE Representative for Freedom of the Press, Harlem Désir, also stated at the end of his visit to Moldova in November 2018 that „access to information and reporting on subjects of public interest should not be hindered by administrative obstacles which could serve to protect individuals, including representatives of public authorities, from legitimate investigative journalism”.

Recommendations to public authorities:

- To fulfill the recommendations of the Committee of Ministers of the Council of Europe, Rec (2018) 11 on media pluralism and transparency of mass media ownership (increasing transparency degree in the ownership on mass media and reducing the concentration of ownership on the mass media);
- To ensure the implementation of the Audiovisual Media Services Code of the Republic of Moldova, the National Mass Media Development Concept in the Republic of Moldova, the Law on attracting foreign investments in the field of film production and other audiovisual works and the Information Security Concept of the Republic of Moldova in the spirit of European traditions and in accordance with the recommendations of the international partners of the Republic of Moldova;
- To continue the process of improving the legal framework on mass media and adopt the Law on Advertising, to amend the Law on Access to Information, the Law on Freedom of Expression, the Law on Personal Data Protection following appropriate consultations with the civil society;
- To fulfill the United Nations Human Rights Council recommendations to Member States from the Resolution number 39/6 on „Journalists' Security” of September 27, 2018;
- To meet the recommendations of the CoE Committee of Ministers- **CM/Rec(2016)4[1]**, of April 30, 2014 on the protection and security of journalists and other media players;
- To adopt as a matter of urgency the set of draft laws on hate crimes and bias (according to the list of criteria protected by the national law and the ECHR) and to ensure that these provisions are fully implemented in order to prevent new cases of hate speech and bias;

- To investigate promptly and effectively all the criminal offences against journalists committed by state or non-state actors, to hold accountable for intimidation, harassment of journalists, threatening discourse against them;
- To rally to the European standards and norms the Law number 133/2011 on the protection of personal data; the Law number 171/1994 on commercial secret; the Law number 245/2008 on state secrecy, with the formulation of clear provisions on the category of information that is of public interest;
- To ensure access to information of public interest, including through modern electronic means, by eliminating the abusive interpretation of the national and international legal norms on state and commercial secrecy, the protection of personal data, data to refuse to provide information requested by individuals or journalists;
- To ensure the training of central and local public authority with regard to ensuring transparency and access to information.

FREEDOM OF ASSEMBLY

During the year 2018 there have been several large-scale demonstrations. The People's Advocate has always made public appeals to urge participants in these meetings to exercise freedom of peaceful assembly. As a result of monitoring these actions, the People's Advocate did not identify violations of the freedom of assembly.

Freedom of assembly is guaranteed in Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 5 letter d) of the Convention on the Elimination of All Forms of Racial Discrimination

The Constitution of the Republic of Moldova enshrines this right in Article 40, which states that „meetings, demonstrations, manifestations, processions or any other assembly are free and may be organized and conducted only peacefully and without the use of any kind of weapon”.

In its final remarks on the Third Periodic Report of the Republic of Moldova on the Implementation of the International Covenant on Civil and Political Rights, the Human Rights Committee recommends that the State guarantee the right to free assembly without

unjustified restrictions and obstacles in law and in practice, to take appropriate steps to ensure that organizers and participants in meetings do not face intimidation, including interference from the police before organizing assemblies.

During the year 2018, several large-scale meetings took place, and the People's Advocate interfered with a public appeal to the organizers of the demonstrations, but also to the authorities.

In his appeals, the Ombudsman noted that the peaceful expression of the point of view on subjects, events with social impact during demonstrations, is the proof of the maturity of a democratic society. The civilized dialogue, with the exclusion of violence, is a defining condition for the free assembly, an important premise for ensuring free exchange of ideas, opinions and a guarantee of respect for democratic principles and the rule of law.⁵⁰

At the same time, the People's Advocate urged all participants in the protest actions to maintain peacefulness without allowing their passage into violent actions that would jeopardize public order, body integrity and people's lives, as well as the integrity of property.

The representatives of the police forces were also encouraged to ensure the maintenance of public order, to strictly observe the legal provisions regarding the protest actions, as well as the legal provisions on the use of special means.

At the same time, the People's Advocate appreciates the efforts made by the representatives of non-governmental organizations to guide protest participants how to behave in a crisis situation by drafting and distributing recommendations.⁵¹

Whenever mass demonstrations were announced, crisis cells were organized within the Office of the People's Advocate to monitor the conduct of the assemblies, and in the event of violent degeneration of peaceful actions, to intervene, according to the People's Advocate mandate, established by the Law on the People's Advocate (Ombudsman), number 52, of 03.04.2014.

In this context, the Ombudsman is keen to express his appreciation for the openness of the institutions responsible for ensuring public order, to ensure respect for human rights in the context of the demonstrations that took place during 2018.

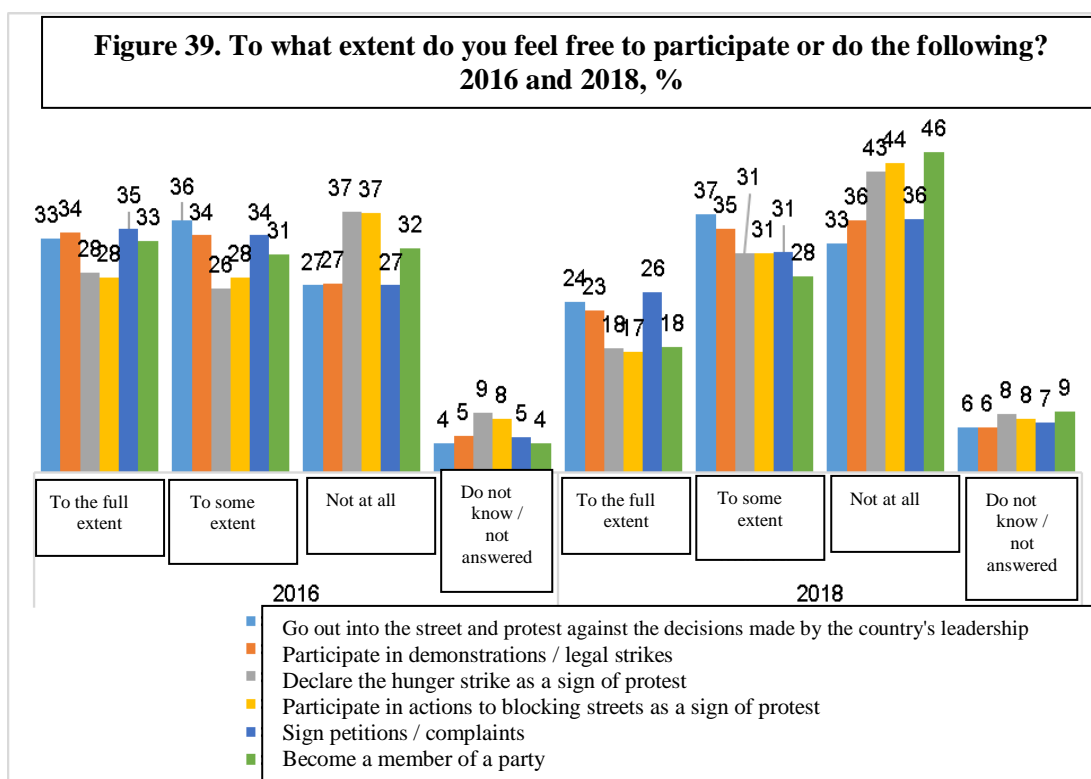
Data from the Study „Perception of Human Rights in the Republic of Moldova” in the Republic of Moldova (2018), conducted by iData Company at the Office of the People's Advocate order and with the financial support of UNDP Moldova, raise concern, showing a decline in overall civic activism and the desire to engage in decision-making processes. If in

⁵⁰ <http://old.ombudsman.md/ro/content/avocatul-poporului-mihail-cotorobai-indeamna-autoritatile-statalui-precum-si-0>

⁵¹ <http://old.ombudsman.md/ro/content/avocatul-poporului-mihail-cotorobai-reafirma-importanta-respectarii-dreptului-la-libera>

2016 a large part of the population of the Republic of Moldova felt free to take part in a civil or protest action in different forms (33%), then in 2018 less than a quarter would feel free to participate in a certain protest action (24%). In 2018, only 23% would feel free to participate in legal strikes or other demonstrations, which is 11 percentage points less than in 2016.

More and more respondents have a reserved attitude to meetings and protests. Up to half of them (44%) would not feel free to participate in street blocking actions in sign of protest, for example, or to declare the hunger strike (43%).



RECOMMENDATIONS:

The People's Advocate recommends that the authorities ensure freedom of assembly as also stated in its recommendations by the UN Human Rights Committee: without undue restrictions and obstacles in law and practice, and to take appropriate action to ensure that the organizers and attendees to meetings do not face intimidation, including interference from the police before organizing meetings.

RIGHT TO HEALTH PROTECTION

In spite of changes in the health system, the implementation of various reforms aimed at improving this area, health care beneficiaries continued to invoke human rights violations in health care, notably as regards: failure to comply with the condition of obtaining informed patient consent; non-observance of professional ethics by doctors; lack of correct information; faulty doctor-patient communication; lack of discretion while providing medical assistance (confidentiality); limited access to specialized treatment; poor quality of medical services; limited access to cost-effective treatments; lack of legal framework for malpractice and so on.

The Republic of Moldova is a party to a series of international acts and organizations which concern is, among others, health and its many aspects, and some of these acts are of supreme legal force, thus obliging the state to respect them and implement them plenary. In order to implement the principles enshrined in international acts and to fulfill the inherent obligations, the Constitution of the Republic of Moldova stipulates in Article 36 paragraph (1) that *the right to health protection is guaranteed*.

At the same time, this right implies a series of specific obligations for the state, including:

- A healthcare system that offers equal opportunities to enjoy the highest possible level of health;
- Prevention, treatment and control of diseases;
- Access to essential medicines;
- Maternal, reproductive and child health;
- Timely access to basic health services;
- Information and education in health;
- Participation of the population in the decision-making process in the health system.

By guaranteeing the right to health protection, the Constitution establishes obligations for the State and it is absolutely natural to impose upon the legislative authority the task of regulating the main areas and aspects of the realization of the right in question. Article 36 paragraph (3) of the Basic Law provides that the structure of the national health care system and the means of protecting the physical and mental health of the person are established according to the organic law. The Parliament fulfilled this obligation by adopting the *Law on Health Protection* number 411-XIII of March 28, 1995, *Law on Patient Rights and Responsibilities* number 263 of 27.10.2005, *Law on Public Health Surveillance* number 10-XVI of February 3, 2009 and other laws in the health field.

At the same time, this right is also found in Article 12 of the Covenant on Economic, Social and Cultural Rights, Article 25 of the UN Convention on the Rights of Persons with Disabilities. The right to health protection and healthcare is also enshrined in Articles 11 and 13 of the Revised European Social Charter.

The right to health is also provided by the Sustainable Development Objective 3, which is about ensuring a healthy life and promoting the well-being of all at all ages. The objectives of this SDO are: to reduce maternal mortality; eliminating preventable child deaths; eliminating or reducing HIV / AIDS epidemics and other diseases; ensuring universal access to sexual and reproductive health services; access to basic medicines and safe vaccines.

Recommendations referring to the realization of the right to health were submitted to the Republic of Moldova as a state-party to several international treaties on human rights. Thus, on this chapter, we find recommendations from the Committee on Economic, Social and Cultural Rights⁵², Committee on Human Rights⁵³, Committee on the Rights of Persons with Disabilities⁵⁴, Council for Human Rights⁵⁵, Council for Human Rights⁵⁶.

The right to health is addressed today in the light of international provisions, with emphasis on patient rights, these being laid down in the European Patients' Rights Charter, which includes 14 patient rights.

Moreover, by ratification of the Convention on Human Rights and Biomedicine⁵⁷, the Republic of Moldova once again committed to „take appropriate measures to ensure fair access to good quality health services”.

Equally important is the obligation of the state to ensure the right to the highest standard of health, which refers to the fact that all health services must be: *available, affordable, acceptable and qualitative*.

In other words, the state must ensure:

- a sufficient amount of medical services and medicines;

⁵² Final Observations on the IIIrd Periodic Report of the Republic of Moldova on the Implementation of the International Covenant on Economic, Social and Cultural Rights, October 6, 2017.

⁵³ Final Observations on the Third Periodic Report of the Republic of Moldova on the Implementation of the International Covenant on Civil and Political Rights, November 18, 2016.

⁵⁴ Final Observations on the Initial Report of the Republic of Moldova on the Implementation of the Convention on the Rights of Persons with Disabilities, April 12, 2017.

⁵⁵ The Report of the Special Rapporteur on Rights of Persons with Disabilities on his mission in the Republic of Moldova, February 2, 2016.

⁵⁶ Recommendations for the Republic of Moldova issued during the IInd cycle of the Universal Periodic Assessment, November 8, 2016.

⁵⁷ Law on the Ratification of the Additional Protocol to the Convention on Human Rights and Biomedicine which targets biomedical research number 271 of 30.11.2012.

- *physical* accessibility (financial and non-discriminatory for all vulnerable groups), *informational* (the right to request, receive and disseminate health information, including for people with disabilities);
- Acceptability - which would take into account the patient's cultural specificity, medical ethics;
- quality services.

The year 2017 marked the health care system through a series of reforms designed to implement changes in this sector, to provide high-quality primary care, to improve health management and healthcare funding.

Being declared as one of the priorities for the coming years, the right to health care was also thoroughly monitored by the People's Advocate in 2018.

Ensuring human rights in the health care system, respecting patient dignity, and enhancing the participatory role of individuals in making healthcare decisions must truly become a priority for the state. Health is not only a social, economic and political issue, but also a human rights issue. Violation of human rights can lead to poor health or may result, if necessary, from precarious health.

Achieving performance in the healthcare system is driven by the success of the four basic functions: managing, funding, generating resources and delivering services.

Management of the health system must be conducted in accordance with internationally and European recognized principles, based on transparency, multi-sectoral partnerships and the opening of the health communication system.

Funding for the health system must be achieved through a fair distribution of resources, avoiding family financial failure in case of sickness, stable and predictable resource mobilization, and respect for solidarity in the accumulation of those health resources.

Also important are actions to improve the human resource management and development of medical staff planning mechanisms to meet the current and future needs of the healthcare system.

These actions are required as a result of the massive migration of health care professionals into the health system.

In previous reports⁵⁸ on the observance of human rights in the Republic of Moldova, the People's Advocate warned the authorities about the irregularities detected at the time of granting the medical assistance and made recommendations in this respect, among which:

⁵⁸ <http://ombudsman.md/rapoarte/anuale/>

- Creation by the Ministry of Health of an independent professional medical expertise body that will objectively examine patients' claims or complaints.
- Revision of the normative framework regarding the periodical checking of the medical devices put into operation and endowed with the medical institutions and the adjustment to the international standards.
- Reviewing the assessment and accreditation criteria for medical institutions in terms of respecting human rights.
- Initiation of initial and ongoing training in the field of health and human rights legislation for healthcare professionals in order to respect patients' rights in carrying out the medical act.
- Developing an effective regulatory framework for investigation and resolution of cases of medical errors and malpractice.

Throughout 2018, health care issues continued to be invoked in applications filed with the Office of the People's Advocate and at Citizens' Audiences.

Most of these requests related to the problems of not receiving medical assistance on time; infringement of the patient's right to information; the insufficiency of the competent medical staff or the acute lack thereof in rural areas; reduced access to emergency medical services (with the occurrence of cases of deaths); failure to provide adequate / personalized treatment for the patient diagnosed with rare disease; deficiencies in the provision of medical services provided by the Single Program of Compulsory Health Insurance.

In January 2018, the medical system in the Republic of Moldova was shaken by the collective statement of some women who suffered from the interaction with the medical system of the Republic of Moldova in the prenatal field⁵⁹.

This case has revealed mass violations of patients' rights, violations of medical legislation and ethical and deontological norms by some medical workers.

In that Statement, mothers referred to cases in which they were refused / delayed giving urgent medical assistance, were asked for money for medical services that the law says should be free, they felt humiliated, disrespected, discriminated by medical staff on various criteria, including on the demand to find out which treatment is being administered; have been diagnosed and treated wrongly - sometimes fatal for the fetus and / or serious consequences for the physical and emotional integrity of mothers.

⁵⁹ <https://www.zdg.md/stiri/stiri-sociale/doc-declaratia-comuna-si-istoriile-a-98-de-femei-care-scot-la-iveala-probleme-grave-in-sistemul-medical-perinatal-din-r-moldova-au-fost-transmise-astazi-catre-mai-multe-institutii-publice>

Examining this case, the People's Advocate condemned the behavior of representatives of medical institutions. The physician-patient relationship must be based on competence, professional responsibility of the physician and the appropriate ethical and moral qualities, as well as respecting the „do not harm”.

And in this case, the People's Advocate has come up with a set of recommendations to health authorities on the need to respect the right to health and the concrete steps to be taken to prevent patients' rights violations.

With reference to the violation of patients' rights, invoked directly in petitions to the People's Advocate, prevails:

The right of the patient to correct information

The right to correct patient information remains one of the most often invoked by patients when addressing for healthcare, either to the family doctor or to the public health care institutions.

Failure to respect the right to correct patient information often occurs due to faulty communication between the doctor and the patient or by the lack of knowledge by some physicians of the provisions of the medical legislation.

The People's Advocate appreciates, however, the efforts of the Ministry of Health, Labor and Social Protection in the elaboration of the Guide on the application of the procedure for communication and counseling of patients⁶⁰ and trusts that it will be brought to the attention of all medical workers to improve this aspect.

In the Republic of Moldova the patient's right to information is found in the Law number 263 of 27.10.2005 on the rights and responsibilities of the patient⁶¹, which stipulates that every patient has the right to be informed about the volume, types and conditions of the provision of health services, the level of accreditation of the medical institution, the license, the qualification of the employed medical staff, and so on.

Patient's right to personalized treatment

Throughout 2018, the People's Advocate examined applications for limited access to health services, according to the state of health, a situation that also often led to the emergence of disability.

According to the provisions of the European Charter of Patient Rights, this one (the patient) is entitled to diagnostic and treatment programs tailored to individual requirements, in which economic criteria should not prevail over the right to care.

⁶⁰ http://old2.ms.gov.md/sites/default/files/legislatie/novyy_dokument_10.pdf

⁶¹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=313060>

An Ombudsman's concern in this respect is the personalized treatment for rare diseases in the Republic of Moldova, correct diagnosis, delay of establishing the diagnosis, absence of information about a certain disease in primary care, lack of information about certain rare diseases, lack of personalized medical services appropriate to the disease.

At the Office of the People's Advocate have been made some complaints alleging violation of this right, by not granting personalized treatment, or late diagnosis of rare diseases.⁶²

According to the official information provided by the Ministry of Health, Labor and Social Protection, there is a List of Rare Diseases in the Republic of Moldova, which is managed by the Reproductive Health and Medical Genetics Center of the Mother and Child Institute, supplemented according to practical casuistry. The total number of patients included in the Rare Disease List of this Center includes 800 patients with over 20 clinical conditions.

Diagnosis of rare diseases in the opinion of the People's Advocate remains a major issue for ensuring the right to health protection.

Respect for patient time

Ensuring access to health services is considered worldwide as a fundamental right of the individual and is a basic condition for improving the health of the whole population.

Although, the right to qualitative and reasonable medical care provided in the compulsory health insurance system; types of healthcare; their method of granting is stipulated in Health Protection Law number 411 of 28.03.1995, it continues to be invoked by the citizens of the Republic of Moldova in the part of ensuring unlimited access and registration with a family doctor.

Given that our country faces an acute shortage of family doctors, especially in rural areas, the patients face limited access to primary health care or late provision of necessary health care.

It should be noted that according to the European Charter of Patient Rights, each individual has the right to receive the treatment he or she needs in a given time period depending on the degree of urgency of the disease.

Health services must guarantee for every access to the services they need, and when this cannot be done, it is necessary to immediately include the patient on the waiting list, which, at his request, can be consulted subject to the observance of the right to privacy.

⁶² Example: The citizen R. B., after several requests to specialized doctors from the country, had to resort to doctors from abroad, where he was correctly diagnosed with a rare disease and the Republic of Moldova cannot provide the specialized treatment, according to the diagnosis.

Minimum medical insurance

According to the Constitution of the Republic of Moldova, the state has the responsibility to ensure the access to medical services for all the citizens, the minimum of medical insurance being free and guaranteed. This goal is achieved through a package of medical services that the state assumes to provide to the country's population through the so-called „Single Program” financed from public sources.⁶³ Unlike other countries where there are several packages of medical services at the same time, there is only one in the Republic of Moldova, from where comes the name of Single Program.

The Single Program is a document that lists the diseases and conditions that require medical assistance and determines the amount of assistance provided to persons insured by the medical-sanitary institutions contracted by the CNAM (National Pay Office of Medical Insurance) and its territorial agencies in accordance with the legal provisions.

The citizens of the Republic of Moldova most often disagree with the amount of healthcare provided by the Single Program, which are insufficient and do not ensure the complete restoration of health. In the context of the massive exodus of doctors in the country, the assurance of the full amount of health care is endangered, so there are endless waiting lists for various services.

At the same time, the patients assert that this document is difficult to understand, ambiguous and allows for a double interpretation.

Damage to the honor and professional dignity of medical workers

The rules of protection of the law have a special importance in the work of the medical workers in the provision of medical care, in the education of the medical staff, at the fulfillment of the professional obligations, being respected by the legislation and by showing a conscientious attitude towards the patients.

An alarming situation in the medical system in our country is the act of aggressing the doctors.

Year 2018 was perhaps the most marked year of population dissatisfaction with health and social issues. Obviously, this phenomenon is directly affecting physicians and the state does not have enough mechanisms to protect them.

First of all, it is worth mentioning that the medical system in our country has been experiencing an unprecedented shortage of human resources in recent years.

This phenomenon obviously affected the primary health care segment, which violates the principle of ensuring access to essential health services.

⁶³ <http://lex.justice.md/viewdoc.php?id=326302&lang=1>

During the year 2018, the Ombudsman was also informed by doctors who requested data confidentiality. They mentioned that remuneration, working conditions, obsolete devices, migration of specialized labor force, financial crisis, inequities towards patients and the provision of doctors for medical errors are the most common reasons why doctors leave the public health system.

As a result, shortage of medical workers often creates problems and doctors fail to provide quality medical services.

During the year 2018, the role of the family physician also diminished considerably, to the detriment of family medicine and for the benefit of specialized and hospital medicine.

The more frequent cases of doctors' aggression in recent years,⁶⁴ impose the need to develop medical malpractice insurance for medical workers, which is an indispensable component of the health field. Our country could take over from the experience of other states the principles and methods of applying mandatory medical malpractice insurance, adapting them to our conditions.

Although, in order to enhance the personal security of emergency doctors on May 20, 2016, the Ministry of Health and the Ministry of Internal Affairs signed an order on measures to improve cooperation and joint intervention in healthcare, this joint order is not fully implemented, and the number of cases of aggression of medical workers increases.

We believe that there is a technical basis in the Republic of Moldova which can focus on the local legislation in the field of compulsory medical malpractice insurance. It remains only the legislators' awareness of the urgent and inevitable necessity of introducing into the health system the responsibility for the errors and negligence of the medical staff.

It is necessary the stringent creation of a structure that protects the rights and dignity of physicians from all attacks from outside.

The People's Advocate considers that the Republic of Moldova needs a law on medical negligence, in the context of numerous scandals in the health care system.

Thus, it is necessary to adopt a malpractice law in the Republic of Moldova.

On the one hand, this law would help patients defend their rights and hold those who harm their health, and on the other hand, the law will protect doctors because not all cases of medical errors occur from the direct fault of the physician.

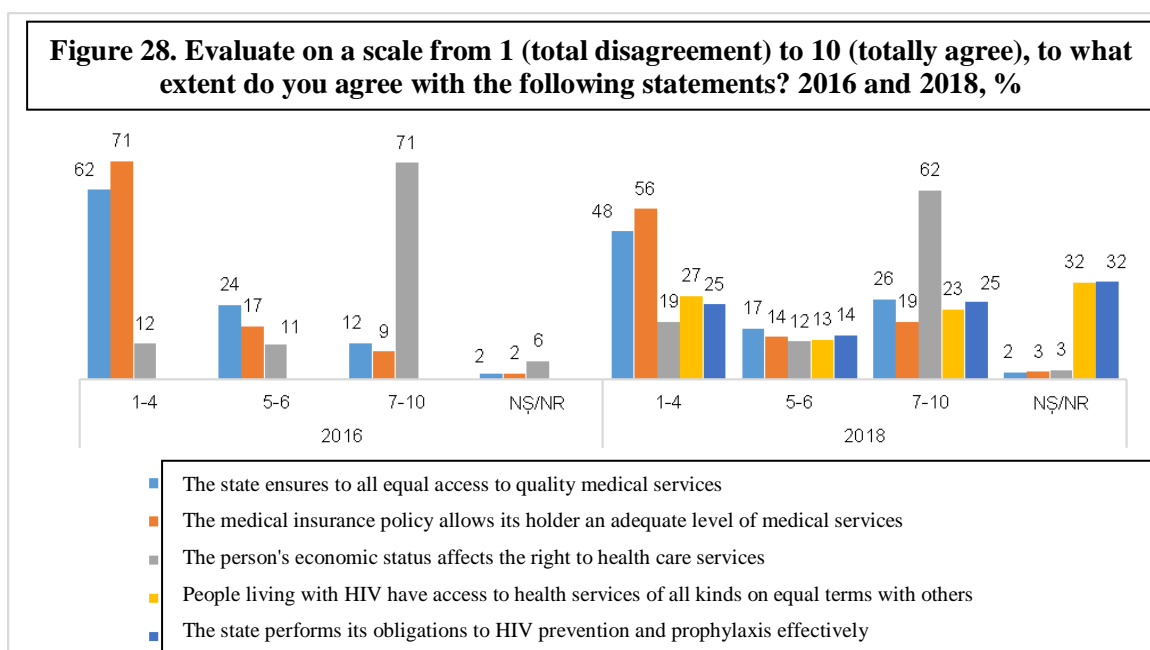
The population's perception of respecting the right to health is not very good.

The study „Human Rights perception in the Republic of Moldova” (2018), conducted by iData Company, at the request of the Office of the People's Advocate shows the

⁶⁴ <https://www.zdg.md/editia-print/social/victim-e-in-halate-albe-cine-loveste-in-medici-si-de-ce-dosarele-sunt-clasate>

predominantly negative attitude of the respondents towards the way the rights to health are respected.

Approximately 62% of respondents argue that the person's economic status affects the right to health care services (compared with 71% in 2016) and 56% state that the health insurance policy does not allow the holder to have an adequate level of medical services (comparative with 71% in 2016). At the same time, 48% of respondents believe that the state does not ensure equal access to quality health services (compared with 62% in 2016). These statements show a high degree of dissatisfaction with the health system in general, and even a decline in people's perceptions of respect for this right.



Expert opinions have divided on how the right to health is respected. Experts who had a fairly good perception of the health law situation referred to HIV + people as well as to people with disabilities under the age of 18 who, in their opinion, are provided with free treatment and care.

Roma people sometimes face a discriminatory attitude when requesting medical assistance. The study showed that this category of socially vulnerable people often does not benefit from proper health care.

Respondents also mentioned that the right to quality medical services is violated in penitentiary institutions, which is why a large number of people in detention and in rural areas and the Transnistrian region suffer and die.

In the context of the above, we find that one of the fundamental problems that negatively influence the proper realization of the right to health is the under-financing of the

system. This issue generates others such as doctors' working conditions, insufficient medical staff due to exodus, obsolete equipment, limited access to quality medical services and quality treatment, and other specific problems over a long period of time.

Another fundamental issue is the review of the legal framework and, if necessary, the adoption of new provisions in order to take over the good practices of other countries that have effective health systems and which adequately ensure respect for the patients' right to health.

And last but not least, we find that human rights are not sufficiently integrated into the public policies of the state in the part of the health system, which requires the review of state policies through a human rights based approach so that the health system to be adapted to people's needs, and not vice versa.

RECOMMENDATIONS:

- Developing appropriate health policies for rare diseases;
- Initiating control over financial resources for the early diagnosis of rare diseases;
- Developing a methodology for rehabilitation and resocialization of patients diagnosed with rare disease;
- Establishment by health institutions of policy and institutional procedures to respect patient rights;
- Performing regular monitoring on compliance / implementation by healthcare professionals and managers of public medical-sanitary institutions of the normative acts in force in the field of health (laws, orders, regulations, clinical protocols);
- Developing an effective regulatory framework for the investigation and resolution of cases of medical errors and malpractice;
- Organization of initial and continuous training of health workers in the field of healthcare legislation and human rights in order to ensure respect for patients' rights in the realization of the medical act;
- Specialists require communication training, and patients need a higher degree of responsibility for their own health;
- Revision of state policies from the perspective of the human rights based approach;
- Implementing the recommendations of international and regional human rights organizations.

RIGHT TO ASSISTANCE AND SOCIAL PROTECTION

The right to assistance and social protection is not the area where there is significant human rights progress. The causes that affect the proper realization of this right lie in the need to improve the legal framework, to provide the social protection system with adequate financial resources and properly qualified human resources.

These findings are also confirmed by the population's perception of respect for the right to social assistance and protection, which demonstrates that the level of realization of this fundamental right is not only appropriate in terms of respecting human rights standards.

The right to social assistance and protection is enshrined in Article 22 of the Universal Declaration of Human Rights, Article 9 of the Pact on Social, Economic and Cultural Rights, Article 28 of the UN Convention on the Rights of Persons with Disabilities.

The Constitution of the Republic of Moldova enshrines this right in the provisions of Article 47: *„(1) The State shall be bound to take actions in order that every person has a decent standard of living that would ensure him/her and his/her family members health protection and welfare including food, clothing, shelter, medical care, as well as necessary social services. (2) All citizens have the right to be insured in case of: unemployment, disease, disability, widowhood, old age or other situations where, due to causes beyond one's control.”*

The fundamental right to social assistance and protection is also provided by the Sustainable Development Objective Number 1 - No poverty: Eradication of poverty in all its forms globally. The targets of this objective include: eradication of extreme poverty, implementation of social protection measures appropriate for all and protection of all the poor and vulnerable, ensuring that all men and women, especially the poor and vulnerable, have equal rights to economic resources and access to basic services.

Previously, the People's Advocate submitted a series of recommendations to the authorities that needed to be undertaken to improve the situation regarding the realization of the right to assistance and social protection as follows:

- Proper implementation of the recommendations of international human rights monitoring bodies;
- Reviewing the way of financing the existing social services system and remodeling them according to the current needs of people with disabilities;

- Analysis of the opportunity to exclude the requirement to refuse the monthly allowance for care and supervision when granting a personal assistant for people with severe disabilities;
- Development of a mechanism for evaluating the quality of social services provided, based on both quantitative performance indicators and qualitative indicators for assessing beneficiaries' perceptions;
- Establishment of a cooperation mechanism between the local public authority and the territorial structure of social assistance for the monitoring and coordination of the work of the social assistance staff, as well as of the beneficiaries;
- Establishing effective intra- and intersectoral coordination mechanisms at community level (mayorality, social worker, medical worker);
- Uniform and coherent implementation of legal provisions in the field of social assistance, correlated with beneficiaries' social needs and problems;
- Continuously improving the capacities of representatives of local public authorities and human rights structures, including the protection of persons with disabilities.

The People's Advocate would like to draw attention to the recommendations that have been submitted to the State in the process of assessing the level of compliance by the State with the regional and international human rights commitments assumed by the Republic of Moldova.

Thus, the UN Committee on Economic, Social and Cultural Rights recommends the State to significantly increase the level of public social spending, both nationally and locally, in order to ensure progressive economic, social and cultural rights, in particular social security, housing, water and sanitation, health care and education. At the same time, the Committee recommends revising the system of granting disability certificates to ensure that the assessment reflects the characteristics, circumstances and needs of people with disabilities and to allocate sufficient funds to provide personal assistants to all persons with severe disabilities. The UN Committee on Economic, Social and Cultural Rights reiterated its previous recommendations that pensions should be increased to a level that would ensure a decent living and, as a first step, reach the minimum subsistence level.

The Committee also recommends that the State party: immediately remedy the situation of parents who care for children with disabilities; examine the conditions of social insurance schemes, strengthen coordination between different social security schemes and rationalize the process of granting social security benefits to ensure the continuity of social benefits; to ensure that self-employed professionals, the majority of whom are women, have equal access to social security schemes; to raise public awareness of social security

programs and their enforcement procedures, and to provide assistance to Roma and rural people in demanding the necessary insurance and identity documents.

The Committee also recommends the State party to step up its efforts to combat poverty, with a special focus on people in rural and retirement areas. The Committee also urges the State party to ensure that all eligible persons benefit from the „Social Aid” program and to increase the amounts of benefits to a level that will provide beneficiaries with a decent living standard. In addition, the Committee further recommends that the State party review the eligibility criteria, including the list of assets, to ensure that all persons in need benefit from the „Social Aid”.

The Committee recommends that the State party consider the possibility of ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

The Committee for the Protection of Persons with Disabilities, in the evaluation process, recommends that the State Party provide an adequate standard of living for people with disabilities and their families, including by ensuring reasonable accommodation in respect of pensions and social allowances; to ensure that social protection and poverty reduction programs take into account the additional costs of disability; to ensure that people with disabilities have access to community social services and public housing programs and that these services and programs are also available in rural and remote areas; to pay attention to the links between Article 28 of the Convention and Target 1.3.1. of Sustainable Development Objectives⁶⁵.

The People's Advocate also draws attention to the recommendations of the European Committee for Social Rights in its conclusions on monitoring the implementation of the European Social Charter (revised) by the Republic of Moldova⁶⁶.

Thus, the Committee concludes that the situation in the Republic of Moldova is not in line with the provisions of Article 12 § 1⁶⁷ of the Charter for the following reasons:

- It was found that the social security system does not cover a significant percentage of the population;
- The minimum amount of unemployment benefit is not appropriate⁶⁸;
- The minimum age limit is not appropriate⁶⁹;

⁶⁵ Proportion of population covered by social protection plans / systems, by gender, distinguishing the children, the unemployed, the elderly, the disabled, pregnant women, newborns, victims of work accidents, and the poor and vulnerable people.

⁶⁶ https://www.ecoi.net/en/file/local/1425569/1226_1519804343_cr-2017-mda-eng.pdf

⁶⁷ To establish or maintain a social security regime.

⁶⁸ The amount of the income replacement benefit should be set so as to be reasonably proportionate to previous earnings and never be below the poverty threshold, defined as 50% of the average income equaled and calculated on the basis of the poverty risk threshold.

- The minimum amount of sick pay is not appropriate⁷⁰.

The Committee considers that the situation in the Republic of Moldova is not in line with the provisions of Article 12 § 2⁷¹ of the Charter because it was found that the Republic of Moldova does not maintain a social security system at a satisfactory level at least equal to that required for the ratification of the European Social Security Code.

The Committee also notes that the efforts made by the Republic of Moldova to develop the social security system, according to the provisions of Article 12 §3⁷² of the Charter are not appropriate. As a rule, stagnation of the social security system in the States Parties to the Charter is temporary and applies only during the period of country's economic crisis.

As regards the compliance with Article 12 §4, the Committee considers that the situation in the Republic of Moldova is not in line with the provisions of Article 12 §4⁷³ of the Charter, for the following reasons:

- Equal treatment with regard to access to family benefits is not guaranteed to nationals of other States Parties. The legislation of the Republic of Moldova does not ensure the equal right of parents and children who do not have a domicile in the Republic of Moldova but are eligible under the other conditions provided by the national legislation to receive family benefits (child raising allowances up to the age of 3).
- The right to maintain earned benefits is not guaranteed to nationals of other States Parties. The legislation of the Republic of Moldova does not ensure the right of the citizens of other States Parties to benefit from a benefit (pension, indemnity) acquired under national law in the territory of the other States Parties in the absence of a social security agreement. The payment of benefits, including

⁶⁹ Minimum pension size for age limit (in 2018 – 1025 lei/ www.cnas.md) remains below the subsistence minimum (during the I semester of 2018 - 1589 lei/ www.statistica.md).

⁷⁰ The amount of the sickness allowance is calculated in proportion to the contributory periods completed by the insured person. If the contribution period is less than 5 years, the amount of the allowance will be 60% of the insured person's income. Taking into account the guaranteed minimum salary in the real sector, which in 2018 constituted 2610 lei per month, the amount of the sickness allowance of the person who has completed a contribution period of less than 5 years will be below the minimum subsistence level (during the I semester 2018 - 1895,7 lei/[statistica.md](http://www.statistica.md)).

⁷¹ To maintain the social security regime at a satisfactory level at least equal to that required for the ratification of the European Social Security Code.

⁷² Make efforts to gradually bring the social security regime to a higher level.

⁷³ Take appropriate measures by concluding appropriate bilateral or multilateral agreements or by other means and subject to the conditions set out in these agreements, to ensure:

- a) equal treatment between the citizens of each Party and the citizens of the other Parties with regard to social security rights, including the retention of benefits under social security legislation, irrespective of the displacements that the protected persons could carry out between the territories of the Parties;
- b) granting, maintaining and restoring social security rights by means such as the aggregation of periods of insurance or employment completed under the legislation of each of the parties.

social security benefits, is restricted on the grounds that the person resides in any other State Party to the Charter.

- The right to maintain the rights acquired is not guaranteed to nationals of other States Parties. If the person has pursued an activity in more than one Member State and does not fulfill the minimum probationary requirement for entitlement to benefit (in particular, a pension) under national law, the State must take measures to ensure the aggregation of periods of insurance completed in other States Parties. It also requires a pro-rata approach in calculating and paying benefits.

The Committee believes that the situation in the Republic of Moldova is not in line with the provisions of Article 13§ 1⁷⁴ of the Charter, for the following reasons:

- The amount of social benefits paid to a person without financial means, including the elderly, is inappropriate;
- The right to health care is not guaranteed to all people without financial means.

In the process of examining applications, the People's Advocate found some cases of violation of the right to social assistance and protection.

Thus, the contracted soldiers could not benefit from paternal leave, as there was a legislative void in the Law number 162 of 22.07.2005 on the status of the military and the Regulation on how to perform the military service in the Armed Forces approved by the Government Decision number 941 of 17.08.2016.

The People's Advocate proposed to the Ministry of Defense the initiation of the procedure for amending the relevant normative framework so as to guarantee to the military the right to paternity leave.

As a result of the intervention of the People's Advocate, was completed the Law number 162/2005 on the status of the military with Article 14¹ „social leave”, which eliminated the causes and conditions that gave rise to violations of human rights and freedoms.

Another problem identified in the individual case study is that the rehabilitated victims of political repressions during the period 1917-1990 who live in the Republic of Moldova

⁷⁴ to ensure that any person who does not have sufficient resources and who is not in a position to acquire them by his own means or to receive it from another source, in particular through benefits under a social security scheme, can benefit from an appropriate assistance and, in the event of illness, the care required by his or her condition;

but benefit from a pension in another state cannot claim to pay the monthly state allowance established according to the legislation in force⁷⁵ for this category of people.

With the granting of the status of victim of political repression, the State through Law number 1225 of 08.12.1992 obliged to rehabilitate and to restore the victims of political repressions in their political, social and citizenship rights and to compensate the material damage arising from the totalitarian regime arbitrariness. Consequently, the fact that the person has been recognized as a victim of political repression presupposes the right to benefit from the special social protection measures established without any differentiation based on certain criteria. From this point of view, the People's Advocate considers that the requirement imposed to be a beneficiary of a pension or allowance, established under national law, should not be a determining requirement in establishing the right to monthly state allowance to the victims of political repression.

The People's Advocate recommends the Ministry of Health, Labor and Social Protection to initiate the procedure for revising the normative framework, so that all citizens of the Republic of Moldova, rehabilitated victims of political repressions, can benefit from the monthly state allowances.

Further, there are insufficiencies in the realization of the right to social assistance and social protection of the elderly.

According to the data presented by the National Social Insurance House, in the first semester of 2018, the average pension size amounted to MDL 1658.7. This represents 104.4% of the average value of the subsistence minimum set for pensioners (in the first half of 2018 – MDL 1589⁷⁶) and nearly 100%, if we report the average age of the old-age pension.

Indicator name	The rate of the respective beneficiaries of the total number of pension beneficiaries (%)	
	2017	2018
of the total number of pension beneficiaries, the amount of which is below the minimum subsistence allowance for retirees, divided by categories:	(up to MDL 1566,6)	(up to MDL 1589)

⁷⁵ The Regulation on the way of setting and paying the monthly state allocations to certain categories of population, approved by the Government Decision of the Republic of Moldova, number 470 of 02.05.2006;

⁷⁶ <http://www.statistica.md/newsview.php?l=ro&idc=168&id=5343>;

- old-age pensions	54,3	49
- disability pensions	15,4	13
- survivors' pensions	1,6	1,6
- pensions for seniority	0	0,01
- pensions of certain categories of civil aviation employees	0	0
- pensions to the participants in the liquidation of the Chernobyl disaster	0	0,01
- pensions to the military in term and to their family members	0,1	0,07
- pensions of some employees in the field of culture	0	0
- early retirement pensions	0,4	0,3

Although in recent years there has been a slight increase in the coverage of the subsistence level for pensioners (by 9.6% in the first semester of 2018 as against the first semester of 2017), the minimum age limits remain below the minimum of living for pensioners and covers only 64.5% of this or 48.4% in the case of the minimum pension of persons with severe disabilities. In comparison, the average pension size for other categories of pensioners⁷⁷ exceeds the subsistence level almost three times.

In 2018, the Constitutional Court examined some aspects of the right to social assistance and protection.

Thus, the Court declared as unconstitutional the provisions of Article 36 paragraph (1) of the Law number 156 of October 14, 1998 on the public pension system⁷⁸, which provided for the non-granting of the pension entitlement to the insured who establishes his domicile abroad.

The Constitutional Court has held that Articles 2 and 36 of the Law number 156 of October 14, 1998 make payment of the pension dependent on the place of domicile of the persons, which may lead to situations where certain persons who worked in the Republic of Moldova and contributed to the social security system through their payments are private pensioners for the sole reason that they no longer reside in the Republic of Moldova.

⁷⁷ People with public functions and / or public dignity are considered.

⁷⁸ Decision of the Constitutional Court number 10 of 08.05.2018

In conclusion, the Court concluded that the differential treatment of non-resident persons in the Republic of Moldova compared to those domiciled in the Republic of Moldova in respect of pension payments violates Articles 46 and 47 in conjunction with Article 16 of the Constitution⁷⁹. Accordingly, persons who are entitled to pension payments in the Republic of Moldova should continue to enjoy these benefits even if they change their place of residence outside the country.

Pursuant to the decision of the Constitutional Court in question, amendments were made to the Law number 156 of 14.10.1998⁸⁰, which eliminated the social inequity found by the Constitutional Court in relation to the persons who contributed to the social insurance system but could not benefit from a pension if they were not domiciled in the Republic of Moldova.

On 22.11.2018, the Constitutional Court found that the right to a disability pension in the event of a severe disability caused by a general disability should not be granted according to the actual contribution actually made, as shown in Table 1, paragraph (1) of Article 20 of the Law number 156 of October 14, 1998 on the public pension system.

The Court considers that with regard to the disability pension granted in the case of a severe disability caused by a general disability, the reasons underlying the regulation of a standard retirement age or a minimum contribution period are no longer applicable. The total loss of work capacity due to a general disability is a random event that cannot be controlled by the person in question, so that the setting of an age and a minimum contribution period on which the disability pension can be granted is not justified.

The Court also considers the fact that the exclusion of persons with disabilities caused by general illnesses that have lost their full capacity to work from the payment of disability pension, have the consequence of placing them in a position to seek the resources necessary for their survival, contrary to the purpose of Article 47 of the Constitution, which follows precisely the opposite.

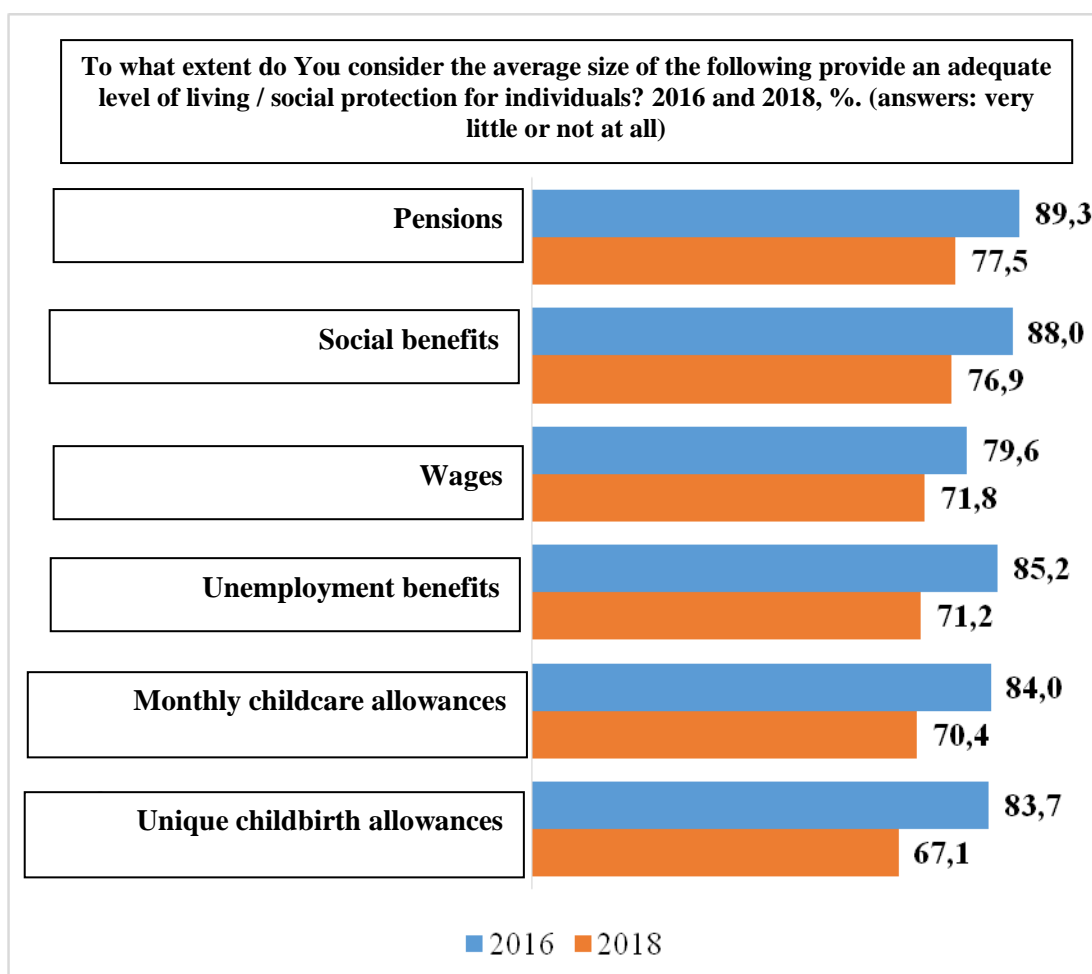
In view of the decision in question, the authorities are to amend the Law number 156 of October 14, 1998 on the public pension system.

People's perception of respect for the right to social assistance and protection demonstrates that the level of achievement of this fundamental right is not at an appropriate level, not only in terms of respecting human rights standards.

⁷⁹ (see, *mutatis mutandis*, *Pichkur v. Ukraine*, §54)

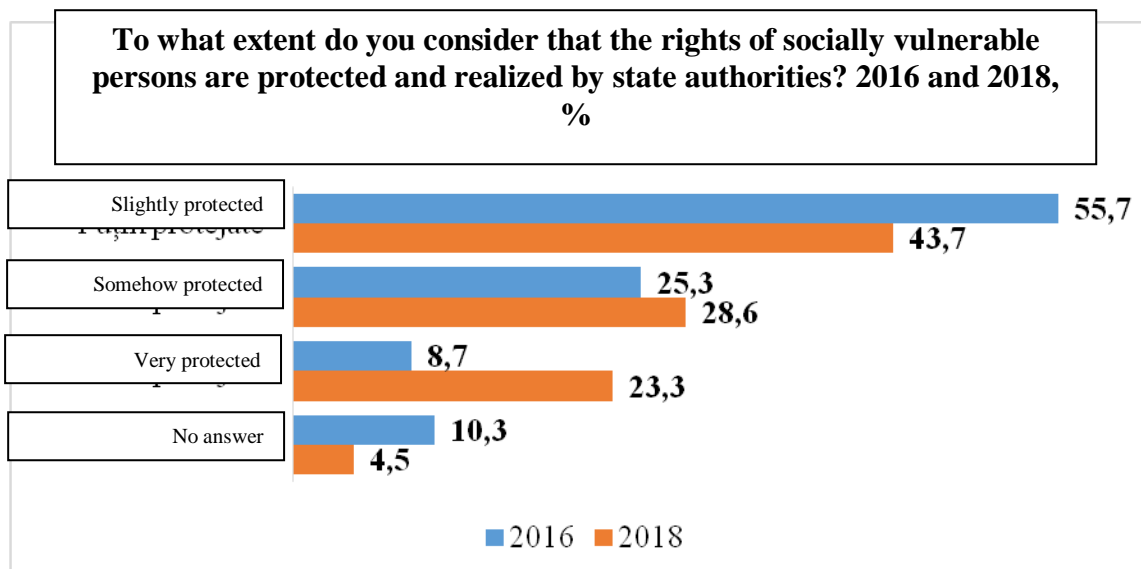
⁸⁰ Law amending the Law number 156 / 1998 on the public pension system number 258 of 22.11.2018.

Thus, the data of the study „*Perception of Human Rights in the Republic of Moldova*”, conducted in 2018 at the order of the Office of the People's Advocate⁸¹, shows that the number of people who consider pension, salary, allowances and other social payments to be insufficient is very high. Respondents are the least satisfied with the size of the pension (77.5%), unemployment benefits (76.9%) and other social insurance benefits.



The results of the study also show that the rights of socially vulnerable people continue to be perceived as the least protected or not at all protected by state authorities (43.7% of respondents). And only 23.3% of respondents believe that the respective rights are protected to an appropriate level.

⁸¹ This study is being carried out under the project „Strengthening the technical capacities of national institutions for the promotion and protection of human rights” funded by the Ministry of Foreign Affairs of Denmark and implemented by the United Nations Development Program (UNDP) in partnership with the UN Office for Human Rights (UN OHCHR) and the United Nations Population Fund (UNFPA).



In the context of what has been said, it is noted that the right to social assistance and protection is not the area in which significant human rights progress. The reasons that affect the proper realization of this right lie in the need to improve the legal framework, to ensure the social protection system with adequate financial resources and properly qualified human resources.

RECOMMENDATIONS:

- Proper implementation of the recommendations of international human rights monitoring bodies;
- Implementation of the recommendations previously exposed by the People's Advocate in its reports;
- Ensuring a level of social security benefits (old-age pension, unemployment benefit, temporary work allowance due to habitual illnesses or work-related accidents) so that their minimum amount equals, at least, with the set minimum subsistence level;
- It is advisable to examine the opportunity to ratify Article 23 on the right of the elderly to social protection and Article 30 on the right to protection against poverty and social exclusion from the content of the European Social Charter (revised).

SITUATION OF HUMAN RIGHTS DEFENDERS IN THE REPUBLIC OF MOLDOVA

Between June 25-29, 2018, United Nations Special Rapporteur on the Status of Human Rights Defenders Michel Forst paid a visit to the Republic of Moldova to assess whether the Republic of Moldova provides the basics for a safe and favorable environment for human rights defenders. To this end, the legal and institutional framework has been estimated; access to justice; protection policies and mechanisms that would pay attention to groups at risk; the conditions of activity of independent national and empowered human rights defenders, non-state actors who respect and support the work of defenders, the community of human rights defenders.

On February 28, 2019, at the 40th session of the UN Human Rights Council, the Special Rapporteur presented his conclusions on the state of affairs at this compartment in our country.

According to the Special Rapporteur's findings⁸², the Republic of Moldova has a good set of laws that, in most aspects, create an appropriate environment for the functioning of human rights defenders. However, despite a satisfactory global regulatory framework, the situation of human rights defenders in the Republic of Moldova requires improvements.

Michel Forst mentions in the report that human rights defenders and journalists are victims of denigration campaigns, lawyers face politically motivated criminal charges or are threatened whenever they defend inconvenient voices, journalists are confronted with limitations in terms of access to information, and national institutions for the defense of human rights feel ignored in practice. The Special Rapporteur refers to concrete cases and offers names of human rights defenders who have been harassed, dismissed, or unjustifiably charged for reasons such as knowingly taking an illegal or wrong decision.

The report also shows that some groups of defenders are particularly vulnerable due to the very nature of the rights they defend, their own identity or the particularities of their work. It is noted that because of the atmosphere in the country that hinders their work in the field of human rights, some human rights defenders have had to leave the country for requesting asylum abroad.

Also, in the Report it is noted that in the Transnistrian region, legislation on non-profit organizations is causing serious concerns, and human rights defenders sometimes do not feel that they operate in a safe and permissive environment.

⁸² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/007/23/PDF/G1900723.pdf?OpenElement>

The UN Rapporteur stresses that civil society has no practical tools to influence the decision-making process. The process of policy development and implementation is often not inclusive and transparent. The principles of participation and responsibility are not part of the interaction between authorities and human rights defenders.

The Special Rapporteur makes a number of recommendations to the authorities, including examining the possibility of drafting and adopting a special law on human rights defenders, as well as ensuring the adoption of a law on NGOs that respect international human rights standards.

Michel Forst argues that the state needs to develop legal provisions and practices to protect the principles of genuine civil society participation in central and local decision-making, and that conditions should be ensured as the media of NGOs and other advocates of human rights to have practical tools to hold politicians accountable and, in order to influence the decision-making process and the implementation of policies. NGOs and the media should have more open access to publicly important information, says UN Rapporteur.

Michel Forst calls on the authorities to ensure the independence, impartiality and transparency of the judiciary by protecting judges against any interference in their work and by ensuring independent, impartial and prompt investigations into any allegations of interference with the independence of the judiciary.

The Rapporteur recommends to the authorities to promote media diversity and pluralism, to ensure transparency in media ownership and to strengthen efforts to combat excessive media ownership, support independent media and ensure a favorable environment for journalists.

Michel Forst also drew attention to the importance of adopting a zero tolerance policy in cases of intimidation and stigmatization of human rights defenders, journalists and lawyers; to investigate promptly, independently, impartially and effectively any act of retaliation, intimidation or stigmatization against them.

The rapporteur also referred to the importance of guaranteeing the right to a fair trial, in particular by taking immediate and effective measures to ensure that unjustified or disproportionate criminal proceedings are not brought about by accusations made; that selective justice should not be used against political opponents, independent judges, lawyers and human rights defenders; that civil society groups, international and regional organizations and the general public have the right to monitor these processes.

The UN Rapporteur emphasized the role of the Office of the People's Advocate as a national human rights institution in providing a safe and empowered environment for human rights defenders, guiding and advising the Government on its human rights obligations,

including related to the harmonization of the internal legislation with the international standards and their integration into the public policies, implicitly those of the human rights defenders. In this regard, Michel Forst has recommended also at the Equality Council that the authorities ensure adequate funding for the Office of the People's Advocate (OPA).

Some of the Special Rapporteur's recommendations concern the strengthening of the Ombudsman's role in terms of closer collaboration with human rights defenders and involvement in the protection of the risk group. This protection could be provided in a number of ways, including through formal complaints mechanisms and protection, advocacy and awareness programs, providing public support when violations are committed against defenders, and capacity building.

The People's Advocate took into account the UN Rapporteur's preliminary recommendations made shortly after the visit to the Republic of Moldova and decided to include issues related to the protection of human rights defenders among the priority areas of activity. On December 6, 2018, the Office of the People's Advocate organized a *Forum of Human Rights Defenders*, discussing the situation and the difficulties they face.

The People's Advocate also sent a written **Declaration** for the 40th session of the UN Human Rights Council, which was heard by the UN Special Rapporteur on the Status of Human Rights Defenders on the visit to the Republic of Moldova on June 25-29, 2018.

In the statement, the Ombudsman announced that he shared the concerns raised by the UN Rapporteur on the situation of human rights defenders in the Republic of Moldova and expressed his intention to monitor the situation of human rights defenders and to give them all the support they will need.

The People's Advocate also said that he would propose to the deputies in the future Parliament the adoption of a law on human rights defenders.

Recommendations:

- The People's Advocate recommends the authorities to make the necessary efforts to implement the recommendations of the UN Special Rapporteur on the situation of human rights defenders;
- The People's Advocate encourages the authorities to adopt as soon as possible the legal framework on human rights defenders as well as on NGOs that respect international human rights standards.

OBSERVANCE OF THE RIGHTS OF PERSONS WITH DISABILITIES

The Constitution of the Republic of Moldova guarantees the Protection of Disabled Persons through the provisions of Article 51:

(1) The disabled persons shall enjoy special protection from the whole of society. The State shall ensure normal conditions for medical treatment and rehabilitation, education, training and social integration of disabled persons.

(2) No one can be subdued to the forced medical treatment unless for the cases provided by the law.

At the international level, the rights of persons with disabilities are protected by the UN Convention on the Rights of Persons with Disabilities, dated 13.12.2006.

Regarding the level of implementation of the Convention, the UN Committee on the Rights of Persons with Disabilities has exposed its views in the Final Comments on the Initial Report of the Republic of Moldova (April 12, 2017).⁸³

The rights of people with disabilities are also provided by the Sustainable Development Objective 4, which is to ensure quality and inclusive education for all and to promote lifelong learning opportunities. The targets of this objective are to eliminate disparities in education by 2030 and to ensure equal access to all levels of education and training of vulnerable persons, including persons with disabilities.

In 2010, through Law Number 166 of 09.07.2010, the Republic of Moldova ratified the United Nations Convention on the Rights of Persons with Disabilities⁸⁴.

This implies that our country has undertaken to implement its provisions by adjusting national legislation and practices.

Approximately 1 billion people with different degrees of disability now live on the planet, accounting for about 15% of its population. Every fourth European has a family member with disabilities.

According to the official data of the National Bureau of Statistics, **people with disabilities represent about 5 percent of the country's population.**⁸⁵

The estimated number of persons with disabilities in the Republic of Moldova is 180.6 thousand people, including 11.7 thousand children aged 0-17 years.

People with disabilities represent 5.1% of the country's total population and children with disabilities make up 1.7% of the total number of children in the Republic of Moldova.

⁸³ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMDA%2fCO%2f1&Lang=en

⁸⁴ <http://lex.justice.md/md/335376/>

⁸⁵ <http://www.statistica.md/newsview.php?l=ro&idc=168&id=6191>

Given that monitoring compliance with the rights of people with disabilities is one of the strategic directions of the Office of the People's Advocate, this area has been brought to the attention of the People's Advocate and during 2018.

Although the legislation of the Republic of Moldova guarantees equal rights for persons with disabilities as well as for other citizens, people with disabilities are still facing many systemic problems at the local level, from the lack of ramps at the entry into public institutions, to the poor process of establishing disability by responsible bodies.

During 2018, in the Addresses to the People's Advocate, persons with disabilities from the Republic of Moldova mostly invoked the violation of the right to information, and when a person does not have access to the correct information, he is unable to claim other rights.

Even though in the previous reports the People's Advocate submitted recommendations to the authorities regarding the obligation of the state to respect the rights of persons with disabilities, gaps continue to exist in this area in terms of ensuring accessibility conditions.

Other issues raised by the people with disabilities, which remain current every year, are the accessibility to the physical and informational environment and the lack of a mechanism of sanction for non-observance of the provisions of the Law on Social Inclusion of Persons with Disabilities Number 60 dated 30.03.2012 by the public institutions, economic agents, construction companies, medical institutions, educational institutions, etc.

Access to public transport is also a current problem for people with disabilities, and it is not adapted for those with visual impairment, locomotor or hearing impairment.

Thus, the Ombudsman considers the development of the legislative framework for the adaptation of public transport to the requirements of disabled persons, the design of an integrated public transport system to be primordial inclusive, the gradual renewal and modernization of public transport, signaling equipment, information points, tickets from their stations to meet the requirements of inclusive transport.

The People's Advocate was frequently perceived by people with disabilities in the part related to the realization of the right to social assistance and protection. In the applications addressed to the Ombudsman, it has been very frequently invoked the malfunctioning of the social service „Personal assistance”.

Thus, we find that the responsible persons from the field of social protection, especially social workers, do not make sufficient efforts to facilitate the independent life and social integration of people with disabilities. Proof of this fact are the cases examined by the People's Advocate, which only after his intervention were solved.

In 2018 there took place a *reform of the process of determining the degree of disability*⁸⁶. This reform aimed at improving the process of determining disability and establishing inclusion measures for people with disabilities in order to provide them with the possibility of easier employment in society.

However, the People's Advocate has been repeatedly informed of the difficult procedure for determining the degree of disability. Citizens claim disagreement with the long-term review of dossiers submitted to establish or reconfirm the degree of disability. The competent authorities state that these situations occur due to the lack or insufficiency of employees.

It is worrying that citizens cannot benefit from the medical care covered by the compulsory health insurance policy during the examination of the disability status dossier by the National Council for Dissolution Determination, and for a person with disabilities these services are often vital and may be needed at any time.

In this context, the Ombudsman recommends the authorities to exercise all diligence in examining and resolving the problems faced by persons with disabilities in order to prevent violations of other rights protected by the Constitution and the international treaties to which the Republic of Moldova is a party.

The People's Advocate appreciates the harmonization of the provisions of Article 51 of the Constitution of the Republic of Moldova with the standards of the UN Convention on the Rights of Persons with Disabilities by changing the notion of „handicapped persons” to „persons with disabilities”, as repeatedly recommended in previous reports.

In the reference year was approved the National Program of deinstitutionalization of persons with intellectual and psychosocial disabilities from the residential institutions managed by the National Social Assistance Agency for the years 2018-2026 and the Action Plan on its implementation⁸⁷, which provides for the realization of the process of deinstitutionalization of people with disabilities from residential institutions by providing social services at community level and transformation of residential institutions into regional centers with attributions in the development and provision of alternative community-based services.

⁸⁶ <http://lex.justice.md/md/375089/>

⁸⁷ Government Decision of the Republic of Moldova number 893 of 12.09.2018 on the approval of the National Program for de-institutionalization of people with intellectual and psychosocial disabilities in the residential institutions managed by the National Social Assistance Agency for the years 2018-2026 and of the Action Plan on its implementation;

This Program aims at reforming the residential care system for persons with intellectual and psychosocial disabilities by developing and delivering community social services in order to ensure their right to independent living and community living.

Also, the People's Advocate welcomes the achievements of the State in the context of the approval of the minimum package of social services that is financed within the limits of the funds of the Population Support Fund⁸⁸. Previously, the People's Advocate pointed out the existence of problems related to the development of community services for people with disabilities, which were generated also by the fact that the organization and functioning of these services are frequently put to the attention of the local public administration. In the Thematic Report developed by the People's Advocate „Integration of People with Serious Disabilities into the Community: Impact of the Social Assistance Service”, the Ombudsman recommended the revision of the regulatory framework for financing / co-financing from the State Budget of Social Services „Personal Assistance” and „Respiro” to ensure an independent life and the integration into society of people with severe disabilities.

In light of the Government Decision number 800 of 01.08.2018 for the approval of the minimum social services package and the amendment of the Regulation on the way of establishing and paying the material aid, the minimum social services package includes the social support service for the underprivileged families / social support service for families with children, social service Personal assistance.

At the same time, the People's Advocate recommends the continuation of the actions to support local public authorities in developing community services for people with disabilities by extending the social services included in the minimum package, including the inclusion of the „Respiro” service.

As stated in the study „Perception of Human Rights in the Republic of Moldova” (2018), conducted by the iData Company, at the order of the Office of the People's Advocate, according to experts, the most vulnerable social group is the one that includes people with disabilities.

Experts also state that people with disabilities do not have access to information because they are poorly accessible.

At the same time, more than 80% of respondents consider that including the people with disabilities need the greatest attention from the perspective of the protection of human rights.

⁸⁸ Government Decision of the Republic of Moldova number 800 of 01.08.2018 on the approval of the minimum package of social services and the amendment of the Regulation on how to set and pay the material aid.

In the perception of the participants is violated, in particular, the right to education of persons with disabilities. In their case, reference was made to the inclusive education system, which, they say, was not thought through to the end. As problems, there were mentioned the lack of teachers prepared to manage the situations between ordinary children and those with special educational needs, the high number of children in classes, the loaded curriculum, insufficient number of teachers to give support at home.

The right to work of persons with psychosocial disabilities is the most offended (30.7%) compared to persons with physical disabilities (29.1%). The reason, mentioned by experts, for which this right is violated is: discrimination and stereotypes. These people are hardly accepted to work. At the same time, the experts acknowledge that the entrepreneurs have the right to choose the best and most suitable for them. For this reason, in their perception, employers employing people with special needs must be promoted so that such social engagements become a trend.

Most people with disabilities have shown their indignation within the focus group that there are largely directly denied the submission of employment papers, as well as the fact that they are only promised to have their candidacy analyzed and that they will be called back later. In respondents' perception, employers hesitate / refuse to hire people with special needs because:

- there are additional costs to ensure their access to the workplace;
- there are expenses related to the adaptation of the workplace itself;
- are required by law to provide them with a reduced working hours (6 hours),
- people with special needs are often absent from work due to illness, etc.

Referring to the limitation of the right to work of the people with special needs, the respondents added that even if the form of disability is not visible, the employer quits to hire him as soon as he notices that the insurance policy is active on the grounds of disability.

Some people with disabilities have recognized that they have changed their workbook to exclude the possibility that the employer is influenced by the form of disability in the employment decision.

At the same time, people with disabilities, compared to other respondents, have claimed least their right to non-discrimination, the right to culture and cultural identity, and the right to personal freedom and privacy.

RECOMMENDATIONS:

- Establishment of an efficient mechanism for implementation and control over compliance with the requirements for accessibility at all stages, design, authorization, construction and operation of constructions.
- Implementation by the authorities of the measures to ensure accessibility of persons with disabilities to social infrastructure.
- Elaboration and approval of an efficient accountability mechanism for the non-observance of normative and legislative acts guaranteeing the right of persons with disabilities to an accessible social infrastructure.
- Review of strategies and policies to ensure respect for the rights of people with disabilities;
- Makes the public aware of issues related to the rights of people with disabilities;
- Ensuring the participation of people with disabilities in the development of policies and laws that target them;
- Implementing the recommendations of international human rights bodies.

OBSERVANCE OF HUMAN RIGHTS AND FREEDOMS IN THE ADMINISTRATIVE-TERRITORIAL LOCALITIES OF THE LEFT BANK OF THE DNIESTER RIVER AND BENDER MUNICIPALITY (TRANSNISTRIA)

The rights of persons living in the administrative-territorial settlements on the left bank of the Dniester River and Bender municipality (Transnistria) are particularly at risk of human rights violations, given the presence of political and other tensions, as well as the long-standing nature of the conflict.

Even if the state does not have effective control over these localities, the state does not cease to have jurisdiction, and therefore it still has obligations under international law with reference to the persons within that territory.⁸⁹

The State does not cease to have jurisdiction within the meaning of Article 1 of the European Convention on Human Rights (ECHR) on that part of its territory. Even in the absence of effective control, the State has a positive obligation and is required to undertake diplomatic, economic, judicial or other measures in its competence with regard to foreign States and international organizations, to continue to guarantee the rights of individuals.⁹⁰

The State has a continuing obligation to ensure the observance of the rights recognized in the Agreement with regard to the population of non-governmental territory controlled within the effective power of the territorial state.⁹¹

The state must lay the ground on deliberating and undertaking actions on the controlled nongovernmental territory, which, on the one hand, can motivate the National Institutions for Human Rights to pro-active actions and on the other to serve as signs of concern and to present clear challenges that should not be ignored.

The People's Advocate and the People's Advocate for the Rights of the Child, through the Varnita Representation of the Office of the People's Advocate, within the bounds of objective circumstances, permanently monitors the human rights situation in this territory and interacts directly with those living in the administrative-territorial settlements on the left bank of the Dniester River (Transnistria), neighboring localities in the area with increased security regime and civil society in the region.

Since its inception on October 17, 1998, the Office of the People's Advocate, as an important non-governmental human rights defense mechanism has been constantly

⁸⁹ *Ilascu and Others v. Moldova and Russia*, 48787/99, European Court of Human Rights, July 8, 2004, § 333.

⁹⁰ *Ilascu and Others v. Moldova and Russia*, § 331,333 and 339.

⁹¹ Committee on Human Rights, Establishing Observations Concerning Moldova (CCPR/C/MDA/CO/2(2009), paragraph 5.

monitoring the situation regarding the observance of human rights and freedoms in the Transnistrian region of the Republic of Moldova.

In most cases, the institution perceives the essence of the systemic problems existing on the left bank of the Dniester River, as a result of the examination of the oral and written applications received from persons living on both banks of the Dniester River, the study and analysis of the situation from the open sources and the information appeared in the press, from the reports of civil society organizations and the views of activists in the region.

At the same time, the People's Advocate also reacts in cases where the national authorities admit human rights violations through their actions or inactions.

In order not to pose to risk the employees of the Office of the People's Advocate and the citizens living in the localities on the left bank of the Dniester River and in the neighboring localities to be persecuted, in order not to prejudice the negotiation process, the People's Advocate chooses the optimal ways to solve each problem individually.

On October 17, 2012 our institution managed to open a representative office in the Varnita village - a settlement in the area with enhanced Security regime, under the jurisdiction of the constitutional authorities, considered by Tiraspol as part of the self-proclaimed Transnistrian republic.

Thus, it has increased the accessibility of the People's Advocate for the inhabitants of the administrative-territorial settlements on the left bank of the Dniester River and Bender municipality (Transnistria), and the representation from Varnita has become a platform of discussion for the representatives of the civil society in the region.

Most often, the persons ask for advice / assistance on issues related to: maladministration with national and civil status documents, especially minors; interference with free movement and non-respect of the right to private property; the forced enlistment of young people in so-called „armed forces of the Transnistrian Moldavian Republic” or the pursuit of young people who „avoided” their service in the „Armed Forces of the Transnistrian Moldovan Republic”.

In the year 2018, 190 addresses (12 written) were registered at the Varnita representation, out of which 163 (86%) from citizens residing in the localities under the control of the secessionist authorities in Tiraspol.

Resetting the work of the human rights subgroup

In 2018, the work of the human rights subgroup was resumed. The creation of this specialized structure was determined by the serious situation in the field of ensuring and

protecting human rights in the Transnistrian region and by the need to identify solutions and to propose to the persons whose rights were violated of appropriate remedies.

This subgroup was established under the auspices of the Ministry of Justice of the Republic of Moldova, where the Office of the People's Advocate where it is represented by the People's Advocate.

During the year 2018 there were 4 meetings of the subgroup, during which various issues related to the observance of human rights from the perspective of good practices and international standards in the field of human rights were discussed. Thus, issues related to the respect of children's rights, the protection of the rights of HIV + people and people with tuberculosis, the rights of persons with physical disabilities, and the prevention and combating of domestic violence.

The People's Advocate appreciates the establishment of this platform for dialogue between Chisinau and Tiraspol, given the fact that it is offered the opportunity to discuss the problems faced by the people on the left bank of the Dniester River, outside the political framework, but based on the obligations to respect fundamental human rights. At the same time, the international standards in the area of human rights are promoted in order to be taken over and implemented by the de facto authorities in the region, but also the knowledge of the problems faced by the population of the region.

Evaluation visit of the Human Rights Expert Thomas Hammarberg

Between May 28 and June 1, 2018, the Human Rights Expert Thomas Hammarberg made a visit to assess the implementation process of the Human Rights Report in the Transnistrian region of the Republic of Moldova, drawn up by the expert as a result of the study visit in May, September and November 2012.

The UN Human Rights Expert's follow-up report found⁹² an increase in the level of human rights awareness in the Transnistrian region.

According to the expert in several key areas such as the rights of people with disabilities, the prevention and treatment of HIV / AIDS, tuberculosis, the situation has generally improved. Changes in perception regarding disability and recognition of the rights of persons with disabilities are obvious. The emergence of a dynamic platform for the people with disabilities in civil society, as well as of successful initiatives focusing on increasing the accessibility of public buildings and spaces, are among the positive developments that deserve to be mentioned.

⁹² <http://md.one.un.org/content/unct/moldova/ro/home/presscenter/press-releases/statement-by-senior-un-human-rights-expert-thomas-hammarberg-on-.html>

The phenomenon of domestic violence is widely treated as a violation of human rights. The opening of a crisis and temporary shelter for victims of domestic violence as well as the construction of a permanent shelter for such persons offers the hope that further progress will be made in the field of preventing and combating the phenomenon of domestic violence.

In his report, Thomas Hammarberg also mentioned that civil society representatives in the region are worried about the consequences and interpretation of „Transnistrian law on the activity of non-commercial organizations”⁹³ recently approved on NGOs.

The expert found a serious and very worrying situation for Roma people. Many of the Roma people in the Transnistrian region are illiterate, undocumented and vulnerable. Roma children are marginalized in kindergartens and the absenteeism rate is very high. Most Roma in the region are not employed and those who are employed are discriminated against at work. Most Roma people do not have access to quality and accessible health services, and older Roma, Roma with disabilities and Roma women are among the most affected.

In the end of his follow-up report, the Human Rights Expert Thomas Hammarberg noted that bilateral political negotiations, as well as the „5 + 2” format have advanced and led to solving problems arising from the recommendations of the 2013 report⁹⁴, such as recognition of diplomas⁹⁵ and the functioning of schools with teaching in Romanian.

However, in the opinion of the People's Advocate, the situation regarding the observance of human rights and freedoms in the administrative-territorial settlements on the left bank of Dniester river is worrying.

Situation of people with disabilities

The serious situation of the people placed in the Psycho-neurological hospital in Tiraspol was brought to public attention by means of a video message from a beneficiary of this institution⁹⁶, in which he addresses the leader of the Tiraspol administration Vadim Krasnoselski and tells about inhuman conditions in the institution where he is placed.

Later, the institution was visited by the Tiraspol public organization „Общество защиты прав пациентов „ГЛИН”” („Society for the protection of the rights of patients „GLIN”), who confirmed the described state of affairs. As a result, the public organization

⁹³ <http://president.gospmr.org/pravovye-akty/zakoni/zakon-pridnestrovskoy-moldavskoy-respubliki-okenommercheskih-organizatsiyah-.html>

⁹⁴ http://www2.un.md/key_doc_pub/Expert_Superior_Hammarberg_Raport_TN_DrepturileOmului.pdf

⁹⁵ <http://gov.md/ro/content/procesul-de-apostilare-actelor-de-studii-din-regiunea-transnistreana-demarat>

⁹⁶ https://www.youtube.com/watch?v=YjdKIMKq5_I

addressed a letter⁹⁷ to the leader of the Tiraspol administration, describing inhumane conditions that can only be compared with those in the Nazi extermination camp, Auschwitz.

Forced enlistment in the „Transnistrian Armed Forces”

The Law of the Republic of Moldova Number 1245 of 18.07.2002 on the training of citizens for the protection of the Homeland⁹⁸ sets out the forms, conditions and way of preparing the citizens of the Republic of Moldova for the protection of the Homeland.

According to Article 32 paragraph (1) letter b) of the Law number 1245 of 18.07.2002 on the training of citizens for the protection of the Homeland is exempt from the military service in due time by the citizen who has completed the full course of training at the military chair.

These acts issued by the national military centers that confirm the exemption from the military service within the term, according to Article 32 of the Law number 1245 of 18.07.2002 on the training of the citizens for the protection of the Homeland⁹⁹, are not recognized on the left bank of the Dniester River.

Thus, with the return to their home on the left bank of the Dniester River, after having graduated from the higher education institutions, where they completed the full course of training at the military chair, or performed the short-term military service at the National Armed Forces training centers or at special concentrations organized by the military centers, the young people are automatically quoted and incorporated into the „Transnistrian army”¹⁰⁰. Even if the young people change their domicile in the neighboring localities under the control of the constitutional authorities, they are prosecuted and attracted to „criminal

⁹⁷http://pacientypmr.ucoz.org/blog/proverka_psikhonevrologicheskogo_doma_internata_vyjavila_nekotorye_narusheniya/2018-12-12-29?fbclid=IwAR0W8yeh-gi9UWDtqNMsEdVEHsga8DCvaXgojp1YVzIT0uAo-kSeHIujbe4

⁹⁸ Law number 1245 of 18.07.2002 on the preparation of citizens for the defense of the Homeland
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=312749>

⁹⁹ **Article 32.** Exemption from military service within the term

It is exempt from military service within the term the citizen who:

- a) was recognized, according to the state of health, unfit for military service in peacetime;
- b) has completed the full course of training at the military chair;
- c) is released from military service for conscience purposes;
- d) lost his father (mother) brother (sister) who died during the military service. The recruit may not use this

right;

e) has an unprecedented criminal record or has not been rehabilitated in the manner prescribed by law.

¹⁰⁰ According to the information on the WEB page of the „ Transnistrian Moldovan Republic (TMR) Prosecutor's Office” in 2018 or in the case 134 cases related to „defense and security”.

liability for the criminal offense provided by Article 325 paragraph (1) of the Criminal Code of the Transnistrian Moldovan Republic¹⁰¹”.

Documenting the citizens from the administrative-territorial settlements on the left bank of the Dniester River and Bender municipality (Transnistria)

The issue of documenting with civil status documents (*about 46% of the total number of addressing*) as well as the recognition of civil status facts produced and registered in the Transnistrian region remains the most frequently encountered by the beneficiaries.

The People's Advocate welcomes the efforts of the Chisinau authorities in identifying the solutions to simplify the process of documenting the citizens from the left bank of the Dniester River with legal acts¹⁰².

At the same time, the issues that generate bureaucratization and delay in the provision of public services by the services of the Agency of Public Services, indicated in the Report on the observance of human rights in the Republic of Moldova in 2017, have not been liquidated.

The mechanism to exclude bureaucratization and delays in the process of issuing birth certificates based on children of civil status documents issued by the de facto authorities on the left bank of the Dniester River has not been identified.

Thus, after receiving the duplicate of the birth certificate, (*without entering the identification number in it*) on the basis of the copies of the civil status documents issued by the civil state authorities subordinated to Tiraspol, the person must address to the territorial subdivisions Issuance of Identity Documents Services within the Agency of Public Services, where the person's registration takes place (*assigning the identity number*) without issuing identity documents from the National Passport System¹⁰³. Subsequently, the person is to address repeatedly to the territorial subdivisions of the Civil Status Services of the Agency of Public Services in order to complete the birth certificate, but in this case by entering the identification number in the birth certificate.

Individual freedom and personal security, physical and mental integrity

On the territory of Bender there are located 2 penitentiary institutions subordinated to the National Administration of Penitentiaries of the Republic of Moldova.

¹⁰¹ Article 325, paragraph (1) Evasion of military service or alternative civil service. 1. Evasion of conscription for military service in the absence of legal grounds for exemption from this service is punishable by a fine of 700 (seven hundred) to 1,700 (thousand seven hundred) estimated minimum wage levels or imprisonment for up to 2 (two) years.

¹⁰² Law number 310 of 22.12.2017 on completing the Law number 100/2001 on civil status acts;
Law number 17 of 05.04.2018 on the amendments and additions to some legislative acts;

Government Decision number 872 of 31.10.2017 on the amendments and additions to the Regulation on Issuance of Identity Documents and Records of Residents of the Republic of Moldova.

¹⁰³ in accordance with point 8 of the Regulation on the State Registry of the Population approved by the Government Decision number 333 of 18.03.2002

Over the years, the Tiraspol authorities have prevented the normal activity of these prisons, disconnecting the Penitentiary number 8 from the aqueduct and sewerage system, from the district heating network and the electric networks of the city, blocking the sentencing of the prisoners. For these reasons it is difficult to ensure the proper functioning of these penitentiaries, as well as their supply with the minimum necessary for existence.

Employees of the Office of the People's Advocate have unrestricted access to these institutions and make visits in the process of examining petitions addressed by prisoners¹⁰⁴.

Ensuring the right to physical and mental integrity is one of the priority areas for a qualitatively new approach. The experience of the Republic of Moldova in implementing the National Torture Prevention Mechanism, the involvement of civil society representatives in the Transnistrian region in this activity could help to increase safeguards against abuses by the representatives of the authorities.

In this context, the Office of the People's Advocate proposed to strengthen the efforts to monitor the situation of the people in the detention facilities on the left bank of the Dniester River and as a result, in the National Action Plan for Human Rights for the years 2018-2022 approved by the Parliament Decision number 89 of 24.05.2018, there are found actions to be performed.

At the Varnita representation of the Office of the People's Advocate four requests were received from relatives or directly from detainees from penitentiary institutions subordinated to the secessionist authorities on the left bank of the Dniester River, who invoked illegal detention, torture and inhuman or degrading treatment in places of detention.

Given that the work of the People's Advocate merely complements the existing means of defending human rights and freedoms and does not entail the revision of the powers of the state power, all these requests were handed over to the competent bodies for examination in accordance with the legislation on petitions.

HORJAN and others CASE

On June 2, 2018, a public meeting was held in Tiraspol on the debate on current socio-economic issues in the Transnistrian region. The event brought together about 300 people and was peaceful. Subsequently, dozens of people were summoned to the police sections, where they were detained for periods of 3 to 15 days, or fined administratively with fines for attending an „unauthorized” meeting. The organizer of the event, Oleg Horjan, was placed in arrest for 60 days, including his family members: Evghenii Horjan - 14 days of

¹⁰⁴In 2018 two petitions were examined with the displacement to the penitentiaries number 8 and 12 in Bender subordinated to the National Administration of Penitentiaries.

administrative arrest, Svetlana Horjan – 3 days of arrest. The list of administrative detained persons includes older people, civic activists, etc.

The Ombudsman received 15 complaints about persecution, abusive detention, submission of fines, imprisonment of persons for free expression (speech) at that event.

Horjan and others case point out that the abuses continue in the Transnistrian region, which implies the urgent need to identify effective mechanisms for the protection of human rights in the uncontrolled territory, as well as to settle the Transnistrian conflict in peaceful and transparent ways. The Ombudsman's institution is open to this effect.

KUZMICIOV case

On July 27, 2018, about 04:00 p.m. to 04:30 p.m., a crew of the National Patrolled Inspectorate (NPI) with the identification number 0321 (Leuseni-Chisinau route, km 13) would have been involved in favoring the abduction of people, namely: the citizen Kuzmicev Ghenadie, son of Iurie, year of birth 1966, originating in Tiraspol, as well as the vehicle with which he moved of the model Toyota Avensis, registration number T426KK. The National Patrolled Inspectorate (NPI) employees have premeditated the vehicle under the guise of overtaking the speed limit, they got up the driving acts, then that vehicle was approached by another vehicle „Toyota Land Cruiser Prado” from where came out 4 masked men, who kidnapped Ghenadie Kuzmicev. This action would have been favored, including by non-involvement by National Patrolled Inspectorate (NPI) employees. Although the witness of the abduction claimed and demanded stopping the perpetrators, the National Patrolled Inspectorate (NPI) employees did not intervene, which presumed a serious doubt about the participation or co-authoring in committing at least the act of kidnapping. Later, Ghenadie Kuzmicev was transported to the Transnistrian region, where he was subjected to acts of torture and ill-treatment in a prison in Hlinaia. Relatives and defenders claim that he is subjected to inhuman treatment, acts of torture in order to recognize guilt, is deprived of medical care, which seriously affects his state of health.

On August 09, 2018, the Chief Prosecutor's Office of Chisinau municipality, the Main Office ordered the commencement of criminal prosecution in the case number 2018898105 on the basis of Article 164 paragraph 2, letter e) of the Criminal Code on the abduction on July 27, 2018 of the citizen Ghenadie Kuzmiciov, by several people.

At the same time, over the years, the People's Advocate has made several demarches to the „human rights officer” in the Transnistrian region asking for joint visits to the places of detention. Unfortunately, this initiative was not followed.

The right to free movement

In the opinion of the People's Advocate, the right to free movement in the Transnistrian region is affected by the presence of the police, customs and border posts installed unilaterally by the Tiraspol authorities¹⁰⁵.

Up to now, the traffic between the two banks of the Dniester River is difficult, because the Transnistrian authorities allow the passage of persons on the controlled territory in a discretionary manner. Official delegations wishing to move to the districts on the left bank of the Dniester River are obliged to notify the Transnistrian authorities in advance for obtaining the authorization, even if such authorization can be revoked at any time.

In order to ensure the objective of reintegration of the country as well as to ensure access to international road traffic of the population of the left bank of the Dniester River and Bender municipality under the conditions of the Vienna Road Transport Convention of November 8, 1968¹⁰⁶, on 26.07.2018 the Parliament of the Republic of Moldova adopted the Law number 170 of 26.07.2018 on the registration of some means of transport and the amendment of some legislative acts¹⁰⁷.

According to the aforementioned law and subsequent amendments¹⁰⁸ by way of derogation from the provisions of the Fiscal Code number 1163/1997, of the Customs Code of the Republic of Moldova number 1149/2000, of the Law on Customs Tariff number 1380/1997, of the Law number 1569/2002 on the way of introducing and removing goods on the territory of the Republic of Moldova by natural persons and the Law of the Population Support Fund number 827/2000: Means of transport classified under the tariff heading 8703 and trailers thereto, falling within the tariff heading 8716, motorcycles (including mopeds) and auxiliary motorcycles, with or without side attachment, classified in the tariff heading 8711, owned by the persons mentioned in the clause 3 of the law, having plates with registration number issued in the administrative-territorial units on the left bank of the Dniester River (with the exception of Cocieri, Corjova, Cosnita, Dorotcaia, Molovata Noua,

¹⁰⁵ despite the article 5 of the Agreement on the Principles of peaceful settlement of the conflict in the Transnistrian region of the Republic of Moldova of July 21, 1992.

¹⁰⁶ Law number 170 of 26.07.2018 on the registration of certain means of transport and the amendment of some legislative acts <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=356793>

¹⁰⁷ Law number 321 of 30.11.2018 on amending some legislative acts.

<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=376843>

¹⁰⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=378751>

Pirita, Pohrebea, Vasilevca in Dubasari district) in the Bender municipality or in the Gisca, Chitcani, Zahorna, Merenesti and Cremenciug from Causeni district localities, irrespective of the term of exploitation, can be registered in the subdivisions of the Agency of Public Services, for obtaining the plates with a neutral registration number, without paying the import duties and the additional mandatory payments established according to the Law of the Population Support Fund number 827/2000, as well as without the mandatory presentation of customs documents.

At the same time, according to the Article 231¹ of the Contravention Code of the Republic of Moldova, the driving of the vehicle with a registration number issued in the administrative-territorial units on the left bank of Dniester River or Bender municipality by a person who has a residence in another locality than the localities on the left bank of Dniester River, Bender municipality or the Gisca, Chitcani, Zahorna, Merenesti and Cremenciug localities of the Causeni district shall be sanctioned in accordance with the provisions of the Contravention Code.

The People's Advocate is disturbed by the fact that the inhabitants of the Cocieri, Corjova, Cosnita, Dorotaia, Molovata Noua, Pirita, Pohrebea, Vasilevca localities of the Dubasari and Varnita district from the Anenii-Noi district cannot benefit from the right to obtain neutral registration numbers for personal vehicles with registration numbers issued in the administrative districts on the left bank of Dniester River and Bender municipality and risk to be sanctioned in accordance with Article 231¹ of the Contravention Code of the Republic of Moldova, and the movement in the region with the vehicle registered in the Agency of Public Services with Moldovan numbers is possible only by paying the vignette to the Transnistrian customs posts.

From January 1, 2018 de facto authorities in Tiraspol have implemented a „new customs code”¹⁰⁹ which stipulates the payment of the vignette for the right to travel in the region with vehicles registered in other states, including those registered with the Agency of Public Services with Moldovan registration numbers. According to Article 132-7 of the „Customs Code of the Transnistrian Moldovan Republic”¹¹⁰, the citizens of the Republic of Moldova residing in the administrative-territorial districts on the left bank of the Dniester River and Bender municipality (Transnistria), holders of Transnistrian passports are obliged to pay the vignette for the introduction of their own car in the region if it is registered in the subdivisions of the Agency of Public Services.

The right to property

¹⁰⁹ <https://www.youtube.com/watch?v=qyMqJKaptcw>

¹¹⁰ <http://customs.gospmr.org/tamozhennyi-kodeks-pridnestrovskoy-m.html>

Access of farmers to their agricultural land located along the Ribnita-Tiraspol permanent route is in the Ombudsman's eye.

The People's Advocate welcomes the Government's actions to support farmers who for years suffer considerable material damage. In this context, we remind you that at the Executive meeting of January 11, 2018, was approved the Government Decision „On granting direct payments to agricultural landowners located on the Ribnita-Tiraspol route for 2017”, which provides for the allocation from the reserve fund of Government to the amount of MDL 7,986,513.37 to partially compensate for some losses incurred by the owners of the agricultural land in the Dubasari district, located along the Ribnita-Tiraspol route, with the allocation of the respective means in the form of direct payments in the amount of MDL 1229.68 per hectare, according to the regulatory procedures established by the Dubasari District Council.

Right to social assistance and protection

Given the fact that the Law on the basic provisions of the special legal status of the localities on the left bank of Dniester River (Transnistria) number 173 from 22.07.2005 remained unimplemented, no local public local authorities were established in the Eastern region of the country and the local public authorities at both levels provide assistance and social protection and social protection to persons in difficulty only if they have a residence visa in the localities under the jurisdiction of the constitutional bodies of the Republic of Moldova except for persons falling under the Law number 190 of 08.05.2003 „On veterans” and Government Decision number 906 of 24.09.2010 on the creation and activity of „Commissions for the examination of the appeals of the citizens of the Republic of Moldova domiciled in the localities on the left bank of the Dniester River (Transnistria) and the localities” approved in the purpose of executing the Law number 1585-X III of February 27, 1998 on compulsory health insurance.

Thus, the citizens of the Republic of Moldova benefiting from pensions established by the National Pay Office of Social Insurance of the Republic of Moldova, residing in the localities under the control of Tiraspol, do not have full and equal access to social assistance, social assistance benefits and services.

RECOMMENDATIONS:

- It is necessary to adjust the legislation so as to eliminate all the barriers faced by the citizens at birth registration so that all children are registered immediately, regardless of the region in which they were born.

- The executive must improve the existing regulatory framework in the fields of the issue of civil status documents, identity documents, as well as the determination of citizenship of the Republic of Moldova for the inhabitants of the left bank of the Dniester River.
- The state should encourage the work of civil society organizations and initiative groups in the localities on the left bank of the Dniester River and to develop clear mechanisms for the protection of persons conducting activities on promoting and defending human rights in the administrative-territorial settlements on the left bank of Dniester River and Bender municipality (Transnistria).
- The Government shall undertake measures aimed at intensifying the human rights dialogue at expert level for human rights issues in the localities on the left bank of the Dniester River.
- The People's Advocate reiterates the importance of implementing the international recommendations on the protection of human rights that refer to the left bank of the Dniester River and Bender municipality.

II. OBSERVANCE OF CHILD RIGHTS IN THE REPUBLIC OF MOLDOVA IN 2018

Overview on the observance of child rights

This Chapter of the Report of the observance of the rights of the child in the Republic of Moldova in 2018 aims to present the People's Advocate's opinion on the rights of the child on the current child rights protection system and the issues to be improved in the future. Also a retrospective opinion on subjects and rights addressed in the Report for 2017 will be presented and which will not be elucidated in separate compartments in this report.

The People's Advocate for the Children's rights, Maia Banarescu, appreciates the state's effort to ensure respect for the rights of the child. The national child protection system is viable and meets the rigors of international standards in the field, including the policies and legislation adopted.

Throughout 2018, there took place important interventions in the field of education through the re-evaluation of the National Curriculum and the elaboration of the National Curriculum Reference Framework in the health and social protection system by developing social and health services, increasing the amount of allowances and other social benefits for children and families with children, as well as in the child protection and security system.

At the same time, the Ombudsman notes the existence of multiple systemic weaknesses in all areas of child rights that were set out in the Annual Reports on the observance of children's rights in the thematic reports and other documents drawn up, and indicates its Recommendations on remedying the situation, which are largely unfulfilled by the public line authorities. The Ombudsman expresses his indignation at this situation and urges the state authorities to identify the solutions to the recommendations, stating that the recommendations are the result of monitoring the respect of children's rights and come to improve the system of protection of children's rights.

The Children's Ombudsman also states that the state has arrears in implementing the UN Committee on the Rights of the Child's Recommendations on the regular, combined fourth and fifth report of the Republic of Moldova¹¹¹.

Taking into account the findings of monitoring the child's rights, the Children's Ombudsman notes that the main failure of state policies lies with their faulty implementation. If, in the normative plan, the established mechanisms are good enough, in

¹¹¹ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

practice, there are a number of problems and impediments generated in the most cases by the lack of attitude and professionalism of the employees.

At the same time, it points out that not in all actions of the public authorities and persons of public dignity, state officials (judges, prosecutors, lawyers, social workers, etc.) give priority to the best interests of the child.

In the context of the above, it is worth mentioning that the Report on the observance of child rights in the Republic of Moldova in 2017 was a comprehensive one that presented a thorough analysis of some of the rights of the UN Convention on the Rights of the Child and also drew attention to a set of issues over which the People's Advocate for the Children's Rights has submitted several Recommendations¹¹² to redress the situation in the field of child rights. We find that central and local public authorities have failed to implement many of the recommendations put forward by the Ombudsman, and consequently the situation has not improved significantly in the departments concerned in the report.

Regarding the respect of the **child's right to name and citizenship**, the People's Advocate for the Rights of the Child states that the problems regarding the documentation of the children, especially of the children from the left bank of the Dniester River, have not been solved, a major impediment being the human factor which delays the documentation procedure and / or the knowledge of both the regulatory framework and the failure to comply with internal working procedures. In particular, persists the problem of documenting children living in the territory of the left bank of the Dniester River on which legal protection measures (guardianship / tutorship) have been established on the basis of acts issued by unconstitutional authorities in the region and which do not have legal force on the territory of the Republic of Moldova. Consequently, the Recommendations set out in the Thematic Study on the Rights of the Child to Name and Citizenship¹¹³ remain current for the Responsible Authorities.

It is welcomed that the representatives of the guardianship authorities refer the Children's Ombudsman for receiving legal advice on the respect of children's rights to name and citizenship and calls for his intervention in solving individual cases. This leads to the conclusion that officials of public institutions need continuous training in the field of activity and rights of the child.

Respecting children's rights of the regions from the left bank of Dniester River has been and remains one of the priorities of the People's Advocate for Children's Rights mandate, as there have been no positive changes in this segment.

¹¹² http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf

¹¹³ http://ombudsman.md/wp-content/uploads/2018/10/studiul_documentarea_0.pdf

De jure, the situation of children from the left bank of Dniester River is unknown to the constitutional authorities of the Republic of Moldova. They do not have statistics on the actual number of children in the region, including children at risk: those without parental care, abandoned children, children with special needs and their social inclusion; the number of allegedly abused children and the measures taken to facilitate their physical and psychological recovery are not known. Similarly, the number of children in guardianship / tutorship and the conditions for establishing legal protection measures, of the adopted children and the adoption procedure, including the international one, are unknown. There is a lack of information on the number of children in conflict with the law and the conditions of their detention, the ways of resocialization of children who were in conflict with the law, etc.

It is worth mentioning the lack of access to the Children's Ombudsman on the left bank of the Dniester River, the People's Advocate for Children's Rights recalls and regards this as a serious obstacle in monitoring the observance of children's rights in this region.

He also notes that the limited access of the representatives of the constitutional authorities of the Republic of Moldova and non-governmental organizations working in the field of human rights / child rights in the left bank of Dniester River does not allow assessment of the real situation regarding the observance of children's rights.

The People's Advocate for Children's Rights reiterates the urgent need to identify an effective solution to assess the situation of children on the left bank of the Dniester River and to intervene when necessary.

A particular concern is the situation of children left without parental care and other children in risk situation who are in the custody of the state. During the year 2018 the Children's Ombudsman initiated cooperation with some non-governmental organizations on the left bank of the Dniester River, registered under the national legal procedure, to identify the possibilities of intervening in the interests of children in solving the problems and ensuring respect for the rights.

The Children's Ombudsman welcomes the creation of the Government Consultative Body, the National Human Rights Council, in order to provide an efficient mechanism for developing and evaluating the implementation of human rights policy documents and appreciates the institutional preservation of the National Child Rights Council. He also mentions the importance of setting up the Human Rights Working Group within the Reintegration Policy Bureau, where subjects for ensuring the rights of children from the left bank of the Dniester River will be discussed.

The People's Advocate for the Children's Rights Maia Banarescu, who is a member of these three structures, hopes that joint efforts will identify ways to ensure respect for the rights of children on the left bank of the Dniester River and she will exercise all due diligence within the limits of her duties, to intervene in the interests of the children of the region, in each case when requested.

At the compartment **children's rights to family**, the People's Advocate for the Children's Rights notes the perpetual issue for the Republic of Moldova, namely the establishment of the meetings schedule in the case of the parents' divorce and establishing the child's domicile with one of the parents. As in previous years, we note the lack of a unified practice in the establishment of meeting charts by tutelage authorities, so their actions are segmental and do not provide a complete solution to the problem. Also, based on the case law of the Office of the People's Advocate on this segment, we note that the legal value of this chart, determined by the tutelage authorities, is not clear once it is not respected, and the competent public authority does not have coercive leverage to ensure the child's right to see his parents and relatives.

The Children's Ombudsman reminds to the public authorities and parents that any child is not the property of the parents and the principle of the best interests of the child enshrined in Article 3 of the UN Convention on the Rights of the Child states that all decisions taken and actions taken must be consistent with it.

Another problem in this compartment is the illegal exit of the child from the country without the consent of the other parent, namely the Children Ombudsman notes that neither the parents nor the authorities have a relevant solution to solve the situation. Thus, when a parent departs abroad with his / her child and establishes with his / her permanent domicile in the new state, he / she violates the right of the other parent to see the child and the right of the child to see the second parent and the family extended from his part.

In the context of the above-mentioned cases and in the cases examined by the People's Advocate for the Children's Rights, it draws the attention of the competent authorities and courts to the fact that when examining the cases concerning the dissolution of marriages and the domicile of the child, special attention must be paid to the circumstances: by whom the child has been raised and to whom he is psychologically attached, the social integration of the child in the situation in which it is obvious that one of the parents, especially the one with which the child's domicile is to be established, intends to establish his / her residence outside the country, observance of the right of the child to maintain family ties with the other parent, etc.

The procedure of forced execution of court decisions pronounced on this subject is frequently revealed in applications addressed to the Children's Ombudsman. The bailiffs also do not have a unified practice and training necessary to deal with cases of forced execution in the situation of the transmission of the child to the parent with whom the domicile was established. The execution procedure itself and their behavior can affect the psychological state of the child. In the discussions with the administration of the National Union of Bailiffs, it was stressed the need for compliance with the administrative acts in the field, the principle of the child's best interest and continuous professional development on this subject and the area of child rights.

Another issue that came within the Children's Ombudsman's concerns was and is the **observance of the rights of children with disabilities**. In this respect, he reiterates the recommendations made in the thematic studies (Thematic Report „Social Inclusion of Children with Autistic Spectrum Disorders in the Republic of Moldova”¹¹⁴, Special report „Assessment of the situation of children placed in boarding houses for children with mental deficiencies from Orhei and Hancesti in the process of deinstitutionalization”¹¹⁵, „Report on Social Inclusion of Children with Sensory Disabilities”¹¹⁶) and reminds the authorities of the positive obligation of the state to offer special protection to children with disabilities.

We note that in this section a large part of the *recommendations* of the Children's Ombudsman are in the attention of the central public authorities of the line and action is being taken to achieve them, especially with reference to ensuring the rights of children with autistic spectrum disorders.

To conclude with this chapter, I reiterate the need to unify the efforts of the Ombudsman, state authorities, non-governmental organizations and external partners to take effective measures to ensure respect for the rights of the child, taking into account the best interests of the child and taking into account his / the issues that concern him.

¹¹⁴ http://ombudsman.md/wp-content/uploads/2018/10/raport_tematic_autismul_0.pdf

¹¹⁵ http://ombudsman.md/wp-content/uploads/2018/10/raport_diz_2017_red_0.pdf

¹¹⁶ http://ombudsman.md/wp-content/uploads/2018/10/raport_copii_diz_0.pdf

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

The child's right to life and development is the inherent obligation of the state to ensure the survival and development of the child. It regains its legal basis under Article 6 of the UN Convention on the Rights of the Child¹¹⁷, which, unlike other international mechanisms in the field of human rights protection, stipulates not only the positive obligation of the state to protect the life of the person, and not to allow the application of capital punishment, but at the same time the Convention requires the High Contracting Parties **to ensure as far as possible survival and development of the child**. In this context, the Children's Ombudsman points out that this specific obligation imposes on the State the duty to undertake concrete efforts to ensure the simultaneous observance of all rights enshrined in the Convention.

At national level, the right to life and development of the child is guaranteed by the Constitution of the Republic of Moldova, Article 24¹¹⁸ and the Law on the Child Rights number 338 of December 15, 1994¹¹⁹, which in Article 4 provides for the obligation to recognize the child's right to life and physical and psychological inviolability. We highlight the fact that the legislator in the Law 338/1994 omitted explicitly to stipulate in the text of the legislative act the provisions on „ensuring, as far as possible, the survival and development of the child”. This highlights a discrepancy between international standards and national mechanisms for the protection of children's rights.

The People's Advocate for Children's Rights notes with concern that the recommendations on the right to life of the child stipulated in the Report on the observance of child rights in the Republic of Moldova in 2017¹²⁰, have not been taken into account by central and local public authorities. The Child Ombudsman also notes that the State has not taken any action on the implementation of the UN Committee on the Rights of the Child's Recommendations on the Fourth and Fifth Periodic Combined Report of the Republic of Moldova¹²¹. As a consequence of those related, the situation regarding respect for the child's right to life, survival and development did not change and the situation at national level remained constant.

In the year 2018, the People's Advocate for the Children's Rights analyzed the situation regarding respect for the child's right to life through the **prism of birth and**

¹¹⁷ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹¹⁸ http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

¹¹⁹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311654>

¹²⁰ http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf

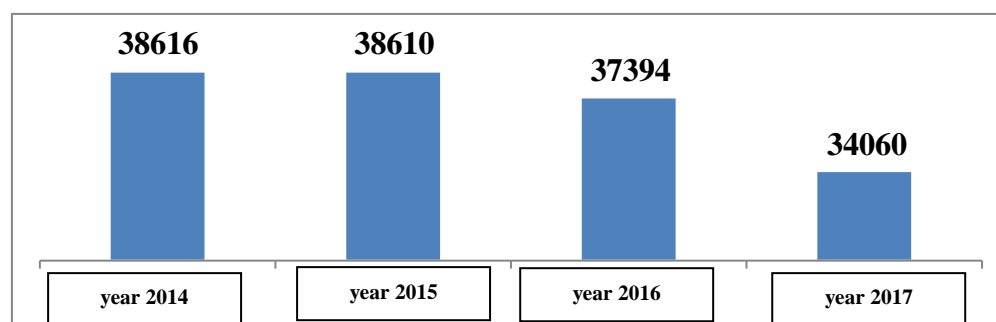
¹²¹ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

demography in the Republic of Moldova. This problem has been raised by the Children's Ombudsman since the start of his mandate and continues to remain a priority on his agenda. Following the subject's monitoring, the following problematic issues were identified:

- Insufficient policies in the field of family planning;
- Economic decline and emigration of the population aged between 16 and 35;
- The amount of the unique childbirth allowance (MDL 5645¹²²), is too small and does not cover the minimum consumption basket;
- The amount of the monthly childcare allowance, of uninsured persons, (MDL 540¹²³), the net below the daily needs for childcare and care.

We appreciate the state's effort to increase the amount of social benefits for children and families with children in 2019.

Also, according to the latest statistical data, the birth rate in the Republic of Moldova is in a continuous decrease¹²⁴. So if the figures were constant in the years 2014-2015, about 38 thousand children were born each year, we can see that in the next few years the situation is experiencing a considerable decline and is just over 34 thousand in 2017. Although at the time of drafting the Report on the observance of child rights in the Republic of Moldova in 2018, the National Bureau of Statistics failed to cumulate the data for 2018, the situation remains an unfavorable one for our state.



Source: National Bureau of Statistics

As a result, the Republic of Moldova remains an unattractive state for young people, from the perspective of creating a family and conceiving children.

Children's Ombudsman concludes that, under the current circumstances, if government authorities fail to correct the situation, in the opinion of specialists, in about 15-20 years the Republic of Moldova runs the risk of reaching an aging population of about

¹²² <http://www.cnas.md/slidepageview.php?l=ro&idc=560&t=/Alte-prestatii-sociale/Indemnizatii/Indemnizatii-adresate-familiiilor-cu-copii/Indemnizatie-unica-la-nasterea-copilului/>

¹²³ <http://www.cnas.md/slidepageview.php?l=ro&idc=560&t=/Alte-prestatii-sociale/Indemnizatii/Indemnizatii-adresate-familiiilor-cu-copii/Indemnizatie-unica-la-nasterea-copilului/>

¹²⁴ <http://statbank.statistica.md/pxweb/pxweb/ro/20%20Populatia%20si%20procesele%20demografice/20%20Populatia%20si%20procesele%20demograficePOP030/POP030100.px/table/tableViewLayout1/?rxid=2345d98a-890b-4459-bb1f-9b565f99b3b9>

70% and considers it imperative to adopt protection policies: „the rights of future generations”. This theory was launched in 2008 by the English teacher Marie-Claire Cordonier in the „World Future Council”¹²⁵, where she mentioned „*the obligation to protect the future generations is a vital necessity of each state as well as of the international society as a whole. Thus, when we ensure the sustainability of child protection and related rights protection services, we can hope for the continuity of the human species as a gender*”¹²⁶.

In light of the above, the Children Ombudsman encourages the government authorities to create as appropriate, or strengthening the existing policies in the field of the protection of future generations. In order to ensure a sustainable development, it is necessary to improve the quality of life that future generations can enjoy and, as adaptation to sustainable lifestyles brings together, the rights of future generations and their well-being must become a primordial need for authorities' / today's people.

Another issue addressed by the People's Advocate for the Children's Rights in the field of the right to life in 2018 is **the deaths of young children due to the negligence of their parents / legal representatives or other persons in whose care they are**. The year 2018 has been marked by many cases of child death due to the negligence of parents or caregivers (frozen children in the streets, children fired in homes, newborn babies thrown at the tombstone, children who have fallen from a height, etc.)¹²⁷. Although the Strategy for the Development of Parental Skills and Competencies exists as early as 2016 (approved by Government Decision Number 1106 of October 3, 2016)¹²⁸, and on June 11 this year, the Ministry of Education, Culture and Research is submitting a draft normative act on the approval of the National Parental Education Strategy 2018-2025, the situation did not experience any major changes.

In the context presented, the Children's Ombudsman emphasizes the set of identified issues:

- Insufficient intervention by public authorities to prevent and mitigate major risk factors, including alcohol / drug abuse, domestic violence, child abuse, neglect of parental responsibilities;
- Insufficiency of specialized community services;
- Insufficiency of pre-school institutions in some localities, including lack of nursery groups;

¹²⁵ https://www.worldfuturecouncil.org/wp-content/uploads/2016/03/WFC_CISDL_2008_Selecting_Best_Policies_and_Law_for_Future_Generations.pdf

¹²⁶ https://www.worldfuturecouncil.org/wp-content/uploads/2016/03/WFC_CISDL_2008_Selecting_Best_Policies_and_Law_for_Future_Generations.pdf

¹²⁷ <http://www.jurnaltv.md/news/70d2635f78e659a5/neglijenta-parintilor-costa-vieti.html>

¹²⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366978>

- Lack of safe sources of income, as well as inability of families setting the priorities for addressing the identified issues;
- The irresponsibility of some families / parents towards the lives of their own children;
- Insufficient parenting skills in raising and educating children, managing family budgets of state financial support;
- Lack of control on the part of the authorities to spend the allocated money.

We point out that during the year 2018 the number of child victims of the crimes stipulated in the Criminal Code, Chapter II „Criminal offenses against the life and health of the person” is 91 compared to 23 during the year 2017¹²⁹.

Also, the People's Advocate for the Children's Rights finds an uncertain situation regarding the actions provided in Article 163 „Leaving in Distress” of the Criminal Code. Such cases are rarely examined by the courts due to the degree of affinity between the offender and the victim's representative, however, the Children's Ombudsman does not consider that the tightening of the existing rules will lead to a recovery of the current situation. In the circumstances created, the Children's Ombudsman considers that only continuing education, the eradication of parental irresponsibility and the reducing the phenomenon of abusive consumption of alcohol and / or narcotic substances and the phenomenon „children give birth to children” will change the current situation for the better.

In emphasizing the above, the People's Advocate for the Children's Rights asks the public authorities for the need to revise the child protection system, especially for young children, in order to prevent those situations from happening in the future. The Children's Ombudsman encourages the state to continuously strengthen child rights protection policies on the child's right to life, survival and development, and at the same time, reminds to the central and local public authorities in the field of child rights protection that according to the provisions of General Comment number 14 (2013) of the UN Committee on the Children's Rights¹³⁰, the obligation to respect the best interests of the child resides in the cumulative observance of all the rights enshrined in the UN Convention on the Rights of the Child, but particularly the right to life, survival and development of the child.

Another aspect addressed in this compartment is **respect for the right to life, the prematurely born child**. According to statistical data, premature births are in the average

¹²⁹ <http://politia.md/ro/advanced-page-type/rapoarte-si-evaluari?page=3>

¹³⁰ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

around 2000 yearly, representing 7% of the total births¹³¹. Thus, the People's Advocate for the Children's Rights in partnership with the „Vitae Public” Association organized a National Conference „Prematurity in the Republic of Moldova, Challenges and Opportunities”¹³², in order to analyze the existing situation and to identify the relevant solutions.

The problematic issues identified are as follows:

- Insufficiency of professionals specializing in the provision of qualified medical assistance to children born prematurely;
- The unequal distribution of family doctors and pediatricians throughout the Republic of Moldova;
- Under-assessment of child's condition and late hospitalization;
- Poorly developed early prevention system;
- Lack of cooperation between the early intervention service with the social protection specialists in the territory.

The Child Ombudsman reiterates that the right of the child to life and access to quality health services and their availability regardless of the time of his appearance in the world, is a primary obligation to be implemented by the state and monitored by the national human rights / child protection institutions. Also, the People's Advocate for the Children's Rights reminds to the relevant public authorities the Recommendations stipulated in the Thematic Report on the „Observance of Human Rights in Providing Pre-hospital Medical Assistance in the Republic of Moldova (2016)”¹³³, by which reference was made to the **poor state of provision of ambulances with equipment predestined for children and especially for newborns.**

In conclusion of the above, the People's Advocate for the Children's Rights has the following **RECOMMENDATIONS:**

- Strengthening the respect of the child's best interest in ensuring the observance of the child's right to life;
- Increasing the knowledge of families and of the community about the signs of danger to the life and health of the child;
- Creating / strengthening family planning services and parenting skills training for child raising and education;

¹³¹ <http://ombudsman.md/news/fiecare-copil-are-dreptul-la-cea-mai-buna-stare-de-sanatate-si-a-beneficia-de-servicii-medicale-de-inalta-calitate-tratament-si-recuperare/>

¹³² <http://ombudsman.md/news/fiecare-copil-are-dreptul-la-cea-mai-buna-stare-de-sanatate-si-a-beneficia-de-servicii-medicale-de-inalta-calitate-tratament-si-recuperare/>

¹³³ http://ombudsman.md/wp-content/uploads/2018/10/raport_respectarea_drepturilor_2016_site_1_0.pdf

- Implementation of minimum quality standards for early intervention services;
- Ensuring the prenatal screening realization;
- Development of quality medical services by providing medical institutions with adequate equipment and continuing training of medical staff;
- Changing family-friendly policies and frameworks.

RIGHTS TO HEALTH

Protecting the child's right to health (Article 24 of the UN Convention on the Rights of the Child) remains a priority for the work of the People's Advocate for the Children's Rights. The Children's Ombudsman considers that every child, regardless of social status or any other criterion, must have access to the highest health standards. No child has to suffer or die because he is poor or because he cannot benefit from specialized medical services. At national level, the right to health of the child is guaranteed by a multitude of legislative acts starting with the Constitution of the Republic of Moldova (Article 36)¹³⁴, Law number 338 of December 15, 1994 on the rights of the child (Article 4)¹³⁵, Law number 411-XIII of March 28, 1995 of health care etc.

The People's Advocate for Children's Rights highlights that national health care standards are largely in line with national standards in the field. At the same time, he denotes that central and local public authorities did not take into account the recommendations stipulated in the Report on the observance of child rights in the Republic of Moldova in 2017, so the situation regarding the respect of the right to health did not undergo any essential changes. The Children's Ombudsman also notes that the state remains remarkable in the implementation of the UN Committee on the Rights of the Child's Recommendations on the Fourth and Fifth Periodic Combined Report of the Republic of Moldova¹³⁶.

Analyzing the situation on the observance of the child's right to health, in the light of the events that took place in this area in 2018, the People's Advocate for Children's Rights notes a problem related to the implementation of the provisions of Articles 3 and 24 of the UN Convention on the Rights of the Child.

¹³⁴ http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

¹³⁵ <http://lex.justice.md/viewdoc.php?id=311654&lang=1>

¹³⁶ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

We recall that respecting the **principle of the best interests of the child** is a priority **in protecting the right to health**. Thus, the Children's Ombudsman finds an erroneous understanding of the principle given by health workers.

Following the monitoring carried out by the staff of the Office of the People's Advocate and following the consultation of the children's opinions in the national children's forums, the following shortcomings were found:

- Poor involvement of the child in decision-making process about treatment and / or administered preparations;
- Exclusive consultation of parents' opinion on treatment and / or administered procedures;
- Intimidation of children, especially in the situations where the health problem is related to the intimate areas of the body.

The People's Advocate for the Children's Rights reminds the competent authorities that Article 3 paragraph (1) of the Convention provides for the obligation of public and private institutions, courts of law, medical and social institutions, administrative authorities and legislative bodies to ensure that the interests of the child are assessed and taken as a first step in all actions affecting the children. This principle must be respected in all health decisions. The Ombudsman emphasizes that children's best interests should be based on their physical, emotional, social and educational needs, age, gender, relationships with parents and caregivers, their family and social environment, and decisions should only be taken after their views have been heard in accordance with Article 12 of the UN Convention.

The Children's Ombudsman urges the authorities to place the interests of children at the heart of all decisions affecting their health and development, including resource allocation, the development and implementation of policies and interventions that affect the underlying determinants of their health. It is also imperative to emphasize the importance of the child's best interest as a basis for making decisions about granting, retaining or terminating treatment for all children. The state should develop procedures and criteria to provide guidance to health workers to assess the child's best interests in health and other areas with which they interact when treating or conducting investigations.

Discussions with children on health status facilitates the development of a healthy lifestyle.

Referring to General Comment number (2003)¹³⁷ of the UN Committee on the Rights of the Child, the People's Advocate for the Rights of the Child further specifies the

¹³⁷ https://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

importance of the **superior interest of the child to have access to adequate information** on health issues. Particular attention should be paid to certain categories of children, including children and adolescents with psychosocial disabilities. When considering hospitalization or placement in an institution, this decision should be made in accordance with the principle of the best interests of the child, first of all understanding that it is in the interest of all children with disabilities to be cared for as much as possible, in the community in a family setting, and preferably in their own family, with the necessary support at the disposal of the family and of the child.

Throughout the reported period, the People's Advocate for Children's Rights also analyzed the situation **of child vaccination**. It should be noted and reminded that the question of ensuring the right to health in the context of ensuring the compulsory vaccination of children was addressed by the Children's Ombudsman in the Report on the observance of the rights of the child in the Republic of Moldova in 2017¹³⁸.

In 2018, this issue was brought to the attention of the Children's Ombudsman by parents who invoked a number of issues such as: failure to inform parents about the fact that the children are to be vaccinated and the children were vaccinated without their consent; vaccination of children in areas inappropriate for the vaccination procedure, lack of control of pre-vaccinating and post vaccination child health status, etc.

The People's Advocate for Children's Rights reminds line public authorities that such deviations have a negative impact on children's health and generates parents' reluctant attitude towards vaccination.

The Children's Ombudsman reaffirms his position on the compulsory vaccination of children and indicates the obligation of parents to ensure the vaccination of children and the obligation of the public authorities to ensure the quality of the vaccine and the serious observance of the medical conditions of the vaccination process.

This opinion was publicly supported at the meeting of the Parliamentary Committee on Health, Social Protection and Family and at the Constitutional Court meeting of October 30, 2018 where the constitutionality control of Article 52 paragraph (6) of the Law number 10 of February 3, 2009 on state public health supervision and point 21 subpoint 1) letter e) from the National Immunization Program for the years 2016-2020, approved by the Government Decision number 1113 of October 6, 2016). The Honorable Court issues a Decision¹³⁹ by which it recognizes as constitutional the rules challenged, thus recognizing the obligation of vaccination.

¹³⁸ http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf

¹³⁹ <http://www.constcourt.md/>

The People's Advocate for Children's Rights points to the following aspects:

- Vaccination of the child is an action taken to protect the rights of the child, in accordance with the spirit of the UN Convention on the Rights of the Child, a right should not harm other rights enshrined therein;
- National health authorities are to strengthen qualitative measures for mass information of the public on the benefits and side effects from the administration of the vaccines;
- Parental refusal to vaccinate children should not affect the child's right to education;
- In situations of extreme urgency (epidemic / pandemic), national authorities should ensure to the extent possible the continuity of all rights enshrined in the UN Convention on the Rights of the Child.
- In this context, the state needs to identify a viable mechanism to ensure respect for the right to education of unvaccinated children.

In the year 2018, the People's Advocate for Children's Rights continued to monitor the observance of the right to health of children **suffering from rare diseases**. A rare disease is considered any disease that affects less than 1 out of 2,000 people. At present, approximately 6,000 - 6,000 rare diseases are recognized and about 350 million people around the world suffer from it¹⁴⁰. About 75% of people diagnosed with rare diseases are children.

According to World Health Organization data, 36 million people in the European Union are suffering from rare diseases. Also, according to the official information provided by the Ministry of Health, Labor and Social Protection¹⁴¹, in the Republic of Moldova is established the **List of Rare Diseases**, managed by the Center for Reproductive Health and Medical Genetics of the Institute of Mother and Child¹⁴², being completed according to case law. The total number of patients included in the List of Rare Diseases of the Center is 800 patients with over 20 clinical conditions. However, we conclude that the number of children suffering from a rare genetic disease is unknown, because many of them are diagnosed across the country and the family fully meets the medical and empowerment needs.

At the same time, from the list of diseases recognized as rare diseases offered by the Ministry of Health, Labor and Social Protection, it results that in 2018 in the Republic of

¹⁴⁰<http://www.euro.who.int/en/countries/republic-of-moldova>

¹⁴¹<https://msmps.gov.md/>

¹⁴²<https://www.mama-copilul.md/>

Moldova there were identified 1370 cases of rare diseases¹⁴³. It is regrettable that the Ministry of Health, Labor and Social Protection has been unable to provide disaggregated data on children, their number diagnosed with rare diseases and the treatment they receive, which indicates insufficient attention to this area. It is worth mentioning that the diagnosis of rare diseases in children in the Republic of Moldova is a major problem for ensuring the right to health protection.

Following the follow-up, the Children's Ombudsman found the following shortcomings in this area:

- Lack of data system, including disaggregated by children;
- The poorly developed preventive diagnostic system;
- Low number of qualified staff, especially in rural areas of the country;
- Lack of social services disaggregated on the type of disability / affection, including for empowerment of children with rare diseases;
- Total or partial lack of RETT prenatal diagnostics of high-risk families;

The Children's Ombudsman has examined a number of cases where breach of the right to health protection has been invoked by not providing personalized treatment for rare diseases. In the year 2018, for the treatment of patients with rare diseases, the Ministry of Health, Labor and Social Protection allocated from the budget the amount of 12,710 thousand MDL¹⁴⁴, which is a very small amount, referring to the number of cases identified. At the same time, it is necessary to consider the quality of life of families with children diagnosed with rare diseases, as they are in the position to obtain the necessary medication, the consumables, etc. In the case of rare diseases, only 5% of them can be medicated or with special nutrition, the rest, 95% are symptomatic and require habilitation interventions. In the opinion of parents, authorities need to pay more attention to the social and educational inclusion of these children.

As a result of the investigation of this aspect, the Children's Ombudsman has noticed a reduced involvement in the diagnosis, treatment and care of children suffering from rare diseases. In other words, rare diseases in the Republic of Moldova are largely free of treatment, recognition, adequate care and social inclusion.

It has also been observed that family doctors are not well-trained sufficiently to track the symptoms of a rare disease on time, and the late diagnosis of these diseases even leads to severe disability, which involves other costs from the state.

¹⁴³<https://msmps.gov.md/>

¹⁴⁴<https://msmps.gov.md/>

Most of the time, the children are diagnosed with rare, late and out-of-country disease at private clinics abroad, children with rare genetic diseases remain outside the whole child protection system in the Republic of Moldova.

In the context of the presented situation, the People's Advocate for the Children's Rights presents the following **RECOMMENDATIONS:**

- Ministry of Health, Labor and Social Protection will re-evaluate the financial policy on the diagnosis of rare diseases;
- Providing quality services to children with rare genetic diseases by training professionals in the medical sphere and education;
- Supporting parents' training in therapies and caring for their own children;
- The Ministry of Education, Culture and Research will ensure the observance of the right to education of unaccompanied children by applying alternative forms of education;
- Ministry of Health, Labor and Social Protection to step up campaigns to promote immunization in order to convince parents of the benefits of vaccination;
- The Ministry of Health, Labor and Social Protection, through subordinated institutions, will ensure the monitoring during pre- and post-vaccination periods of children;
- The Ministry of Health, Labor and Social Protection will strengthen the mechanism of informing the population thus ensuring the patient's right to information;
- Parents of children who are not vaccinated Children's Ombudsman reminds them of their priority obligation to ensure the child's right to health and education.

RIGHT TO EDUCATION

Right to education is a universal right, recognized for every person, regardless of age, language, social or ethnic origin, or other status. The child's right to education means the right of the child to have access to state-guaranteed education to ensure the plenary development of his / her personality, vocations and aptitudes.

With the ratification of the UN Convention on the Rights of the Child, the Republic of Moldova has assumed a number of positive obligations. It is the duty of the state to create a generalized educational system that can continually develop and support the child. Access to education by the public requires the state to provide this service free of charge, within certain limits and standards prescribed for each level of education.

The People's Advocate for the Children's Rights notes that it is the duty of the state to create conditions to ensure all children with quality education regardless of the social criteria.

Right to education is enshrined in Article 28 and 29 of the UN Convention on the Rights of the Child¹⁴⁵, which, besides compulsory primary education, provides for measures to encourage regular school attendance and reduce school dropout.

Right to education at national level is regulated by the Article 35 of the Constitution of the Republic of Moldova „The right to education shall be ensured by way of compulsory comprehensive school system, by secondary education and vocational education, higher education system, as well as by other forms of education and continuous training.”¹⁴⁶, in the provisions of Article 13 of the Education Code¹⁴⁷ „Compulsory education starts with the preparatory group in pre-school education and ends with high school or secondary vocational and post-secondary technical education” and Article 2 of the Law on the Rights of the Child¹⁴⁸„. The state guarantees every child the right to a level of life appropriate to his / her physical, intellectual, spiritual and social development. The state is taking action to help parents, and other people responsible for children's education and development”.

The Children's Ombudsman reiterates that the issues addressed in the Report on the observance of children's rights for previous years (2016, 2017) remain current, being inadequately addressed by the relevant institutions, without identifying solutions and missing the visible results of these solutions.

In the reported period, the Children's Ombudsman had in mind the respect for the right to education through the quality of level 0 education, namely anterior pre-school

¹⁴⁵https://www.unicef.org/moldova/ro/CRC_RO.pdf

¹⁴⁶http://lex.justice.md/document_rom.php?id=44B9F30E:7AC17731

¹⁴⁷<http://lex.justice.md/md/355156/>

¹⁴⁸<http://lex.justice.md/viewdoc.php?id=311654&lang=1>

education; the phenomenon of violence in educational institutions; the access of children from auxiliary schools to the exercise of the right to education and hygiene and sanitation conditions in schools.

Anterior pre-school education is the first component segment of early education or level 0 education.

During the year 2018, the People's Advocate for the Children's Rights was informed by the parents, whose children attend the private early education institutions (further private kindergartens) in the Chisinau municipality, they were dissatisfied with the quality of the educational services, the lack of qualification of the teaching staff and collecting money without issuing tax vouchers.

On the basis of these complaints, the Children's Ombudsman asked from the General Directorate of Education, Youth and Sports and the Ministry of Education, Culture and Research the information on the number of private kindergartens in the Chisinau municipality and the legal basis for setting up and running the institutions of mixed early and private education. According to the answer received: *„The General Directorate of Education, Youth and Sports did not coordinate the establishment or reorganization of any early private institution. As a result of the actions taken to implement the Education Code, it was found that private entities operating with children aged 0-7 are not established and registered as institutions providing educational services. Thus, the General Directorate of Education, Youth and Sports - a local specialized body in the field of education does not have the decisions of the relevant bodies regarding the creation of entities which are not from the educational field.”*¹⁴⁹

The following gaps have been identified in the examination of the subject of the operation of private kindergartens:

- **Lack of the legal framework regulating the procedure for establishing, registering and / or functioning of private legal entities providing educational services.** We mention that since 2010, the accreditation and assessment procedure of private kindergartens has been suspended. Until the entry into force of the Education Code, accreditation of educational institutions was governed by the Law on Assessment and Accreditation of Education Institutions of the Republic of Moldova¹⁵⁰ and the Law on the Approval of the Regulation for the Assessment and Accreditation

¹⁴⁹Response to the Office of the People's Advocate (OPA) information request, letter of the General Directorate of Education, Youth and Sports number 0118/4578 of 20.12.2018

¹⁵⁰<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311564>

of Educational Institutions¹⁵¹, repealed with the entry into force of the Education Code. At the same time, the provisions of the Education Code in Articles 21 and 23 lay down the rules for the establishment, reorganization and liquidation of public educational institutions in the public field, the situation in the private field being uncertain, normative acts relevant to the field being not adopted.

- **The impossibility of verifying and monitoring the educational process in private kindergartens;** The educational process is based on policy papers in the field of early compulsory education for all types of educational institutions adopted by the MECC¹⁵², founders of private kindergartens often limit or prohibit the access of competent persons in the educational system to verifying the quality of the educational services provided. Based on the above, we find that the state policy in the field of early education and the normative acts in force are not respected and the quality of the educational services cannot be verified or monitored.
- **Staff employed in early educational institutions;** Lack of control by educational authorities on staff employed in private kindergartens, namely teachers.

At present, the number of private kindergartens is unknown, i.e. the number of teachers or persons employed as teaching staff and the criteria by which they are employed, the administrators of private kindergartens in the form of the limited liability company, the public association having the freedom to hire as they like. The uncertainty of the staff employed as teachers and those interacting directly with children is caused by the lack of the regulatory framework and the control of the National Agency for Quality Assurance in Education and Research, the Ministry of Education and Culture and the local specialized body in the field of education.

Violence in schools

During the year 2018, the Children's Ombudsman was asked by parents and students several times to intervene in solving alleged cases of violence, abuse or neglect in educational institutions. As in previous years, acts of violence are committed between

¹⁵¹<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311665&lang=1>

¹⁵²https://mecc.gov.md/sites/default/files/ro_standard_reeditare.pdf
https://mecc.gov.md/sites/default/files/educatia_timpurie.pdf
https://mecc.gov.md/sites/default/files/ghid_cor3.pdf

student-student, teacher-student, student-teacher. Of the most frequently mentioned forms of violence, the violence committed by the teachers towards the students persisted.

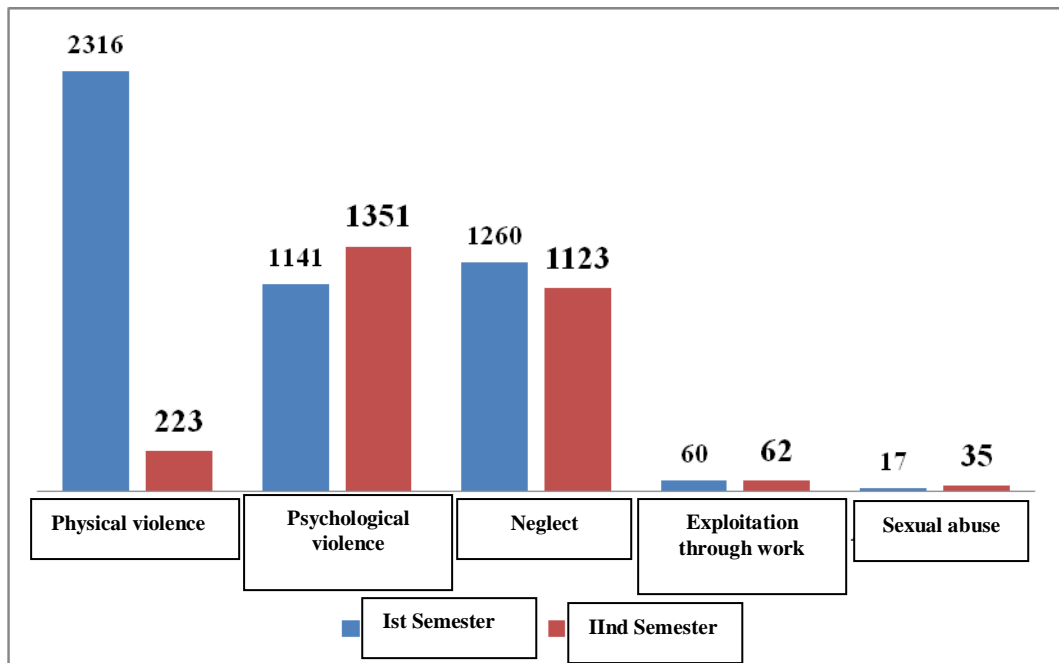
The magnitude of the violence phenomenon has shown that the school is currently the scene of frequent violent incidents, the forms of violence being varied. The most important causes of violence in school include, in addition to family, socio-economic or individual factors, a number of school causes. Lack of an adequate level of awareness of the danger of violence amongst pupils, of didactic strategies and / or effective managerial decisions, misinformation about the obligations of the educational institution, teachers, auxiliary staff, pupils, parents. The procedure for registering, examining and reporting alleged cases of abuse and neglect is unknown or ignored, which places some educational institutions in a situation where they are not able to prevent and combat the manifestations of violence caused by certain extracurricular factors.

According to the data submitted by the MECC, 4794 cases were identified in total in the report for the first semester of the 2017-2018 (September-December 2017) study year on suspected and confirmed cases of child violence, neglect, exploitation and trafficking, including physical violence - 2316; psychological violence - 1141; sexual abuse - 17; neglect - 1260; labor exploitation - 60 complaints¹⁵³.

During January - May 2018, employees of the education system reported 4802 cases of child violence that occurred in the family, school, or other places and services in the community. The generalized report for the second semester of the 2017-2018 study year on reported cases of child violence, most of them refer to emotional violence - 1351, others - 223 to physical violence, and 1123 - to neglect. Also, 62 cases of labor exploitation and 35 cases of sexual abuse were reported. During the same period, each of the 5th case was referred to the bodies with duties in the protection of children's rights, being suspected or identified as a serious case of abuse¹⁵⁴.

¹⁵³<https://mecc.gov.md/ro/content/astazi-este-marcata-ziua-internationala-nonviolentei-scoala>

¹⁵⁴<https://mecc.gov.md/ru/node/6839>



In the opinion of the Children Ombudsman, the increase in the number of cases of violence and abuse towards children identified / registered by the employees of the education system and / or reported to the local guardianship authorities, including to its address, is explained by the fact that the managers of the institutions and those responsible for preventing and the protection of children against violence and abuse in all general and vocational and technical education institutions have benefited from more professional training in the field, which has led to increased accountability and skills.

The procedure for identifying and reporting cases of violence by employees of educational institutions is part of a comprehensive strategy for preventing and combating violence against children. Teachers and directors of educational institutions are obliged to notify the guardianship authorities and other state institutions when a child is at risk.

Sectoral normative acts containing provisions on child protection, prevention and combating of violence in educational institutions on the child and on which the employees of the educational institutions are based are: Education Code, Educational Development Strategy for Education 2014-2020 „Education-2020”, Intersectoral Strategy for the Development of Parental Skills and Competencies for the Years 2016-2022; Regulation on communication between educational institutions and the media in cases involving children, approved by Order of the Ministry of Education number 60 of February 07, 2004, the Order of the Ministry of Education number 77 of February 22, 2013 on the Procedure of Institutional and Intervention Organization of the Workers of Educational Institutions in the Case of Child Abuse, Neglect, Exploitation and Trafficking¹⁵⁵ which specifically describes

¹⁵⁵ http://www.drepturilecopilului.md/files/Ordinul_77_al_ME_si_Procedura.PDF

the procedure for the intervention, addressing and monitoring of all workers in educational establishments not only of teachers. Similarly, the Order of the Ministry of Education number 858 of August 23, 2013, helps the educational institutions through the Methodology for the application of the procedure of institutional organization and intervention of the employees of the pre-university education institutions in cases of abuse, neglect, exploitation, child trafficking¹⁵⁶, Government Decision of the Republic of Moldova number 270 of 08.04.2014 on the approval of the Guidelines on the intersectoral cooperation mechanism for the identification, assessment, referral, assistance and monitoring of children victims and potential victims of violence, neglect, exploitation and trafficking¹⁵⁷, however, the workers in the education system do not know the normative acts indicated above, either know them and do not know how to apply them, their effect being minimal.

We recall that the State, under the provisions of Article 19 of the UN Convention on the Rights of the Child, has undertaken the obligation to undertake all legislative, administrative, social and educational measures to protect children against any form of violence, harm or physical abuse; mental, abandonment or neglect. The State's obligation to protect the inviolability of the child's person, protecting him from any form of exploitation, discrimination, physical and psychic violence, is also stipulated in the provisions of Article 135 of the Education Code and Article 6 of the Law on the Child Rights. Furthermore, the UN Committee on the Rights of the Child in the Final Remarks states the State's obligations: „To strengthen the implementation of the mechanism of intersectoral cooperation in the field of identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking, endorsed in 2014 by providing adequate human, technical and financial resources”.

The People's Advocate for the Children's Rights considers that generally the normative framework in the field of child protection against abuse and violence is good but reticence is found in its implementation. The actors involved in the prevention and protection of the child against violence, part of the intersectoral mechanism, do not have the necessary skills to identify and ensure protection and support measures, circumstances that reduce the effectiveness of their intervention. Also, there is a lack of victim rehabilitation services as guaranteed by Article 39 of the Convention¹⁵⁸ „States Parties shall take all appropriate measures to facilitate the physical and psychological recovery and social reintegration of children who are victims of a form of negligence, exploitation or abuse,

¹⁵⁶ [http://spc.psihologie.md/wp-content/uploads/2016/03/8. metodologie de aplicare a procedurii educatie ro.pdf](http://spc.psihologie.md/wp-content/uploads/2016/03/8._metodologie_de_aplicare_a_procedurii_educatie_ro.pdf)

¹⁵⁷ <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=352587&lang=1>

¹⁵⁸ https://www.unicef.org/moldova/ro/CRC_RO.pdf

torture or punishment or cruel, inhuman or degrading treatment or victims of armed conflict. Re-adaptation and reintegration will take place in conditions conducive to the health, self-esteem and dignity of the child” and of the abusers.

Another factor that prevents the eradication of the phenomenon of violence in schools is **the lack of the psychologist in the institutions** and / or the superficial involvement of the psychologist in the institutions where it exists. Schools have been identified that have a psychological unit in institutions, but it either does not intervene at all in the psychological rehabilitation of abusers and abused, or is partially involved, and the necessary steps are not taken to restore an adequate psychological climate. The Children’s Ombudsman notes that the incomplete / defective application of the provisions of the Guidelines on the intersectoral cooperation mechanism for the identification, assessment, referral, assistance and mobilization of child victims and potential victims of violence, neglect, exploitation and trafficking approved by the Decision number 270 of 08.04.2014 from the responsible actors, the maintenance of the teachers who have applied violence against the pupils in the educational system contrary to the legal provisions, as well as the dismissal of those from the position, without applying the correct norms of the Labor Code, are the factors that favor the development of the phenomenon of violence and increase the mistrust of parents and students in the fact that school is a child-friendly place, safe for life and health.

The People’s Advocate for the Children’s Rights has also found in this section the indifference of the managers of the educational institutions towards the cases of violence and abuse in the institutions that they lead. Most situations remain unresolved, more serious, are considered natural.

Practice shows that the employers of the educational institutions to the dismissal of teachers apply the provisions of paragraph (1) of Article 85 of the Labor Code „The employee has the right to resignation - the dissolution of the individual labor contract, on his own initiative, announcing the employer, by written request, 14 calendar days before” contrary to the provisions of Article 86, paragraph 1, letter (n) which provides for his dismissal for „the application, even once, by a teacher of physical or mental violence to the disciples”.

In order to prevent the phenomenon of violence and to promote the protection and respect of all children's rights, the Children's Ombudsman organized two roundtables with the participation of students from the northern area: Edinet, Briceni, Soroca, Drochia, Balti, Soroca, Ocnita, Telenesti, as well as students from ATU (Autonomous Territorial Unit) of Gagauzia: Congaz, Chirsova, Dizghingea, Tomai, Avdarma, with the topic „Specific actions

to prevent violence in schools and reintegration of non-schooled children into educational institutions”.

Also, during the year several activities were organized for informing the students on the „Forms of violence and how we protect”.

Access to education for children with special needs

Another weakness in the realization of the right to education in the eyes of the Children’s Ombudsman was the access of children from auxiliary schools to compulsory state guaranteed education, a positive obligation assumed by the Republic of Moldova with the ratification of the UN Convention on the Rights of the Child, „to ensure primary education and free for all.”

The People's Advocate for the Protection of the Children’s Rights has examined the request submitted by the parents of the children attending the auxiliary schools Number 6 and 7 and by the representatives of the Center for Legal Assistance for Disabled Persons. The petitioners argued that students who are enrolled in studies in auxiliary schools are being violated the right to education by the fact that the Ministry of Education, Culture and Research did not elaborate the Framework Plan for the ninth grades.

Analyzing the relevant international framework, in this case Article 28 and 29 of the UN Convention on the Rights of the Child, the Children’s Ombudsman has noticed that the actions of the national authorities are a discrimination in the access to education on the basis of disability. Thus, the People's Advocate requested, on the basis of Article 23, paragraph (1) of the Law number 52 of April 3, 2014, the contest of the Council for the Prevention and Elimination of Discrimination and Equality as a relevant institution in order to analyze the circumstances invoked and to issue a Decision according to the attributed legal competences. According to the Council Decision number 92/17 of September 29, 2018, there is stated an indirect discrimination on access to education on the basis of disability criterion. In this respect, the Ministry of Education, Culture and Research was asked to organize and monitor the process of revising the school curriculum in compulsory and optional disciplines tailored to the real needs of pupils enrolled in auxiliary schools.

The problem of admission of students from auxiliary schools in the 9th grade was approached by the People's Advocate for Children's Rights Maia Banarescu several times during meetings and working sessions with officials and dignitaries in the field, including the Minister of Education, Culture and Research, Monica Babuc.

As a result of the actions taken by the People's Advocate for the Protection of the Children’s Rights on June 27, 2018, the Minister of Education, Culture and Research issued

the Order number 993, which allowed the graduates of the auxiliary schools, the 2018 promotion, to choose to continue their studies at the parents' request, both in secondary vocational technical education establishments and in the ninth class of auxiliary schools.

Another issue that remains is the educational inclusion of children with disabilities. The People's Advocate for the Children's Rights states that the Recommendations from the previous reports on children with special needs have not been taken into account by the competent authorities. Braille alphabet textbooks are not widely available to school children with visual impairments, learning from textbooks that do not meet state educational requirements, being left alone to deal with themselves, by purchasing textbooks, or identifying people who would write these textbooks to their needs. Likewise, the hearing-impaired or late-deaf children are not insured by the state with hearing aids and maintenance products, there are no pedagogues, translators who know the mimic-gestural language.

And children with reduced mobility continue to have restricted access to education through lack of ramps and other ways of accessing the most educational institutions.

The Children's Ombudsman reiterates that social inclusion and the right to education of children, regardless of necessity, should not be a barrier to the realization of his or her rights, no child should be stigmatized or marginalized because of the diagnosis.

Hygiene and sanitation conditions in schools

Another situation monitored by the Children's Ombudsman during 2018 was the hygiene and sanitation conditions in schools. The Children's Platform of the Children's Rights Information and Documentation Center developed in 2018 the Report on Hygiene and Sanitation Conditions in Schools where students express their perceptions of sanitation conditions in the school where they study. Most of the students said the toilet was located outside the educational institution, some said that although the institutions have functional toilets indoors, they are denied access and have to go to the outside toilet throughout the school year. The children declare that the outside toilets are common, there are no conditions that would ensure their protection and privacy, they do not have the windows through which the light penetrates and it is possible to be airy, obviously lacking the necessary hygienic paper, soap, sinks. Often, outdoor toilets are used by strangers and children are afraid of being abused, they also mention that there are many cases of tobacco and alcohol use in the toilet.

Similarly, problems are also found in cases where sanitary groups are located within the educational institution. Students have exposed a number of persistent problems: lack of soap, toilet brush and detergents indispensable for maintaining hygiene, lack of handwashing water, permanently damp floor on which you can slip, lack of privacy in cabins, some booths have no doors (the reason the girls go out of the lessons to go to the toilet) or they do not close and if closure do not lock, the number of insufficient functional cabins relative to the number of students in the school, the lack of centralized water supply in the sanitary blocks, etc.

Urban students have also indicated as a major problem the access to indoor sanitary blocks, the poor quality sanitation and the non-insurance of sanitary blocks, which are opened only when commissions are in the institutions.

Based on the issues outlined *above*, in order to improve the situation, the Children's Ombudsman proposes the following **RECOMMENDATIONS**:

- Ministry of Education, Research and Culture shall develop the legal framework regarding the establishment, functioning and assessment of early private educational institutions;
- Intersectoral cooperation between authorities in order to ensure that all children have access to guaranteed mandatory education;
- Intensification of awareness-raising and information campaigns on the phenomenon of violence in schools;
- Strengthening the cooperation of all institutions responsible for preventing, reporting and monitoring cases of abuse, violence, trafficking and neglect of children;
- Intensification of the implementation of thematic inspections in the educational institutions regarding the verification of the implementation of the Procedure for institutional organization and intervention of the education workers in the cases of abuse, neglect, exploitation, child trafficking and the necessary assistance.
- Identification of financial sources for setting up appropriate sanitary blocks in all educational institutions and providing the necessary hygiene products;
- Ensuring each educational institution with a specialist in psychology or psychologist;
- Ensuring the social / educational inclusion of children with disabilities, taking into account the problematic issues outlined above.

- Identifying a clear procedure for non-admission of unaccompanied children to education institutions and ensuring the right to education of children not admitted to educational institutions.

RIGHT TO OPINION AND CIVIL LIBERTIES

The provisions of Articles 12 to 15 of the UN Convention on the Rights of the Child (Right to Opinion, Freedom of Expression, Freedom of Thought, Conscience and Religion, Freedom of Association)¹⁵⁹, represents the child's support when he / she wishes to interact with the company or wishes to participate actively in its activity. By means of the given bonds, the State is to ensure by all possible measures that no child will be marginalized in the realization of these fundamental freedoms.

In his work, the People's Advocate for the Children's Rights has repeatedly presented his / her position regarding the observance of the right to opinion and the civil liberties of the child in the Republic of Moldova and presented a set of recommendations for the improvement of the existing situation. Please note that recommendations on respect for children's right to opinion and civil liberties were presented also by the Children's Ombudsman in the Report on observance of children's rights in the Republic of Moldova in 2017, but concrete actions were not taken by the competent authorities¹⁶⁰. The Children's Ombudsman also recalls that the state remains underdeveloped in implementing the UN Committee Recommendations on the Rights of the Child's on the Fourth and Fifth Periodic Combined Report of the Republic of Moldova¹⁶¹. As a result, the situation regarding respect for the child's right to opinion and civil liberties has not changed and the situation at national level has remained constant.

Thus, during the year 2018, being an electoral period, the Children's Ombudsman has been repeatedly informed of the cases on the involvement of children in street activities / street demonstrations. This issue has been examined by the Ombudsman in the light of international standards on respect for the rights of the child to free expression of opinions, freedom of association and participation in peaceful demonstrations.

¹⁵⁹ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹⁶⁰ http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf

¹⁶¹ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

The UN Convention on the Rights of the Child states in Article 15 that States Parties recognize the rights of the child to freedom of association and freedom of peaceful assembly, and the exercise of these rights may be restricted only by the restrictions expressly provided for by law, and which are needed in a democratic society. Also, according to Article 13 of the Convention, the child has the right to freedom of expression, which includes the freedom to seek, receive and disseminate information and ideas of any kind, regardless of borders, in oral, written, printed or artistic or any other means, at the choice of the child. The exercise of these rights may be restricted only if expressly provided for by law, and if the restrictions are strictly necessary to respect the rights or reputation of others, protect national security, public order, public health and good morals.

At the same time, the Children's Ombudsman points out that, under the Convention on the Rights of the Child, the State has an obligation to guarantee children **the right not to participate in public events** in which they do not wish to be involved. It is important for the minor to express his or her willingness to participate or not participate in such events. Lack of such consent results in violation of the Convention on the Rights of the Child and National Law on the Protection of the Rights of the Child.

Another situation examined by the People's Advocate for the Children's Rights was the involvement of children in the protest action against the expulsion of teachers of Turkish origin from the Republic of Moldova¹⁶². From the material presented, it is noted that several students were involved in a public action aimed at presenting the disagreement of the public association with the decision of the national authorities to expel a group of Turkish teachers from the territory of the Republic of Moldova. Thus, the children were lined up wearing bobs and thighs on their heads. The dissatisfaction with this action came from a parent who disagreed with the way in which this action was taken. Also, the information provided shows that the organizing institution did not present evidence of the child's unaccented consent.

Analyzing the circumstances of the presented case and the relevant legislative aspects, the People's Advocate for the Rights of the Child notes that according to the provisions of Articles 12, 13 and 15 of the UN Convention on the Rights of the Child (in force for the Republic of Moldova on February 25, 1993), the State has a duty to guarantee the right of the child to opinion, expression and association. Thus, the UN Convention clearly states *„The child has the right to freedom of expression; this right includes the freedom to seek, receive and disseminate information and ideas of any kind without regard*

¹⁶²https://www.prime.md/ro/directorul-liceului-lucian-blaga-din-capitala-valentina-olaru-a-fost-sanctionat-disciplinar-cu-mustr_81491.html

to borders, in oral, written, printed or artistic form, or by any other means at the choice of the child”.

At the same time, the European Court has also explicitly confirmed that children have the right to participate in meetings taking place in the public space. As the Court noted in the *case Christian Democratic People's Party vs Moldova*, preventing parents and children from attending events and, in particular, from protesting against the government's schooling policy, runs counter to the freedom of assembly of parents and children. Although, at first glance, the Court in the present case offers us the apparently correct solution „*as regards the presence of children, the Court notes that it has not been established by the domestic courts that they were there due to the actions or policies pursued by the applicant. Because **the meetings were held in a public place where anyone, including children, could participate in them.** Moreover, in the Court's view, this was a matter of personal choice for parents to decide whether to allow their children to attend those meetings and would appear to be contrary to the freedom of assembly of parents and children to prevent them from attending such events, which, to be reminded, were carried out to protest against the Government's policy in the field of education. Therefore, the Court is not convinced that this reason was relevant and sufficient”*, the situation is to be analyzed from the perspective of several circumstances.

In the present case, it is noted that the Court was not convinced by the fact that the illegality of children's involvement that is to say, is for the reason of the location (***the meetings were held in a public place, anyone, including children, could participate in them***), a situation that is diametrically opposed to the case being examined by the Children's Ombudsman. From the video materials presented, it is clear that the event was organized **in a closed room where the organizer had to and could control the participants involved in the protest**. Moreover, if the organizers specify that the participants in the event were volunteers, based on the Volunteer's Law number 121 of June 18, 2010, they had to present voluntary contracts whereby children accept to participate in the activities of the host institution, and if there were children under the age of 14 there should also be the written consent of the parents of these children. Thus, the Ombudsman found that there were no collaboration agreements concluded at that time.

Another issue raised in this case, based on the information disseminated, is that the protest was organized during the study program disrupting the development of the study hours. Thus, if the children were involved in the process during the study hours, responsibility is also to be borne by the administration of the lyceum. Similarly, child safety was not ensured during the study program. Analyzing the provisions of Article 3 of the UN

Convention on „*the principle of the best interests of the child*”, the People's Advocate for the Rights of the Child indicates that by balancing the necessities between the provisions of Article 28 (right to education) and of Article 15 (the right to association) concludes on the superiority of the provisions related to education and the fulfillment of the educational program, or the meetings or protests can be organized outside the study program.

Another aggravating circumstance in this case, in the opinion of the Children's Ombudsman, is the form in which the action was taken. The dressing of hoods on the head and the hanging of the thighs on the throats of children is a violation of Article 17 of the UN Convention, namely that any means of informing the child or any transmission / dissemination of a message to children is to be in accordance with moral well-being, knowledge and understanding between people and respecting the cultural background of the child. The state shall take steps to encourage this and protect children from harmful materials.

As a defender and promoter of child rights, the Children's Ombudsman contributes a multitude of activities to promoting respect for civil liberties and the right of the child to opinion. Thus, in November 2018, within the decade dedicated to the 10th anniversary of the creation of the Ombudsman's Office in the Republic of Moldova¹⁶³ and of 25 years from the entry into force for the Republic of Moldova of the UN Convention on the Rights of the Child, was organized the traditional **Children's Forum**, which is a forum where the Children's Ombudsman consults their opinion and the Conference „10 Years of Defending the Rights of the Child in the Republic of Moldova”. The Children's Forum is a direct way of communicating of the children with their Ombudsman, but also with state officials who develop child rights policies. Also, the People's Advocate for Children's Rights organized **2 regional thematic regional tables** to maintain a child-friendly dialogue with the children and consult their opinion. Thanks to these activities, we make sure that the decisions we take for children are consulted with them and that they can participate in the decision-making process, thus respecting the child's right to opinion and civil liberties.

As a result of the above, the following **RECOMMENDATIONS** are submitted:

- Development and promotion of activities involving the participation of all children in the fields that concern them;
- Modification of the normative framework and adaptation to current social realities related to children on the segment of freedom of expression and freedom of assembly;

¹⁶³ <http://ombudsman.md/news/conferinta-nationala-10-ani-pentru-drepturile-copiiilor-in-republica-modova-forumul-copiiilor-editia-a-patra/>

- Modification of the normative framework on the institution of the sanctions of persons / organizations irrespective of the legal status and the organizational form that attract children in carrying out the activities without respecting the legal conditions;
- Undertake information and education programs to raise awareness among the general public, children, young people, parents and professionals about the right of children and young people to participate;
- To promote the support of information networks among children and young people in order to build their capacity to exercise their right to participate;
- Development of mechanisms for submitting complaints from children.

SITUATION OF CHILDREN IN PENITENTIARY INSTITUTIONS

The issue of respecting the rights of children in penitentiary institutions is one of the priorities of the People's Advocate for the Rights of the Child. Thus, since the beginning of the mandate, several activities have been carried out (monitoring visits, representation of children's interests in the courts, investigation of conflict situations between children, supervisors and the administration of penitentiary institutions, day-to-day child attendance, promotion and training in the field of children's rights and freedoms, etc.) in order to improve the national child protection system that is serving the prison sentence.

The legal foundation of the protection of children entering in the custody of the penitentiary system is mentioned above in Article 25 and 40 of the UN Convention on the Rights of the Child. At national level, similar provisions are found in the Constitution of the Republic of Moldova, the Code of Enforcement and the Statute of the Execution of Criminal Punishment approved by the Government Decision number 583/2006¹⁶⁴. The Child Ombudsman notes that the national legislation in the field, largely in line with the minimum international standards, however, highlights the fact that public authorities have ignored the People's Advocate Recommendations for the Rights of the Child in the Report on the observance of child rights in the Republic of Moldova in 2017¹⁶⁵. Furthermore, no action

¹⁶⁴<http://lex.md/>

¹⁶⁵http://ombudsman.md/wp-content/uploads/2018/10/raport_copil_2017def.pdf

has been taken to implement the UN Committee Recommendations on the Rights of the Child's on the Fourth and Fifth Periodic Combined Report of the Republic of Moldova¹⁶⁶.

We point out that the number of convicted children in the Republic of Moldova remains constant with small deviations, which shows that the state policy in the field of preventing and combating child crime is inefficient and requires improvements.

Years	2013	2014	2015	2016	2017	2018
Number of Children	32	27	31	30	36	32

Source: National Administration of Penitentiaries

Following the monitoring carried out by the Office of the People's Advocate and on the basis of reports prepared by the Torture Prevention Council, the following issues were identified:

- Poor level of security insured or children's life and health;
- The services of psychological assistance and assistance in diminishing conflict situations, poorly developed;
- Dwellings do not meet standards of child health and development;
- Sanitary blocks are an outbreak of bacteria and infections;
- Children are required to pay for medical services;
- The educational system does not meet the needs of children;
- Staff trained in daily penitentiary activities are bruising and aggressing the detainees;
- The process of reintegration into society is a poorly developed one;
- Lack of adequate growth and development conditions for 0-3 year-old children in penitentiary institutions together with their mothers sentenced to serving the prison sentence.

At the same time, in the year 2018, the People's Advocate for the Rights of the Child made an ex officio recourse on the cases **of abuse and violence against children that took place in penitentiaries of the isolating type**¹⁶⁷ where they are during criminal proceedings. Please note that the provisions of the UN Convention on the Rights of the Child (in force for the Republic of Moldova of February 25, 1993) in Article 19 state the obligation of the state to protect children from all forms of ill-treatment committed by parents or other persons

¹⁶⁶ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

¹⁶⁷ <https://dip.gov.md/ro/content/cronica-evenimentelor-din-penitenciare-%C3%AEn-zilele-de-s%C4%83rb%C4%83tori>

responsible for childcare and to apply preventive and treatment programs in this regard. This provision also extends to the State's obligation not to admit abusive and violent treatment among children, which is quite common among children in custody of the state. In the same context, the United Nations adopted the Norms for the Protection of Juveniles Deprived of Freedoms, which in paragraph 87, letter d) provide that „all staff members must ensure the protection of the physical and mental health of minors, **including protection against abuse and physical, sexual and emotional exploitation**, and must take immediate action to ensure healthcare whenever necessary”. At the same time, the State, through the signing of the UN Convention, also undertook the obligation to provide adequate treatment for the social recovery and recovery of child victims of armed conflict, torture, neglect, maltreatment or exploitation.

In this regard, the Children’s Ombudsman recalls the failure to comply with the recommendations on respect for children's rights in this situation submitted in his reports on the observance of children's rights in previous years 2016, 2017. The People's Advocate for the Rights of the Child has given his opinion on this situation also during the assessment session of the Republic of Moldova on the implementation of the UN Convention on the Rights of the Child in 2017. The opinion of the Children’s Ombudsman has been included in the Recommendations of the UN Committee on the Rights of the Child of 2017¹⁶⁸, presented to the state, to adapt its policies to the highest international standards in the field. The Committee also expresses its concern that children in the present situation are detained in common with adult detainees without being given an effective delimited space to minimize the influence of criminal subculture.

Analyzing the events that took place at the beginning of 2018 and bringing the national provisions into line with international standards, the People's Advocate for the Rights of the Child notes a number of violations and omissions from the penitentiary administration number 13 and 17 which led to the incidents highlighted above.

In the case of **rape produced** (*by a minor inmate on another minor inmate*), on December 30, 2017, in the P-13 Child Ombudsman found that a number of serious violations of the detention regime were admitted, leading to the **commission** of the given criminal offense. Thus, in the cells where the juvenile detainees were located, there were alcoholic beverages that were prepared on the spot in the cell or were brought by the penitentiary employees. In accordance with the provisions of the Article 30, letter j) of the Law number 1100 of June 30, 2000 on the production and circulation of ethyl alcohol and alcoholic beverages „it is forbidden the retail sale of alcoholic products to persons who have

¹⁶⁸ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MDA&Lang=EN

not reached the age of 18 ...”. Also, the general comment number 10 of the United Nations Committee on the Rights of the Child indicates cutting the State's obligation to assume full responsibility for the life and health of children as long as they are in the custody of the state. Admission of alcohol beverages in juvenile cells is an imminent danger to children's life and health, which is a flagrant violation of the stipulated provisions.

Another issue analyzed by the People's Advocate for the Rights of the Child is **the situation of children aged 0-3 who are in detention facilities with their mothers who are serving their prison sentences and pregnant women in penitentiaries**. During the year several actions were carried out on this segment in order to analyze the situation created and to develop a set of recommendations for the competent authorities in order to redress the situation ascertained. Thus, on July 31, 2018, the People's Advocate for the Rights of the Child organized in collaboration with Public Association (P.A.) „Vitae” a National Conference entitled „Respecting the rights of children born in penitentiary institutions, international norms and standards”¹⁶⁹. The conference was a broad-based discussion platform with the participation of public line authorities, representatives of civil society, international organizations and academic media. Discussions focused on respecting the rights of children in penitentiary institutions with their mothers and pregnant women in light of international standards and good practices. An exchange of views on this issue was carried out in order to identify solutions for the problems existing in the Republic of Moldova in the field. It is necessary to mention that for the Republic of Moldova is a premiere the public approach from the multidisciplinary and multi-aspectual perspective of this subject.

Following the Conference, the following systemic issues were specified:

- Lack of the separate budget line for child nutrition in the budgets of penitentiary institutions;
- Insufficient / lack of medical staff (pediatricians) in detention facilities where children are;
- Inadequacy / lack of sanitary and hygiene products intended for children;
- Lack of playrooms adapted to child safety and protection standards;
- Insufficiency of mother and child protection mechanisms at the moment the child is transferred to the community;
- Lack of collaboration with local guardianship and with the family;

¹⁶⁹ <http://ombudsman.md/news/respectarea-drepturilor-copilor-nascuti-in-institutiile-penitenciare-discutata-in-premiera-pentru-moldova-in-cadrul-unei-conferinte-nationale-organizate-de-ombudsmanul-copilor/>

- Medical services and inappropriate treatment for pregnant women (conditions, food, medical investigation, etc.).

The Children's Ombudsman also drafted the Thematic Report on „The Status of Observing the Rights of Children of 0-3 Years in Penitentiaries with Their Mothers serving Their Prison in Child Rights Institutions in the context of Monitoring the National Implementation of the UN Convention on the rights of the child”¹⁷⁰, on the basis of which a set of Recommendations was developed in order to improve the existing situation.

This report was prepared with the financial support of UNICEF Moldova. Peoples Advocate for the Children's Rights Maia Banarescu expresses thanks and gratitude for effective bilateral collaboration in the best interests of the child and strengthening the capacity of the Children's Ombudsman.

Another issue examined by the Children's Ombudsman is the **situation of persons detained who have reached the age of 18, but calls for further punishment to be made in the juvenile penitentiary**. Pre-established situation in Government Decision number 583 of May 26, 2006 on the approval of the Penalty Execution Statute by sentenced persons clause 185¹⁷¹ and Article 254 of the Execution Code of the Republic of Moldova. Thus, although the legal framework allows for the possibility of punishment by adults in prison for children up to the age of 23, out of 3 cases examined in court involving the Children's Ombudsman during 2018 and another 3 during 2017, **no request from detained children was admitted**.

The Children's Ombudsman considers that although the prisoner has exceeded the age limit set by the UN Convention on the Rights of the Child, the transfer of the sentenced person to the penitentiary for adults will have a negative impact on the continuous development caused by stopping the educational process, falling into the criminal subculture, which diminishes his chances of qualitative reintegration into society.

We also mention that the reports and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the UN Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have pointed out several times that it is not advisable to transfer the detainee, if it is assumed that the new situation will create a risk situation for his life, health and development. In this context, it is of particular relevance also Recommendation Number R (89) 12 of the Committee of Ministers to Member States on penitentiary education, which highlights the fact that the implementation of the penitentiary education

¹⁷⁰ <http://ombudsman.md/avocatul-copilului/>

¹⁷¹ http://lex.justice.md/document_rom.php?id=ED0A2EAF:D4D2D139

system helps to humanize them (penitentiaries) and is an important means of facilitating the return of the detainee to society, prepared both morally and educationally.

In the context of these, the People's Advocate for the Rights of the Child presents the following **RECOMMENDATIONS**:

- Increasing the safety and security level of children who are in custody of the penitentiary system;
- Raising the professionalism level, strengthening the communication capacities of the penitentiary system, the medical and psychological field which is interacting with the children;
- Training of all prison staff in the field of human rights / child rights from the standpoint of international standards.
- Reassessment of traineeships by consulting children's views in such a way that they are attractive and competitive;
- Reassessment of budget policies to provide food for children, hygiene products and medicines to children aged 0-3 and pregnant women in penitentiary institutions;
- Improving the feeding of children in detention by enriching the fruit and vegetable menu.
- Establishment of child-friendly playrooms to provide protection and safety;
- Training of children aged 0-3 years in recreational activities outside the penitentiary institution;

III. TORTURE PREVENTION

5.1. Summary of prevention activities

In 2018, torture prevention continued to be a priority for the Ombudsman's institution. More than 60 preventive visits were carried out in the places of deprivation of liberty.

80% of visits were focused on monitoring the situation of people detained and in police custody. Thanks to the institutional support provided to the Office of the People's Advocate by the Soros-Moldova Foundation within the Project „Retention and Detention Management in the Police Inspectorates of the Republic of Moldova”, the team of the Prevention of Torture Department monitored all territorial subdivisions of the General Police Inspectorate (38 police inspectorates) with / without preventive detention isolators¹⁷². The final conclusions of the monitoring process will be reflected in the Ombudsman's special report on the situation of people detained and in custody of the police. The summary of the observations is described in the relevant subchapter.

Therefore, deriving from the conclusions of the Special Report of the People's Advocate on the results of the ex officio investigation of the case of death in state custody of the citizen Andrei Braguta / 2017¹⁷³, the Ombudsman proposed to carry out a wide-ranging monitoring of the decision-making process for detention; detention of the person by the police; the transportation and escorting of the detained person, as well as the mechanism of detention of detained persons. The Office of the People's Advocate attempted to observe the stages of the deprivation of liberty of the detained person from the first contact with the police employee until his placement in the penitentiary institution, disregarding the activity of monitoring the conditions of preventive detention. In this way, the Ombudsman monitored the mechanism for the implementation of the obligations assumed by the General Police Inspectorate following the „anti-torture reform”¹⁷⁴.

Summary of an ongoing investigation: „The Braguta / 2017 case outlined systemic issues with regard to ensuring the fundamental rights and freedoms of people, especially with disabilities in police custody. From the moment of the detention of the first by the police officers until his placement in the penitentiary institutions, total / partial violations of minimum safeguards against ill-treatment (CPT rules) and violation of human dignity took

¹⁷² The Grant Contract number 14856 of 02.04.2018 signed between the Office of the People's Advocate and the Soros Foundation-Moldova;

¹⁷³ Special report on the results of the ex officio investigation of the death case in state custody of the citizen Andrei Braguta, <http://ombudsman.md/rapoarte/tematice/>;

¹⁷⁴ Action plan on reducing ill-treatment, abuse and discrimination against persons in police custody for 2017-2020 (further anti-torture reform);

place. The indifference or negligence / human factor (of the police employees), the series of interrupted reforms, the failure in institutional communication between the criminal and the civil system; non-documenting and non-reporting torture acts; the lack of clear internal regulations regarding the intervention in exceptional situations, the detention of persons with disabilities or disturbances, the non-observance of the detention procedure (Article 167 of the Code of Criminal Procedure); lack of supervision, the impossibility of managing behavioral crises, etc. are only a few subjective elements of this vicious process that led to a tragic end - the death of the victim. The systemic problems and the degree of involvement of the authorities in this case have been repeatedly exposed by the Ombudsman's Office". In the opinion of the People's Advocate, his remarks in the Braguta / 2017 Report continue to persist in the civil and closed system. The authorities are not yet able to fully ensure the safety and security of the person in custody.

Regarding the situation in penitentiary institutions, the People's Advocate pursued the process of implementing the recommendations on immediate return to rights, improving behavior towards prisoners, improving conditions of detention and preventing torture. In general, the monitored penitentiary institutions have accepted the Ombudsman's recommendations and have responded in due time to the acts of reaction. The People's Advocate appreciates the opening of the National Administration of Penitentiaries and territorial subdivisions in order to prevent torture in the penitentiary system. In this regard, the Ombudsman reaffirms that the penitentiary authorities are to finalize their criminal-law policies, actively continue the process of ensuring minimum conditions of detention in all penitentiary institutions, and adopt standard operational procedures on escort, placement in detention, the application of special means, reporting, evidence, conflict prevention and management, extreme situations, etc. At the moment, there exist only general provisions.

As an accessory intervener in civil cases in relation to the finding of violation of Article 3 ECHR (detention in inhuman conditions), the People's Advocate participated in three such cases. Following *amicus curiae*, the courts have upheld the claims of torture victims' worth over 140 thousand MDL. At the same time, the People's Advocate's visit reports to penitentiary institutions (especially P13 Chisinau) were overwhelmed by the detainees and their representatives, as probation support. In the same vein, the Peoples Advocate recalls that his mandate is one of prevention, promotion and protection, rather than „finding". Consequently, the task of finding the inadequate conditions of detention lies with the medical services in accordance with the provisions of Articles 233 of the Execution Code of the Republic of Moldova.

In July 2018, the Office of the People's Advocate reanimated the process of information on cases of death, suicide / attempts, abuses, injuries or litigation in psychiatric institutions and temporary placement centers for people with disabilities (ex-psycho-neurological hospitals). Thus, between September and December 2018, the Office of the People's Advocate (OPA) received more than 50 informative notes on injuries; violence among patients; patient abuse; application of special contentious and medicinal means, etc. This process allowed the Ombudsman to create an opinion on the situation / impediments in psychiatric institutions. And psychiatric institutions have become aware of the need to record and report ill-treatment. We recall that the degree of compliance with the anti-torture guarantees lies with the law enforcement bodies.

It is the duty of the State to systematically supervise the rules, instructions, interrogation practices and provisions on the guarding and treatment of persons apprehended, arrested or imprisoned in any form on any territory under its jurisdiction in order to avoid any case of torture. (*Article 11 of the UN Convention against Torture and Inhuman or Degrading Treatment or Punishment*).

The situation of aliens in public custody has been seen by the Ombudsman's Institution. During the monitoring period, five preventive visits and three further documentations were made at the Center for Temporary Placement of Aliens within the Migration and Asylum Bureau of the Ministry of Internal Affairs.

On September 25 and October 31, 2018, the employees of the Prevention of Torture Directorate assisted the representatives of the Parliamentary Commission on Human Rights and Inter-Ethnic Relations during two monitoring visits at Cahul Penitentiary Number 5, Penitentiary Number 1 of Taraclia, Penitentiary Number 4 and Number 15 from Cricova. Deputies are convinced that there are overcrowding in penitentiaries, insufficient prison staff, especially medical qualified; lack of jobs for inmates / low wages, and the efforts of the penitentiary institutions in this respect.

For the first time, the Office of the People's Advocate has founded the Anti-Torture Student Forum. In the competition, five law students from the competition were selected within the USM (State University of Moldova), ULIM (Free International University of Moldova), USARB (State University „Alecu Russo” from Balti) and one student from the State Medical University „N. Testemiteanu” as members of the Anti-Torture Students Forum. The mission of the Forum is to identify potential lawyers to contribute to the

prevention of torture and ill-treatment in Moldova¹⁷⁵. With the support of the Torture Prevention Directorate, three study visits were carried out in penitentiary institutions and two public lectures at the Faculty of Law for 140 students. Prevention through experience transfer will continue throughout 2019.

The „training” prevention activity aimed at training professional skills in the field of prevention of torture and ill-treatment in the process of accomplishing the tasks and duties of over 300 employees of the penitentiary system, the police. For the first time, 19 heads of penitentiaries and heads of National Penitentiary Administration (NPA) leadership were initiated by the Office of the People's Advocate (OPA) trainers on the Nelson Mandela Rules¹⁷⁶. The Ombudsman reaffirms the fruitful collaboration with the National Penitentiary Administration Training Center as a key institution in continuing vocational training and education in the penitentiary field. Here too, the People's Advocate reminds the authorities of the positive obligations set out in Article 10 of the Anti-Torture Convention and recommends strengthening the Training Center's potential in training penitentiary workers on distinct fields, increasing investment to create training conditions (laboratories, improvised cells, training sessions and applications, etc.), contracting external trainers, etc. The same recommendations refer to the Ministry of the Interior and the Ministry of Health, Labor and Social Protection for the institutions providing custody of beneficiaries and patients. The Ombudsman supports the comments of the Anti-Torture Committee that effective and necessary training can prevent torture in the closed system. Additionally, the People's Advocate sustains the Ministry of Justice (MJ) / National Penitentiary Administration (NPA), Ministry of Internal Affairs (MIA) / General Police inspectorate (GPI), MSMPS/ANAS must develop standard operating procedures based on international rules for employees in the system so that they have a practical mechanism for applying general rules. A training can only be effective when the trained employee receives clear and substantiated answers in a service / operational protocol (the job description is not considered). It is insufficient to resubmit only international standards. During the training period, the Office of the People's Advocate (OPA) trainers did not notice at trainees, tendencies towards torture against custodians. Rather, the latter have invoked the lack of mechanisms to protect against abuses by retained, detained and beneficiaries or patients.

Annually, the Office of the People's Advocate (OPA) carries out awareness-raising campaigns to prevent the phenomenon of torture and ill-treatment in Moldova. On June 26,

¹⁷⁵ <http://ombudsman.md/news/forumului-studentilor-antitortura-a-fost-constituit/>

¹⁷⁶ [http://ombudsman.md/news/180-de-angajati-ai-sistemului-penitenciar-instruiti-in-prevenirea-torturii-si-relelor-tratamente-in-sistemul-penitenciar/;](http://ombudsman.md/news/180-de-angajati-ai-sistemului-penitenciar-instruiti-in-prevenirea-torturii-si-relelor-tratamente-in-sistemul-penitenciar/)

2018, the International Day for the Support of Victims of Torture, in the square of the Arc de Triumph, the commemoration of victims of torture and solidarity was organized. The activity was attended by National Penitentiary Administration (NPA) and General Police Inspectorate (GPI) representatives. The end of the campaign aimed at transmitting 19 „Torture Prevention” information panels for NPA penitentiary institutions. Similarly, NPA employees have been actively involved in the awareness campaign „*I Do not Apply 166¹*”¹⁷⁷.

In order to strengthen the associative sector effort in the field of torture prevention, on request, training, mentoring and assistance was provided to the representatives of the Civic Platform for the Prevention of Torture in the Transnistrian Region and to the Regional NGO Network for the Prevention of Torture. In particular, prevention, expertise and documentation activities have been organized in cases of particular social importance in the field, at the Promo-LEX Association, Amnesty-International, Law Center of Lawyers and the Institute for Human Rights in Moldova. In this way, the Ombudsman is opening his doors to strengthening the joint effort to prevent torture.

Throughout the monitoring period, the employees of the Directorate organized, assisted 15 meetings and coordinated 21 Council Monitoring visits to prevent torture. A report on the work of the Council for the Prevention of Torture will be presented separately in the second quarter of 2019. No overlap visits or parallel visits have taken place within the mandate of the Torture Prevention Board and the Torture Prevention Directorate (DpT and CpPT).

Obstructing prevention work:

According to paragraph (1) and paragraph (2) of Article 3 of the Law on the People's Advocate (Ombudsman), number 52 of 03.04.2014, „The People's Advocate Institution is autonomous and independent of any public authority, legal person, irrespective of the type of property and legal form of organization, and to any person with responsibility at all levels. **No one can force the People's Advocate to obey his instructions or provisions.**” In accordance with paragraph (1) of Article 59¹ of the Constitution of the Republic of Moldova, the People's Advocate ensures the promotion and protection of human rights and fundamental freedoms. In accordance with the provisions of paragraph (6) of Article 59¹ of the Constitution of the Republic of Moldova and paragraph (4) of Article 3 of the Law number 52 / 2014, the interference in the work of the People's Advocate Institution, the

¹⁷⁷ <http://ombudsman.md/news/lectie-publica-in-domeniul-drepturilor-omului-pentru-angajatii-sistemului-penitenciar/>;

deliberate ignorance by the persons responsible at all levels of the People's Advocate complaints and recommendations, as well as the impediment under any form of its activity, entail liability under the law. **Officials of the Office of the People's Advocate (OPA) have free access to places of detention and unlimited access to any information regarding the treatment and conditions of detention of persons deprived of their liberty.**

In 2018, actions to obstruct the access of the Office of the People's Advocate (OPA) staff to places of detention took place. On July 20, 2018, employees of the Anenii Noi Police Inspectorate restricted the access of employees of the Torture Prevention Directorate to the Isolator.

... excerpt from the talks with the service officer: *the head of the inspectorate told you to go and serve some coffee, then go back in about 2 hours and he will personally lead you to the isolator.*"

At the request of the People's Advocate, the General Police Inspectorate sanctioned disciplinary the police employees (Chief of the Anenii Noi Police Inspectorate, V. Codreanu and L. Raneta - the service officer).

On September 6, 2018, the Director of the Penitentiary 13 - Chisinau I. Pantea obstructed the access of the Office of the People's Advocate (OPA) to the prevented V. Platon (cell 07), thus preventing the investigation of the alleged maltreatment by DDS collaborators „Pantera”, especially the conduct of the confidential meeting.

Extract from the discussions with the Director of the Penitentiary Number 13: „...*I do not allow you to Platon because he has many activities. If I'm going to let you get in, he'll have trouble*”. In a few minutes, the Office of the People's Advocate (OPA) once again reminded about insuring the access to the prisoner, at what Pantea commented „... *at the moment Platon is in the walks court for 2 hours, I do not allow you, come tomorrow, but you call me early and I'll tell you when he's ready, but today I do not allow*”. He repeated the last phrase several times. He also showed a video from the room in the walk yard, where a person walks, who, according to Pineta, is „Platon”... „*he is walking now, with him it's all ok, no, no ... I do not allow you*”.

Summary of the operational situation in the penitentiary system of 03.09.2018, P13 reported: „...on 03.09.2018 the **Penitentiary number 13** at 06:10 p.m., on the detainee

Platon V., by the collaborators of the DDS „Pantera”, the **physical force** was applied by immobilizing the hands behind. Reason: Following the meeting with his lawyers, the detainee has had an aggressive behavior, refusing to be escorted to the cell. The detainee was under medical examination; body injuries were not detected. In this case, materials have been prepared according to Article 273 of the Code of Criminal Procedure and the Chisinau Prosecutor's Office the Center office was notified”.

At the request of the People's Advocate, NPA started a job investigation. Mister Pantea Igor was „*strictly cautioned*”. In spite of this, the Office of the People's Advocate (OPA) had no access to the prisoner until now. The access of the Ombudsman, as well as of the defenders to the defendants (especially P13), is tedious. Several lawyers complained to the People's Advocate about hindering professional defense activity of clients by the administration of the P13-Chisinau from engaging in professional defense work on various ungrounded grounds. Advocates' aggression in the penitentiary is a serious trend. NPA did not react promptly to the relevant complaints. And the defenders, compared to the accusers, are still deprived of the right to defend their clients¹⁷⁸. The UAM approach was also rejected.

Additionally, the members of the Torture Prevention Council informed about the lack of information to prison staff and police on the relevant mandate.

Access to Transnistrian Liberty Deprivation Areas continues to be restricted to the Office of the Ombudsman. Although, he received complaints about allegations of ill-treatment, the People's Advocate was denied access to privative places. The *de facto* administration has mentioned that the rights of the defendants are respected, avoiding any form of discussion for this purpose. The dialogue on preventing torture remains tense. Restricting access to detention facilities in the Transnistrian region is a serious impediment to torture prevention activity.

... First of all, I urge you, within the framework of our interaction, including official correspondence, to refrain from using incorrect terminology and geographic terminology, unfounded accusations and propaganda clichés regarding the human rights situation in Transnistria (*V. Kosinsky, Commissioner*).

¹⁷⁸ Article 66, paragraph 2, 68 paragraph 2 of the Code of Civil procedure; Article 213 paragraph 5 of the Enforcement Code, Article 53 of the Law 1260/2002 on Advocacy; Article 6 ECHR; Recommendation number (2000) 21 of the Committee of Ministers on the freedom to pursue the profession of lawyer, etc.

5.2. Recommendations of the European Committee for the Prevention of Torture, 2018

From June 05 to 11, 2018, the European Committee for the Prevention of Torture (*further CPT*) carried out a follow-up visit „required by certain circumstances”¹⁷⁹. The delegation visited the Penitentiary Number 13 Chisinau (P13), Penitentiary Number 10 Goian (P10) and Penitentiary Number 6 Soroca (P6). The report was presented on December 13, 2018.

The CPT has noted with deep concern that Moldova has made little or no progress in the areas identified in previous reports. These include, in particular, overcrowding, the predominant informal hierarchy between detainees and interpersonal violence, the quality of medical care, poor conditions of detention for adults (including those prevented) and the lack of prison staff (Penitentiaries Number 13 and Number 6). At Penitentiary Number 10, the delegation received several complaints about the physical maltreatment of minors detained by prison staff. The CPT urged the Government to take concrete steps to respond to the recommendations made in the 2018 and earlier reports.

As a result of the absence of a general practitioner's to P6, the CPT issued an Immediate Notice to the Government of the Republic of Moldova requesting it to step up efforts to urgently recruit at least one general practitioner in the penitentiary:

The committee was amazed that in a population of over 800 detainees, for over a year, the institution did not have a doctor. A team of four feldsher tried to meet the prisoners' health needs.

By the letter of the Government of September 28, 2018, he would have informed the CPT delegation of the impediments of recruiting a doctor / doctors to P6. Against this background, we note that there is no information in the NPA balance sheet report for 2018 on the employment of general practitioner (full unit) at P6¹⁸⁰.

In the table below, we will present the summary of CPT recommendations as follows:

Penitentiary number 6 Soroca:	
CPT/2018	NPA/2018

¹⁷⁹ <https://www.ecoi.net/en/countries/republic-of-moldova/>;

¹⁸⁰ <http://anp.gov.md/randomrapoarte-de-bilant-simestriale-anualerapoarte-de-bilant-simestriale-anualerapoarte-de-bilant>;

Extract from the CPT Report, 2018:

1. Make an effort to hire a full-time doctor at P6 or contract the relevant services at the civil hospital in Sorooca;
2. Make an effort to hire a part-time psychiatrist;
3. Increase the number of doctors and nurses / feldsher in the penitentiary;
4. Repair / renovate the dental office;
5. Ensure the proper storage / keeping of medicines, in particular to destroy expired medicines;
6. Procure medical equipment for rescue and resuscitation (defibrillator and oxygen) as well as instruct medical personnel on their use in the field;
7. Allow detainees to contact healthcare services confidentially, for example by means of letter boxes;
8. Ensure that health care professionals do not use drug screening for disciplinary purposes;
9. Perform an assessment of the functionality of Sector 1 at Sorooca Prison, or set up similar housing units in P6;
10. Ensure the fact that the detainees (including minors) who are at risk of abuse by inmates and those who do not (or no longer) want to be

Extract from the Annual Balance Sheet Report, 2018:

1. On August 07, 2018, NPA Penitentiary Inspection Directorate carried out an inspection in P6, in order to elucidate all the issues addressed in 131 petitions from detainees. The petitioners claimed the incorrectness of applying disciplinary sanctions; abuses by the P6 administration; non-compliance with the confidentiality of mail; poor conditions of detention; poor healthcare; restricted access to drinking water and limiting access to the bathroom; including working conditions of convicts, etc. (*The inspection team has accumulated and perfected material on 380 pages: finding notes, photo images, employee staff reports, etc. These were presented to the NPA management*).
2. On June 12, 2018, the NPA organized a P6 needs assessment session, within the support of the CoE Program within the project „Promoting a Criminal Justice System Based on the Observation of Human Rights in the Republic of Moldova”;
3. The reparation of the disciplinary isolator was completed; several barracks sector being reconstructed

<p>part of the criminal subculture receive the full support of the board, including if so requested, in secure units;</p> <ol style="list-style-type: none"> 11. End the practices of delegating the authority of informal leaders / other detainees using them to maintain order among the population; 12. Stop employing detainees to perform key administrative tasks or prison management tasks (such as keeping individual records of detainees); 13. Deprive informal leaders and their circles of privileges that other categories of detainees do not enjoy, including in terms of living conditions; 14. Assessing their individual needs; 15. To significantly increase the number of prison staff (guard and surveillance); 16. Remove the 24-hour shift services for employees; 17. To give high priority to the development and training of prison staff, including continuous; 18. Provide opportunities for engagement and employment of detainees according to their professional vocation; 19. Ensure that the disciplinary punishment of detainees does not lead to a complete ban on family 	<p>in cell-type residential sections;</p> <ol style="list-style-type: none"> 4. The mandatory radiological examination of all detainees at the entrance to the penitentiary system is performed; 5. There were 2 medical assistants employed. 6. Resources have been allocated to repair the Medical Section;
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<p>contacts and that any restrictions on family contacts are applied as a form of disciplinary punishment only when the offense relates to such contacts;</p> <p>20. Revision of the approach to persons who cause their bodily harm (recommendation for the whole penitentiary system)</p>	
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Penitentiary number 10 Goian:

CPT/2018	NPA/2018
<p><i>Extract from the CPT Report, 2018:</i></p> <ol style="list-style-type: none"> 1. Repair all sanitary facilities; 2. To inform the CPT of the completion of the construction of the new detention facility 3. Abolish the practice (change the legislation) of the placement of minors in the insulator as a disciplinary sanction, according to Article 45, 2 of the Nelson Mandela Rules - the disciplinary sanction cannot be imposed on minors; 	<p><i>Extract from the Annual Balance Sheet Report, 2018:</i></p> <ol style="list-style-type: none"> 1. The reconstruction works on the object „Penitentiary Number 10 – Goian” are carried out in proportion of 93.67%. 2. For the year 2019, 4 million MDL are allocated to complete the objective; 3. On June 12, 2018, NPA organized a P10 needs assessment session within the support of the CoE Program within the project „Promoting a Criminal Justice System Based on the Observation of Human Rights in the Republic of Moldova”; 4. 108 minor detainees in P5, P7, P10, P11, P13 and P17 underwent general / lyceum training;

	<ol style="list-style-type: none"> 5. There have been works of capital repair of 2 spaces designed for disciplinary isolation; 6. The mandatory radiological examination of all detainees at the entrance to the penitentiary system is performed; 7. The draft of the new Enforcement (Execution) Code provides for the reduction of the maximum limit of disciplinary isolation of minors to 1 day. That sanction will be exceptional.
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Penitentiary Number 13 Chisinau:

CPT/2018	NPA/2018
<p style="text-align: center;"><i>Extract from the CPT Report, 2018:</i></p> <ol style="list-style-type: none"> 1. Increase the number of doctors and medical assistants / feldsher in the institution; 2. Procure medical equipment for rescue and resuscitation (defibrillator and oxygen) as well as instruct medical personnel on their use in the field; 3. Allow detainees to contact healthcare services confidentially, for example by means of letter boxes; 4. Ensure that health care professionals do not use screening 	<p style="text-align: center;"><i>Extract from the Annual Balance Sheet Report, 2018:</i></p> <ol style="list-style-type: none"> 1. Work has been carried out to improve the conditions of detention; 2. Every year, actions are planned for repairing, arranging and endowing with inventory objects of the living spaces; 3. The Psychosocial Program for Older Persons and Physical Disabilities was piloted; 4. 32 cells were repaired capital; 5. In 17 rooms, current repairs were carried out; 6. The mandatory radiological examination of all detainees at the

<p>for drug use for disciplinary purposes;</p> <ol style="list-style-type: none"> 5. Eliminate 24-hour shift services for employees; 6. Improve the conditions of detention; 7. Reduce the occupancy of cells to provide at least 4m² of living space per person in multiple occupancy cells (not including the space taken up by toilets in cells); 8. All cells must be sufficiently ventilated and kept in proper repair and hygiene; 9. Use of people which do not allow access to natural light due to their structure is to be stopped; 10. As soon as the Chisinau Penitentiary (new) is built and put into operation, P13 activity is to be stopped; 11. Stopping cells with a capacity of less than 6m², or widening them (if possible); 12. Ensure that the disciplinary punishment of detainees does not lead to the complete banning of family contacts and that any restrictions on contact with the family as a form of disciplinary punishment apply only when the offense relates to such contacts; 13. Revision of the approach to persons who cause personal injuries to 	<p>entrance to the penitentiary system is performed;</p> <ol style="list-style-type: none"> 7. Following the penitentiary inspection, it was found inadmissible to place detainees in the disciplinary isolator cell on the grounds that it did not meet health standards. Its sealing was recommended; 8. It is impossible to extend the spaces in the cells of the disciplinary isolator, as it involves the intervention in the structure of resilience of the building, which is risky due to the age of the penitentiary institution.
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themselves (recommendation for the whole penitentiary system);	
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The CPT suggested that the medical examination of an inmate must contain:

- a full account of the objective medical results based on a thorough examination (preferably supported by photographs of any traumatic lesions);
- an account of the person's statements that are relevant to the medical examination (including a description of his / her state of health and any allegations of ill-treatment);
- the doctors' observations on the above, in conjunction with allegations of ill-treatment and objective medical findings;
- the results of the additional examinations carried out;
- the detailed conclusions of the specialized consultations;
- a description of the treatment accorded and of any other subsequent procedures.

In addition, the results of each medical examination, physician's conclusions should be made available to detainees and their defenders.

RECOMMENDATION: The People's Advocate recommends NPA and GPI to implement correctly and according to the CPT's suggestions the content of medical examinations in particular in the part of allegations of ill-treatment in detention or at retention. NPA will integrate the CPT's recommendations throughout the penitentiary system as specific to its subdivisions.

5.3. CPT rules on the transfer of persons deprived of their liberty, 2018

On June 26, 2018, the Secretariat of the European Committee for the Prevention of Torture published the CPT Rules on the transfer of persons deprived of their liberty¹⁸¹.

The CPT argues that whatever the reason for transferring (escorting) of the persons deprived of their liberty from a place of detention to another place (e.g. from a police station to a prison, from a prison in another prison, from a court or hospital or immigration detention center) - transport should always be done in a safe, human and secure manner.

According to the CPT:

¹⁸¹ <https://www.coe.int/en/web/cpt/-/cpt-factsheet-on-transport-of-detainees?fbclid=IwAR2mBAjpasdVhCGfXFDkZwV5Ae-LAPMMg5RjsRpFzrAwoT0aIfLkzIZgVU;>

- Vehicles with individual cabins measuring less than 0.6 m² should not be used for the transport of a person, irrespective of their duration. Individual cabins with a surface area of 0.6 m² may be considered acceptable for short distance journeys, however, for long distance journeys, this area should be much larger;
- In the case of the transport of several persons over short distances, the space per person must be greater than 0,4 m² and for large distances greater than 0,6 m² per person;
- The compartments or cabins used for the transport of detainees should be of reasonable height, equipped with adequate banquetts or resting chairs; be clean, be sufficiently airy, ventilated and properly heated;
- During the short trips, prisoners are to receive drinking water;
- During long journeys, prisoners are to receive drinking water and food at appropriate intervals;
- For long journeys, detainees should have access to sanitary facilities or meet physiological needs under conditions that offer sufficient privacy, hygiene and dignity. Regular stops are recommended;
- Detainees assembled before a court after a long trip should be placed under conditions that ensure respect for their dignity;
- Detainees are to be transported in vehicles duly designed for that purpose, taking into account all relevant safety requirements to protect prisoners;
- The number of detained prisoners must not exceed the capacity of the vehicles used for this purpose;
- Detainees should not stand on a trip due to lack of seating;
- Detainees should not remain inside the truck during transport if it is in breach of safety rules;
- All vehicles must be equipped with appropriate safety devices (e.g. seat belts) and escorts communication devices;
- Secure cabinets / cabs doors must be equipped with a device which, in an emergency, automatically (and / or quickly) unlocks the doors;
- Measures must be taken to prevent violence, intimidation or thefts of detainees against other passengers;
- Applying the handcuffs / body straps to detainees during transport should be used only when the risk assessment in an individual case justifies this. And when the use of these means is considered to be absolutely necessary, it should be done in such a way as to minimize any risk of harm to the detained person;

- Handcuffs should not be used when prisoners are locked inside secure cabs / compartments / cabin;
- Immobilizing the hands behind the detainees during transportation should be avoided to prevent discomfort or injury / trauma;
- Practice using devices blocking the view during transport should be removed;
- The means of transport used to transport or take detainees from a hospital should consider their medical condition;
- The confidentiality of medical data must be respected during transfers of detainees;
- Any practice of segregating HIV-positive detainees should be discontinued.

RECOMMENDATION: By listing the above-mentioned Rules, the People's Advocate recommends NPA and GPI to adapt their internal rules on the transportation, escorting of persons held in accordance with international standards in the context of the implementation of the initiated reforms. In the course of time, the Ombudsman's Office will monitor the conditions of transportation of detainees in order to comply with the criteria highlighted.

5.4. Case law of the ECtHR in cases pronounced in 2018 (Article 3, 13)

Decision	Claims of the Claimant	Findings of the Court	The damage
Mereuta against Moldova ¹⁸² Application number 64401/11	The complainant alleged the lack of effective investigations by omitting the suspect's accusation by the State authorities	The positive obligation set out in Article 3 requires States to establish a legal framework, in particular effective criminal law provisions designed to prevent and punish the commission of crimes against personal integrity caused by private	The Court awarded the applicant EUR 7500 for non-pecuniary damage.

¹⁸² <http://agent.gov.md/wp-content/uploads/2018/07/Mereuta-v.-MDA-ROM-def.pdf>

		<p>individuals. The Court considered that the investigation into the applicant's allegations of ill-treatment was not sufficient or sufficiently effective.</p>	
<p>Goriunov against Moldova¹⁸³ Application number 14466/12</p>	<p>The applicant alleged, in particular, that during a five-month period he was subjected to inhuman and degrading treatment, contrary to Article 3 of the Convention, as a result of his handcuffing each time he moved outside his cell.</p>	<p>In the present case, the Court noted that the application of sanction in the form of reprimand and handcuffing is illegal, and is not provided for by the Penalty Execution Statute for convicts. Similarly, the Court concluded that the applicant had been sanctioned by permanent handcuff when out of the cell in the absence of any allegations or evidence that he constituted a health or safety risk, apparently a punitive and preventive measure, and on the</p>	<p>The Court awarded the applicant EUR 4500 in respect of non-pecuniary damage and EUR 650 in respect of costs and expenses.</p>

¹⁸³ <http://agent.gov.md/wp-content/uploads/2018/09/CASE-OF-GORIUNOV-v.-THE-REPUBLIC-OF-MOLDOVA-ROM.pdf>

		<p>basis of an ordinance which extended the limits of the legal provision allowing such a measure. Therefore, the daily appearance of the applicant in handcuffs in front of other detainees was detrimental to his human dignity, which made him feel unjustly and disproportionately punished.</p>	
<p>Goremachin against Moldova¹⁸⁴ Application number 30921/10</p>	<p>The applicant including complained about detention under inhuman conditions in the Department of Operational Services of the Ministry of Internal Affairs during 2009, at the Penitentiary Number 13 in Chisinau and in Penitentiary Number 11 in Balti</p>	<p>The Court found unanimously the violation of Article 3 of the Convention, noting that the Balti Prosecutor's Office found the inhuman conditions of detention in the Penitentiary number 11. Concerning the conditions of detention in Penitentiary number 13, the Court recalled that it found in numerous</p>	<p>The Court awarded the applicant EUR 15,000 in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses.</p>

¹⁸⁴ <http://agent.gov.md/wp-content/uploads/2018/07/GOREMICHIN-v.-MDA-ROM.pdf>

		<p>judgments that it was contrary to Article 3 of the Convention. Accordingly, the Court considered that the <i>level</i> of suffering <i>inherent</i> in detention had been <i>exceeded</i> and reached the level of severity required by Article 3 of the Convention.</p>	
<p>Botnari against Moldova¹⁸⁵ Application number 74441/14</p>	<p>The applicant claimed detention in poor conditions from Penitentiary Number 13 Chisinau, as well as the lack of qualified medical assistance prescribed to the applicant.</p> <p>According to the applicant, she was detained in a cell in the basement under poor detention conditions. Subsequently, she was transferred to Penitentiary number 13, where she was</p>	<p>The Court unanimously found the violation of Article 3 of the Convention with regard to detention conditions, noting that overcrowding was confirmed by Government information on the size and occupation of cells. Moreover, the poor quality of diet, passive smoking has increased the applicant's suffering, which has exceeded</p>	<p>The Court awarded her EUR 10,000 for non-pecuniary damage and EUR 1,500 for costs and expenses.</p>

¹⁸⁵ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-183370"\]}](https://hudoc.echr.coe.int/eng#{)

	<p>detained in the cell with 16 other detainees, subjected to passive smoking; the cell was infected and the diet of poor quality.</p> <p>During detention at the Department, medical treatment was interrupted and the administration refused to transfer her to the hospital. After transferring to the Penitentiary, she was not provided with medical assistance corresponding to her condition.</p>	<p>the minimum level inherent in detention. In the absence of evidence that the Government would have made significant improvements in Penitentiary number 13 in the recent years, the Court has held that there is no reason to depart from the conclusions reached in previous judgments.</p> <p>Also unanimously, the Court found the violation of Article 3 of the Convention, concerning the refusal of medical treatment.</p>	
<p>Ceaicovschi against Moldova¹⁸⁶ Application number 37725/15</p>	<p>The applicant alleged that he was detained for lack of sufficient and irrelevant reasons, but also for refusing hospitalization in case of serious illness</p>	<p>The Court considered, inter alia, that the refusal of the prison administration to comply with prescriptions of doctors for a period of over 7 months had subjected the</p>	<p>The Court awarded the applicant EUR 10,000 in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.</p>

¹⁸⁶ <http://agent.gov.md/wp-content/uploads/2018/07/Ceaicovschi-v.-MDA-ROM-1.pdf>

		applicant to severe pain and suffering, which was inhuman and degrading treatment within the meaning of Article 3 of the Convention.	
<p>Miron against Moldova¹⁸⁷</p> <p>Application number 74497/13</p>	<p>Before the Court, the applicant claimed inadequate prison conditions in Prison Number 13 of Chisinau for a period of more than 3 years.</p> <p>According to the applicant, he was detained in cells with poor illumination, wet walls and with five other detainees in a 6 square meters. Because of the overpopulation, the applicant had to divide the bed with a detainee, sleeping in turn. During detention he did not receive bed linen or clothing. Several detainees were diagnosed with</p>	<p>The Court recalls that it found the conditions of detention in Penitentiary number 13 being contrary to Article 3 of the Convention in numerous judgments (see, among the recent cases, Hadji v. Moldova, applications number 32844/07 and 41378/07, § 20, February 14, 2012, Silvestru v. Moldova, application number 28173/10, January 13, 2015 and Pisaroglu v. Moldova, application number 21061/11, March 3, 2015). The Court therefore</p>	<p>The Court awarded the applicant EUR 10,000 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.</p>

¹⁸⁷ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-186017"\]}](https://hudoc.echr.coe.int/eng#{)

	<p>tuberculosis or HIV and had open wounds, etc.</p>	<p>considered that the difficulties suffered by the applicant during his detention in the Penitentiary number 13 has exceeded the inevitable level of difficulties inherent in detention and has reached the threshold of gravity provided for in Article 3 of the Convention.</p> <p>Consequently, there has been a violation of Article 3 of the Convention.</p> <p>The Court also found violation of Article 13 as a result of the lack of an effective remedy at national level regarding detention conditions in the Penitentiary number 13.</p>	
<p>Secieru against Moldova¹⁸⁸ Application number 20546/16</p>	<p>Before the Court, the applicant complained about the detention under inhuman conditions</p>	<p>The Court unanimously found violation of Article 5 § 3 of the Convention, noting</p>	<p>The Court also unanimously found the violation of Article 3 of the Convention for the</p>

¹⁸⁸ <http://agent.gov.md/wp-content/uploads/2018/11/SECRIERU-v.-MDA-ROM.pdf>

	<p>and the reasonableness of his detention.</p> <p>During the period of detention, the applicant was detained in Penitentiary number 13, according to him the cell was overpopulated, equipped with a toilet that was not properly separated, the diet was insufficient and of poor quality etc.</p>	<p>that the basic argument invoked by the prosecutor requesting the applicant's arrest was that he had escaped the investigation into the Russian Federation. The complainant responded to this allegation that he did not know about the criminal investigation against him and the fact that the authorities are looking for him.</p> <p>The Court noted that the national courts also raised other reasons such as the risk of the applicant's interference in the conduct of the investigation and the influence over the witnesses. However, the absence of any substantiation, the lack of complexity of the case and the limited degree of</p>	<p>poor detention conditions in Penitentiary number 13.</p> <p>The Court awarded the applicant EUR 3,000 as non-pecuniary damage and 1,500 for costs and expenses.</p>
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		seriousness of the act imputed to the applicant cannot be regarded as relevant and sufficient.	
Cotet against Moldova ¹⁸⁹ Application number 72238/14	Before the Court, the applicant alleged that he was detained in inhuman and degrading conditions for a period of 4 months in 2014 in the Penitentiary number 13 Chisinau	The Court found violation of Article 3 of the Convention due to inhuman and degrading conditions in the Penitentiary number 13 Chisinau	The Court awarded the applicant EUR 4,000 in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.
O.R. and L.R vs Moldova ¹⁹⁰ Application number 24129/11	Before the Court, the applicants complained under Article 3 of the Convention that they had been subjected to inhuman and degrading treatment by police officers and impunity as a result of the failure to initiate criminal proceedings against him under the law.	The Court concluded that due to the delayed and superficial internal investigation, together with the failure to initiate the appropriate criminal investigation more than 9 months after the information on the alleged illegality became known to the authorities, the investigation of the applicants'	The court found the violation of Article 3 of the Convention and awarded the applicants EUR 16,500 in respect of non-pecuniary damage and EUR 1500 for costs and expenses.

¹⁸⁹ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-187201"\]}](https://hudoc.echr.coe.int/eng#{)

¹⁹⁰ [https://hudoc.echr.coe.int/eng#{"itemid":\["001-187481"\]}](https://hudoc.echr.coe.int/eng#{)

	<p>allegations was not effective.</p> <p>The Court also noted that, in accordance with national law, the omission to initiate criminal proceedings limits the subsequent effectiveness of the admissibility of evidence before the court.</p> <p>In the Court's view, the State's leniency in the treatment of police officers charged with very serious crimes is incompatible with the aim of preventing future examples of ill-treatment by the police.</p>	
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RECOMMENDATION: The People's Advocate recommends the Government of the Republic of Moldova to enforce the judgments of the European Court. It is also recommended to apply the Court's conclusions in public policies on the reform of the judiciary and the penitentiary and police systems.

5.5. Summary of the situation in the places of deprivation of liberty.

At the time of drafting the Report, the Government of the Republic of Moldova did not respond to requests from the UN Committee Against Torture in 2017¹⁹¹:

... The Government is to report by **December 6, 2018** on clause 16 (c) of the concludent Observations on the National Prevention Mechanism, clause 9 on the provision of fundamental legal guarantees to persons deprived of their liberty and 14 (i) on the death of Andrei Braguta, clause 33 CAT/C/MDA/3

The Ombudsman is fully convinced that the Moldovan authorities will not ignore the Geneva Committee's requests and will strongly advocate this important exercise in preventing torture.

In this way, the People's Advocate supports and encourages the Government to make continuous efforts to improve the material conditions of detention in the 19 penitentiaries, 21 police isolators, 3 psychiatric hospitals, the isolator of the National Anti-Corruption Center and the 7 temporary placement centers for persons with disabilities, etc., as well as to ensure full guarantees against the custodial persons. In addition, **the Ombudsman concludes that the situation in the detention system can progress in the face of a clear, responsible and conscious political will. The new legislative forum is to take responsibility for the continuity of reforms initiated by NPA and GPI.**

Following his remarks, the People's Advocate noted minor progress. However, in general, the situation in places of detention remains worrying (inadequate detention conditions, lack of personal space, overcrowding, shortages of sleeping areas, limited access to light and clean air, lack of privacy during the use of sanitary facilities, etc.).

The Ombudsman found in many individual cases that the penitentiary authorities failed to implement the standards implementation processes laid down in Articles 2 and 3 of the ECHR.

5.5.1. Penitentiary Institutions

Article 3 ECHR requires the State to ensure that the person is detained under conditions that are compatible with the respect for his human dignity, that the mode and method of execution of the punishment do not cause the person suffering or pain of an intensity exceeding the level of suffering inherent to detention and, having regard to the requirements of detention, the health and integrity of the person is adequately ensured, inter alia, by the provision of the necessary medical assistance. When assessing the conditions of

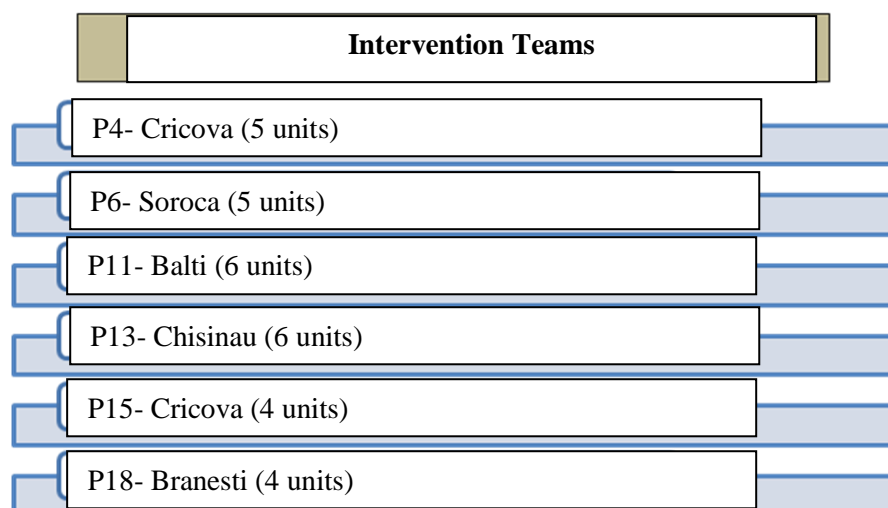
¹⁹¹ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=MDA&Lang=RU, point 33 CAT/C/MDA/3.

detention, consideration should be given to the cumulative effects of these conditions and the duration of detention.

Virtually all penitentiaries are of an old, Soviet organization and unadjusted to the detention of man as such. Large spaces (barracks) influence both prisoners' compliance with detention regime, their health and their ability to participate in re-socialization programs. More than 80% of convicts spend time in institutions due to lack of jobs and other forms of occupation. In their own right, prisons do not have / have limited occupational domains specific to and useful to detained persons. The aspect of „resocialization” is reduced to the process of recording written documentation, rather than a succession of actions in the given field.

At the moment, the detention of persons can be qualified as detention to the detriment of Article 3 of the Convention and the European case law. These findings have been repeatedly drawn up by the UN Committee Against Torture (2014, 2017), the European Committee for the Prevention of Torture (2015, 2018), the People's Advocate (2002 - 2018) and the Torture Prevention Board (2017 - 2018).

On May 16, 2018 Law 300/2017 entered into force on the penitentiary administration system. On the same day, Government Decision 437/2018 on the organization and functioning of NPA was approved. The new regulations aimed at establishing an efficient model of penitentiary system administration, strengthening the institutional framework, developing operational capacity, including motivating penitentiary staff. NPA has liquidated the Technical and Material Supply Center and the Guard, Supervision and Escort Division, and has created the Intervention Team (35 units) with the conflict resolution mission as follows:

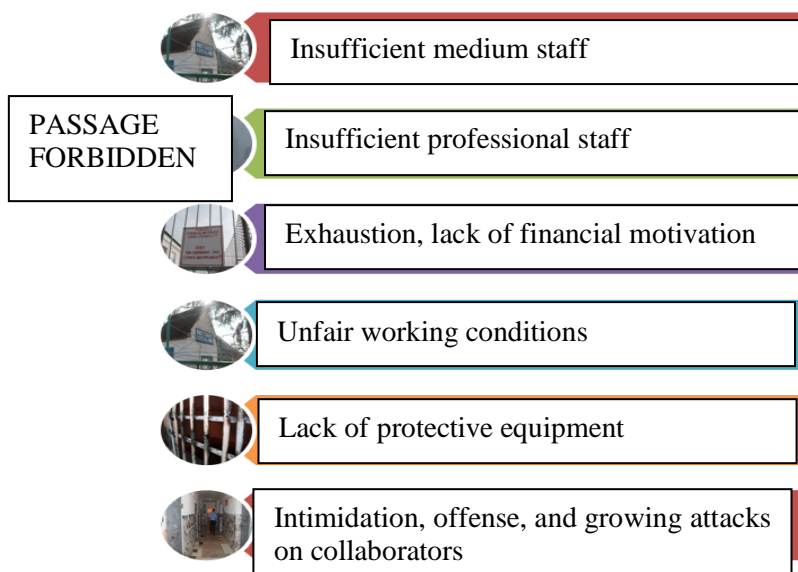


as well as 125 units with the title of:

Escort teams:			
P1 (4 units)	P2 (5 units)	P3 (5 units)	P4 (6 units)
P6 (5 units)	P7 (5 units)	P9 (5 units)	P11 (12 units)
P13 (36 units)	P15 (5 units)	P16 (12 units)	P17 (5 units)
	P18 (8 units)		

Summarizing the impediments and problems in the activity of the penitentiary institutions, we state the following:

Block I: Human resources:



On average, between 7-12 positions were vacant in penitentiary institutions, out of the limits set for the staffing. According to their annual reports, the penitentiary administrations said that they dealt with the exodus of employees in the system. However, there are reservations about the level of employee training, the lack of professionals in areas other than supervision and guarding. Compared to the number of custodians, the number of employees is reduced to 50-60%. The relatively small number of employees is obviously diminishing from efficiency and effectiveness, as well as the quality of the criminal-law act and the prison mission as such. This imbalance shows that the closed system remains on the verge of a „compromise” with the detainees. In fact, the system will not resist possible riots or disobedience, etc.

Investments in human resources (especially skilled) must be a priority for the NPA.

On December 31, 2018, the penitentiary system's enrollment scheme presents:








Number of employees:	Number of inmates:
P1 Taraclia 134 state units, Effective: 120 units	P1 Taraclia: Ceiling: 336 inmates. Are present: 334 inmates
P2 Lipcani: 113 state units, Effective: 103 units	P2 Lipcani: Ceiling: 286 inmates. Are present 290 inmates
P3 Leova: 129 state units, Effective: 112	P3 Leova: Ceiling: 307 inmates. Are present: 301 inmates
P4 Cricova: 119 state units, Effective: 102	P4 Cricova: Ceiling: 713 inmates. Are present: 760 inmates
P5 Cahul: 159 state units, Effective: 142	P5 Cahul: Ceiling: 170 inmates. Are present: 218 inmates
P6 Soroca: 203 state units, Effective: 195	P6 Soroca: Ceiling: 693 inmates. Are present: 775 inmates
P7 Rusca: 108 state units, Effective: 99	P7 Rusca: Ceiling: 231 inmates. Are present: 303 inmates
P8 Bender: 98 state units, Effective: 88	P8 Bender: Ceiling: 279 inmates. Are present: 144 inmates
P9 Pruncul: 146 state units, Effective: 130	P9 Pruncul: Are present: 567 inmates
P10 Goian: 73 state units, Effective: 70	P10 Goian: Are present: 30 inmates
P11 Balti: 183 state units,	P11 Balti: Ceiling: 258 inmates.

Effective: 179	Are present: 448 inmates
P12 Bender: 87 state units, Effective: 85	P12 Bender: Ceiling: 261 inmates.
P13 Chisinau: 258 state units, Effective 245	P13 Chisinau: Ceiling: 570 inmates. Are present: 1000 inmates
P15 Cricova: 153 state units, Effective: 136	P15 Cricova: Ceiling: 470 inmates. Are present: 566 inmates
P16 Pruncul: 204 state units, Effective: 189	P16 Pruncul: 1695 inmates registered in 2018
P17 Rezina: 236 state units, Effective: 223	P17 Rezina: Ceiling: 510 inmates. Are present: 350 inmates
P18 Branesti: 175 state units, Effective: 165	P18 Branesti: Ceiling: 652 inmates. Are present 653 inmates

Another impediment envisioned by the penitentiary system staff is the lack / ineffectiveness of the mechanisms for accountability of detainees for i) the attack on collaborators (18 growing cases) ii) the destruction of goods, iii) violence or other forms of ill-treatment, iiiii) sexual abuse, iiiii) offense / humiliation of employees (especially women), etc. The criminal offense of attacking a collaborator is reduced to a fine, either a small-term prison. This encourages detainees to continue their illicit actions and the employee has to bear them. In 2018 only 113 portable video cameras were purchased, relatively small number compared to the number of employees.

RECOMMENDATION: NPA / Government / Office of the Prosecutor General should identify a solution to this. The CAT / CPT expressly states the Republic of Moldova to ensure a favorable working climate as well as employee protection mechanisms.

Block II: Accountability of detainees:

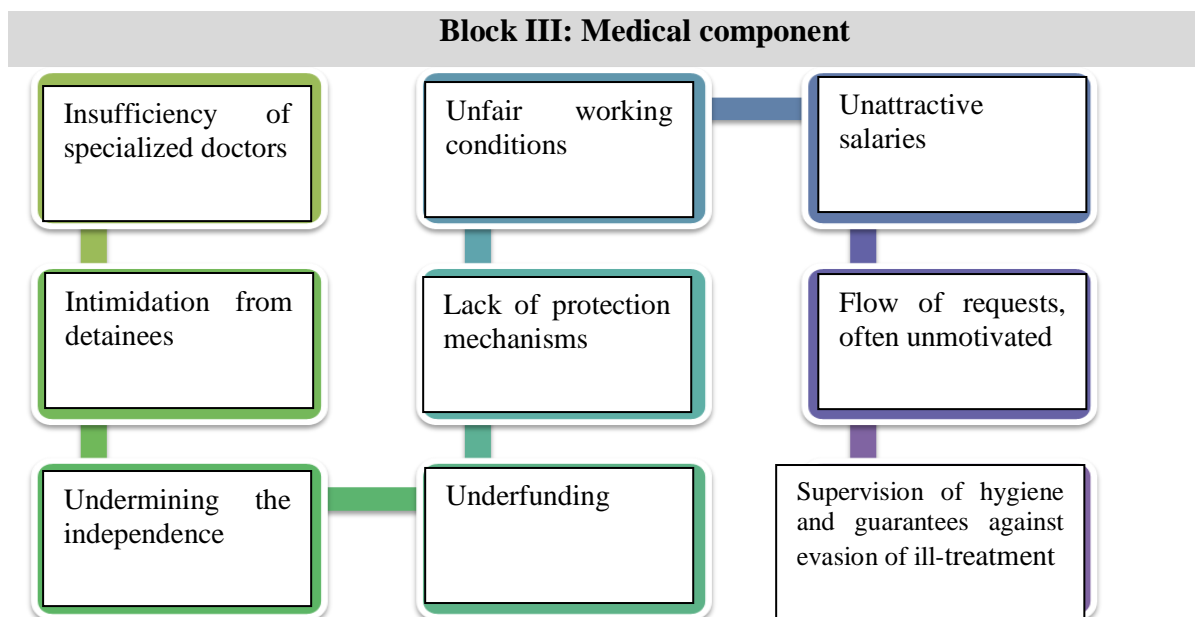
					
Insufficient mechanisms for accountability of detainees for deliberate damage to goods in the cell	Civil liability does not cover the costs of damages incurred. Additional unplanned actions for administration	Detainees blackmail employees with complaints in case of refusal to meet the unforeseen needs of the Execution Status	Sanctions for attacking the collaborators are not effective. Rather, the detainees know that they will not be punished, respectively the aggression continues	Employees do not have legal forms of protection. Rather, they will have to resign	Employees refuse to apply special means to their detriment, in order not to be targeted in any investigation. Failure to prevent riots.
					

At the same time, the penitentiary authority is liable to ensure the safety and security of the persons in custody. In 2018 there were 790 cases of body injuries, 779 protest actions (hunger strike) and 612 cases of auto-offense. Employees applied physical force and special means in 354 cases (rising by 2017). The causes of these negative trends are the dysfunctions of the penitentiary system, frequent acts of violence and intimidation between detainees, the presence of the informal hierarchy, the low rate of criminal cases initiated, etc.

The Ombudsman finds that the preventive measures necessary to ensure the physical, mental integrity and safety of the prisoners in custody of the penitentiary institutions are faulty and the efforts of the prison staff for this purpose are insufficient and in disagreement with the obligations of the Articles 2 and 3 of the ECHR.

RECOMMENDATION: NPA must urgently step up efforts to prevent and repress the acts of violence and intimidation among detainees, paying particular attention to the causes and origins of the phenomenon; to take the necessary steps to ensure that prison staff are no longer based on the informal hierarchy of detainees in order to maintain order and security and to take the necessary measures to ensure that the right of detainees to make complaints is effective, these complaints do not cause pressure from the penitentiary staff; to initiate an in-depth examination of the staff, in particular the security service, and to review the number of staff units of the penitentiary institution in order to extend it and ensure the appropriate number of surveillance staff; to undertake measures to train prison staff in security and safety, including the concept of dynamic security, enforcement of force and means of coercion and confrontation of violent detainees, taking into account preventive and neutralization techniques, such as negotiation and mediation.

RECOMMENDATION: NPA is to develop and approve the program for the reduction of the violence in the penitentiary environment established by NPA Order number 82 of June 14, 2018. Similarly, NPA is to plan training activities for the employees of the security sections, penitentiary and social reintegration.



In 2018, talks on the status and model of the medical system of penitentiaries have become more prominent. CAT / CPT recommended to the Government the transfer of medical units subordinated to NPA under the Ministry of Health with the title of a solution against the dysfunctional health services in the penitentiary system.

CAT pointed to the following:

- 1) the medical staff is not independent of the penitentiary authorities in the exercise of their professional duties;
- 2) the qualification of medical staff is insufficient;
- 3) healthcare in places of detention is different in terms of accessibility, availability and quality, respectively, is not equivalent to that available in the community;
- 4) the quality of assistance is not systematically verified by the Ministry of Health, Labor and Social Protection or other relevant authorities;
- 5) medicine in places of detention is not addressed by the Ministry of Health (MSMPS) and does not reflect in state health policies and strategies;
- 6) the reorganization of the health system has been included as a priority action of the Strategy for the development of the penitentiary administration system for the years

2016 - 2020, but there are considerable arrears in the implementation of activities related to the medical field due to the complexity of the impact on the criminal enforcement system.

In conclusion, CAT recommended the Republic of Moldova:

- Transferring the medical services management function from the penitentiary administration system within the National Penitentiary Administration to the Ministry of Health, Labor and Social Protection;
- ensuring the subordination of penitentiary hospitals and medical services to the Ministry of Health, Labor and Social Protection;
- taking measures to reduce overcrowding of medical units;
- improving the material conditions, including by repairing patients' salons and equipping them with the necessary equipment;
- ensuring sufficient food and availability of medicines;
- development of individual treatment plans and appropriate medication for detainees suffering from psycho-neurological disorders, including antipsychotic preparations.

Thus, in order to improve the medical services provided to detained persons and to ensure the independence of the medical staff providing care to the custodial persons, NPA proposed the following reorganization options:

- 1) the transfer of the competencies for granting medical assistance to the persons detained from the Ministry of Justice to the Ministry of Health, Labor and Social Protection;
- 2) creation of a separate medical subdivision (with legal person status) within the penitentiary administration system subordinated to the Director of the National Administration of Penitentiaries - Directorate of Penitentiary Medical Assistance;
- 3) creation of a public authority within the penitentiary administration system, directly subordinated to the Ministry of Justice - National Inspectorate for Penitentiary Health;
- 4) the establishment of a public medical and sanitary institution subordinated to the Ministry of Justice, which will not be part of the penitentiary administration system - Public Medical Sanitary Institution „Penitentiary Medical Center”.

At the moment, NPA is in the process of discussing in order to identify the optimal model. MSMPs opt for creating a subdivision subordinated to the Ministry of Justice, to be accomplished in several stages. At the end of 2018, NPA proposed to the Ministry of Justice the draft Government Decision on the creation of the Medical Assistance Division for Persons in Penitentiaries, the draft Statements of Proposed States on Medical Services and the Guidance Unit.

Through the NPA Order number 140 of 06.08.2018 on the organization of the self-assessment process of medical services within the penitentiary system, the accreditation procedure of the medical units was initiated. All penitentiaries have begun refurbishing medical facilities for accreditation.

The Ombudsman received information that in some prison it was necessary to evacuate the detainees from the cells and transfer them under overpopulation conditions to create conditions for the accreditation tasks. According to the data, 1.5 million lei were allocated for the purchase of construction materials for the repair of the medical units. The financial means are insufficient and the heads of penitentiaries have had to request the support of the local economic agents to continue the repairs.

With the accreditation of medical departments, it will be possible to contract the National Pay Office of Medical insurance and provide medical assistance to prisoners on the basis of a medical assistance policy. With the support of the Council of Europe, the NPA will review the Regulation on the organization of care for detainees, which will include the organization of psychiatric care in the penitentiary administration. In this regard, a working group has been created.

On September 6, 2018, NPA Order number 169 was issued on the efficiency of medical documentation of bodily injuries in the penitentiary system. The designated personnel responsible for documenting bodily injuries received training during the training courses, which are held annually at the NPA Training Center. All medical examinations are to be performed without the presence of any other medical personnel, subject to confidentiality. The People's Advocate examined the issue of completing the record of bodily injury in his investigations. Respectively, it was found that the employees of the medical service did not always complete correctly and completely, and they recorded the relevant data, including ensuring the reporting of the prosecutor's offices. The „anti-torture” register is not found in institutions. And doctors claim that medical examination sheets are placed in the medical record of the newly arrived prisoner. The medical examination sheets and the annex report contain information only for detainees arriving in the penitentiary and

not at all for detainees in the penitentiary. We recall that antitrust guarantees also include detention itself.

NPA ensures that all newly arrived detainees in penitentiary institutions are placed in quarantine cells, where they are undergoing a complex medical checkup, afterwards they are recorded in the medical card of the convict. In preventive detention isolators, HIV testing is proposed for all newly arrived detainees. Screening for TB (tuberculosis) is mandatory in all preventive detention isolators, and in prisons with the mobile radiograph 2 times / year. Viral hepatitis testing is also performed on medical advice. For the year 2019, it is expected to purchase rapid tests for viral hepatitis C from budget sources. In 2018, radiological tubes, medicines, para-pharmaceutical products, consumables and dental materials for medical services in prisons were purchased. And, with the support of the Council of Europe, a batch of medical equipment will be procured, which will include the defibrillator and Ambu balloon.

The Ombudsman found that the prison authorities, contrary to Articles 2 and 3 of the ECHR, did not provide comprehensive evidence of the state of health of the person deprived of liberty and treatment delivered during detention; diagnosis and medical care are not prompt and appropriate (*for example: the Cosovan case, etc.*).

RECOMMENDATION: The penitentiary authorities must provide the prisoner with the appropriate treatment for the health condition with which he was diagnosed and who was prescribed by a competent physician, and in the event of disagreements with regard to the treatment required to adequately ensure the prisoner's health, it could be necessary for the penitentiary authorities, in order to comply with the positive obligations laid down in Article 3 ECHR, to obtain additional recommendations from a specialist / expert; to ensure the medical check-up / examination of all detainees upon arrival in the penitentiary, paying particular attention to: signs of serious mental illness; suicide risk factors; history and signs of alcohol or drug addiction and symptoms of abstinence; contagious diseases; mental or physical disabilities; to ensure the medical check-up / examination of detainees without undue delays and to take immediate measures to protect the health of detainees.

Beyond the mission of providing care to detainees, medical services or doctors are responsible for regularly checking: a) the quantity, quality, preparation and serving of food; b) the sanitary-hygienic state of the rooms and the territory of the penitentiary; c) the condition and cleanliness of the clothing, the litter of condemned persons, their season's correspondence. Subsequently, the director of the penitentiary is obliged to take note of the report and the recommendations of the doctor and of the medical service and to take the

necessary measures as a matter of urgency. If the head of the penitentiary believes that compliance with recommendations is impossible or unacceptable within the penitentiary, he or she shall submit a report to the National Penitentiary Administration, enclosing the opinion of the doctor or the medical service.

The Ombudsman's Institution, taking into account the determinants of the functions of the penitentiary institutions specified in paragraph (1) of Article 11 and letter a) paragraph (2) Article 13 of the Law on Penitentiary Administration System, number 300 of 21.12.2017, cannot fail to admit that some repeatedly identified deficiencies, such as overcrowding, originated in a chronic, systemic malfunction, and are not attributable solely to the penitentiary administration. At the same time, the content of the reports drawn up by medical staff in the process of engaging in preventive and social care responsibilities and the fulfillment of the obligations under Article 233 of the Code of Conduct would result in circumvention by the staff of the medical service of the applicable rules and standards in the matter. In this regard, the staff of the medical service formulate findings, conclusions and recommendations, abstract, unpredictable and improper (*for example: „satisfactory condition”, „general cleanliness”, „relatively-satisfactory condition”, „requires ventilation”, etc.*). As a result, the staff of the medical service essentially established and developed practices contrary to the recommendations of the People's Advocate, the CAT, the CPT and the requirements of domestic law.

„The burden of medical care in penitentiary institutions should not be limited to the treatment of sick patients. They should be responsible for preventive and social medical care, and insubordination, overcrowding, prolonged isolation and inactivity may require either medical assistance to a detainee or a general medical action of the responsible authority.

RECOMMENDATION: The People's Advocate argues that NPA is to approve a clear and unitary operational procedure for doctor's / healthcare professionals in accordance with the recommendations of the relevant actors regarding the identification and reporting of the sanitary-hygienic situation in all housing, serving, bathrooms, canteens, medical departments, and so on. Doctor's reports are to be thoroughly and seriously analyzed by the penitentiary directors.

A medical service in the penitentiary must be able to provide medical treatment and medical assistance, as well as diets, psychotherapy, rehabilitation or other special care required under conditions comparable to those provided to patients in the community. At

present, penitentiary institutions cannot provide a special diet or diet based on cultural, medical or religious reasons (*NPA Response number 5/1-1652*).

The food regime / special diets are one of the main components of preventive health care to be provided to prisoners with special needs due to health problems, to those who favor a special diet such as vegetarians or those who have special requirements prefigured by religious reasons. Taking into account the synthesis of World Health Organization research, food can have a negative or positive impact on the physical integrity and psychological integrity of the detainee, as well as a causal link between food and the criminogenic forms of the prisoner's conduct.

Prison services do not provide food regimes / special diets for detainees (e.g. P6, P17, etc.) and associate special food regimes / special diets with additional food ration.

The Ombudsman found that the medical, organizational and administrative measures necessary to ensure the physical, mental and welfare of the detainees by ensuring that detainees receive nutrition and sufficient amount of nutrition to maintain their health and strength, of a very good quality, well cooked and served as well as in accordance with a special diet or diet based on cultural, medical or religious reasons, are inadequately performed contrary to Articles 2 and 3 of the ECHR.

RECOMMENDATION: The penitentiary authorities must ensure that diagnosis and medical care for prisoners are prompt and appropriate, and the lack of nutrition provision in accordance with quantitative and qualitative nutritional indices and specific health claims may endanger the health of the person; to promptly undertake the necessary measures to identify and keep a comprehensive record of detainees with special needs in favor of a food regime / special diet due to health disorders, those who have special dietary preferences such as vegetarians or those who have a need special prefigured by religious reasons; the food regime / diet cannot be equated with additional food ration;

These measures necessarily require the compilation of complete, objective and detailed medical reports / reports that would reflect diet, food restrictions and food ration in each case, with the attachment to the medical file.

In 2018, 194 cases of involvement in trafficking and drug use in prisons were documented. Out of 104 documented detainees, 35 drug use was confirmed. Drugs penetrate through guard over buildings guarded, parcels, or are brought by civilians at meetings, says NPA. At the same time, 485 detainees are beneficiaries of the Methadone Therapy Program. In 2018, another 40 new beneficiaries were included.

During his visits, the Ombudsman received allegations of refusing to grant substitution pharmacological treatment and tolerance of illegal drug trafficking, particularly among substitute therapy recipients. For data protection, we will not publish the names of the interviewees.

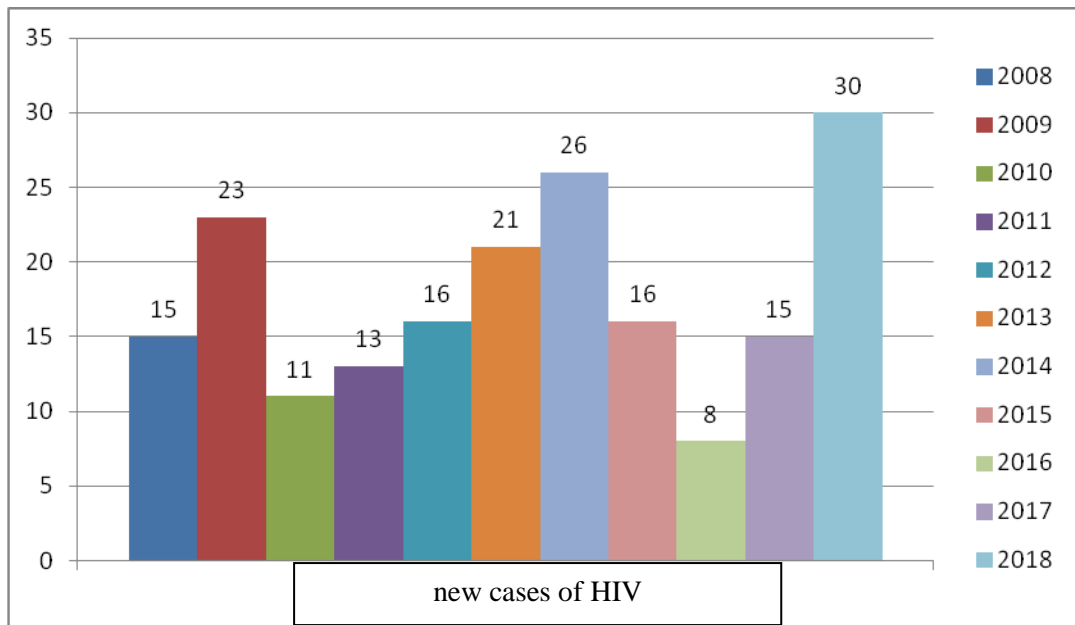
The Ombudsman has estimated that the refusal to grant opioid addiction substitution pharmacological treatment to a person in custody of the penitentiary institution may constitute a violation of Article 3 ECHR. At the same time, the guidelines formulated by the World Health Organization suggest that „the significant and major risk that methadone represents is overdose, which can be fatal. Research results indicate that the most prominent risk of overdose is at the initial stage of methadone replacement therapy.”

In the light of the extremely important nature of the protection afforded by Article 2 of the ECHR in respect of the right to life, that the person in the custody of the state is in a vulnerable position and the authorities have the task of protecting it.

The People's Advocate draws attention to the fact that the uncontrolled use of illegal drugs in prisons combined with methadone pharmacological treatment could cause overdose, which may be fatal, requiring the adoption of preventive and decisive measures to prevent such consequences.

RECOMMENDATION: Penitentiary authorities must take decisive and effective measures to prevent and mitigate, traffic, consumption and uncontrolled proliferation of psychotropic or narcotic substances, precursors, ethnobotanics, analogues and other illegal substances in penitentiary institutions, and pay more attention to the assessment of the state of health and processes of establishing and administering the optimal individual dose in cases involving methadone pharmacological treatment of opiate addiction.

On December 31, 2018, 130 HIV patients are reported to be at the record of the penitentiary administration system, of which 30 new cases and 7 reconfirmed cases or transfers from other states. 139 detainees have received antiretroviral treatment during the year. According to the Order of the Ministry of Justice number 46 of 15.01.2018 on the implementation of the National Program for Prevention and Control of HIV / AIDS and ITS in the penitentiary system for the years 2016-2020, the actions requiring budgeting were financed in a proportion of 30%, so it was possible to carry out the actions and fulfill the commitment to the Global Fund. At present, in 13 penitentiaries (including criminal prosecution isolators), pharmacological treatment is carried out with methadone. The number of HIV positive prisoners is rising.

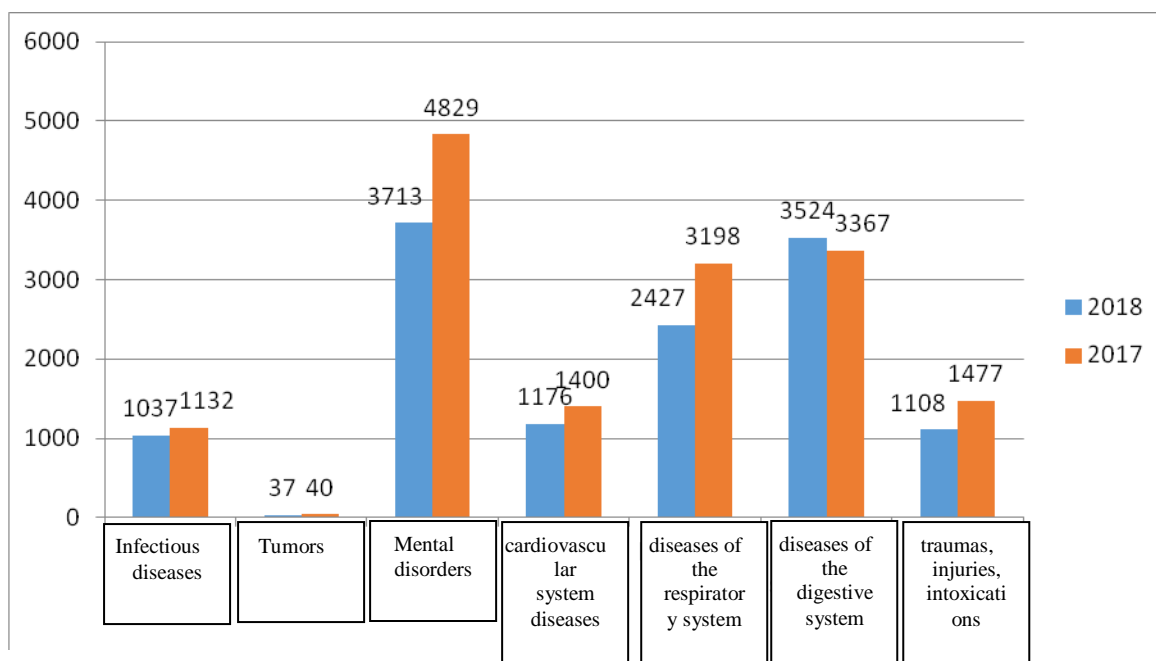


Despite the degree of assistance to HIV patients, the Ombudsman has registered complaints about the placement of patients in the isolators in the basement of penitentiary institutions. Under this conditions, the disease progresses and will not be minimized.

RECOMMENDATION: To avoid placing HIV patients (other infectious diseases) in the basement of isolators in penitentiary institutions.

In 2018, 28 detainees died in the penitentiary system, of which 6 were by suicides. In all cases of death, the Ombudsman was noticed ex officio. In three cases there were suspicions about death under dubious circumstances. Thus, at the Ombudsman's inquiries, criminal cases were initiated on the basis of Article 145 of the Criminal Code (murder), Article 213 of the Criminal Code (negligence of doctors in the civil hospital) and Article 150 of the Criminal Code (suicide determination). Please note that prosecutors have been reserved in collaboration with the Ombudsman Institution to investigate the causes of death in custody of the State.

According to statistical data, is found that general morbidity is 13017 cases decreasing by 34.1% (2017-19754 cases). In the structure of morbidity mental and behavioral disorders are at the forefront. The second place is classified as diseases of the digestive system, and third place the pathologies of the respiratory system as follows:



The People's Advocate noted that the courts continue to issue arrest warrants, despite the restriction of placing persons with serious illnesses under preventive arrest (Article 176 of the Code of Criminal Procedure). And, the NPA, based on Order 331/2006, tolerates prisoners' detention in penitentiary conditions until their state of health becomes acute, so that their health is impossible to restore. The Ombudsman reveals several practices of the institutions, such as the NAC (national anti-corruption center) and the GPI, which apply differently the mechanism of providing care to prisoners / preventives. For example, the NAC immediately handed over the detainee to the Holy Trinity Hospital in Chisinau without waiting for the prosecutors' permission. In some cases, the NAC alerts prosecutors to take responsibility in the event of a worsening of the custodian's health. Territorial Police Inspectorates call civilian medical services or resign the detainees to the NPA. As a consequence, the patient is detained on the basis of an arrest warrant, and to be released he follows a number of commissions and courts, which instead of prioritizing the right to life are consumed on formal and bureaucratic procedures. A detainee with a disease deserves the same treatment and the right to be released from detention when the disease can be prevented and not at the final stage. Judges and prosecutors need to realize that when there is a clear risk of losing life in detention, they shall apply alternative measures to arrest. Penitentiaries will assure the execution of the judiciary in their capacity as executive bodies. However, the healthcare of individuals targeted in criminal investigations is effective outside the closed system. Priority is human life.

On September 26, 2017, Serghei Cosovan (46 years old) was placed under preventive arrest. From that time, he is in P16 (penitentiary hospital) with the diagnosis of hepatic cirrhosis of viral etiology HCV in the active phase, etc. The period in which the detainee was located in this penitentiary led to the aggravation of the disease. Although at the stage of detention - his state of health could be rectified within a specialized civilian hospital. Judges have repeatedly refused to change the preventive measure. And, NPA included the patient in the list of diseases liable to release. Exit from detention will only be possible after a final decision has been reached on his criminal case. His release cannot be achieved because such a condition is not provided for in Order 331. The Ministry of Justice refused to initiate discussions on amending the Order 331.

On October 10, 2018, the Council for the Prevention and Elimination of Discrimination and Equality Issue issued the decision number 03/1307. CPEDAIE (Council for the Prevention and Elimination of Discrimination and Equality Issue) has found that there is a difference in treatment between preventive arrested persons and convicted persons as regards the possibility of benefiting from protection measures applicable to convicted persons suffering from serious illness. The Council recommended that the Ministry of Justice institute without delay a mechanism for the release from the application of the preventive measure in the form of arrest and the execution of the punishment, applicable to all detainees, regardless of the person's procedural status and the moment when the disease is counteracted. The Ombudsman accepted the „Promo-LEX” proposal to amend the Order 331 by assimilating the Russian Federation regulations. For the moment, the Ministry of Justice did not notice the opportunity of these proposals. However, the People's Advocate concludes that delaying this process is inadmissible.

At the NPA special medical committee 12 patients were presented for disease release from the punishment atonement. The case file was filed with 12 persons, 6 detainees were released, 2 were deceased, 2 pending the decision.

RECOMMENDATION: The Ministry of Justice is due to institute without delay a mechanism for the release of the preventive measure in the form of arrest and the execution of the punishment, applicable to all detainees, regardless of the person's procedural status and the moment when the disease is counteracted. Revision of Order Number 331 is imperative. Placement in detention of prevented patients with serious illness should be

avoided. NPA shall facilitate access to medical committees that decide on the release of the person.

On December 31, 2018, 6,990 persons were detained in the penitentiary administration system, compared to 7635 persons who were detained in 2017. Thus, there is a decrease in the number of detainees by 645 persons, representing a decrease of 8, 45%.

The total number of persons deprived of their liberty on 31.12.2018 is constituted by: convicted - 5725 (2017-6294) representing a decrease of 9.04%, prevented - 1261 (2017-1337), which represents a decrease of 5.97%; arrested contraventions - 4 (2017-4); women - 448 (2017-491) representing a decrease of 8.76%; minors (boys / girls) - 67/4 (2017 - 69 / 1), representing an increase of 1.43%; former public servants - 80 (2017-108) representing a decrease of 25.93%; sentenced to life imprisonment - 121 (2017-123), which represents a decrease of 1.63%.

In 2018, 3234 persons (2017-4516) arrived in the prisons administration system, which represents a decrease of 28.39%, and were released - 3773 persons (2017-4129), representing a decrease by 8.62%, of which: after the expiration of the penalty term - 1127 persons (2017-1189), which represents a decrease of 5.21%; with the replacement of the unexecuted part of the punishment with a milder punishment - 309 persons (2017-21) representing an increase of 85.97%; released on probation before term - 609 persons (2017-356), which represents an increase of 18 71.07%; released on amnesty - 45 persons (2017-275), which represents a decrease of 83.64%; pardoned - 2 people (2017-0), which represents an increase of 2 persons; on the grounds of illness - 7 persons (2017-1), representing an increase of 6 persons; other reasons - 37 persons (2017-31), representing an increase of 19.35%; prevented released - 1465 people (2017-2015), representing a decrease of 27.3%; after execution of the contraventional arrest - 172 persons (2017-241), representing a decrease of 28.63%, and deceased - 28 persons (2017-42), representing a decrease by 33.33%.

In order to improve the conditions of detention (including according to the CPT Recommendations), there have been carried out works to improve the conditions of detention in Penitentiaries number 2 - Lipcani, number 3 - Leova, number 5 - Cahul, number 6 - Soroca, number 8 - Bender, number 9 - Pruncul, number 10 - Goian, number 12 - Bender, number 13 - Chisinau, number 15 - and number 17 - Rezina. At P15, 16 cells were blocked, and in P13 was to stop the activity of the cells in the disciplinary insulator. P-12 has performed repairs of 9 cells, and at P17 all cells are overpopulated with improper conditions and only 2 cells have good conditions. P13 has succeeded in renovating 40 cells

out of 170. At P4 there have been actions to enlarge quarantine room space. As a result of the activity of the Penitentiary Inspection Department, the canteens and the situation of the cells in the penitentiaries were assessed. The Directorate received over 350 petitions with complainants on health care, material living conditions, assurance of the right to life and physical integrity, health conditions and hygiene conditions.

The Office of the Ombudsman has received a greater number of requests with similar allegations. Part of the requests constituted the request to carry out documentary visits in the cell for the initiation of civil cases for detention contrary to Article 3 ECHR.

Summary of applications

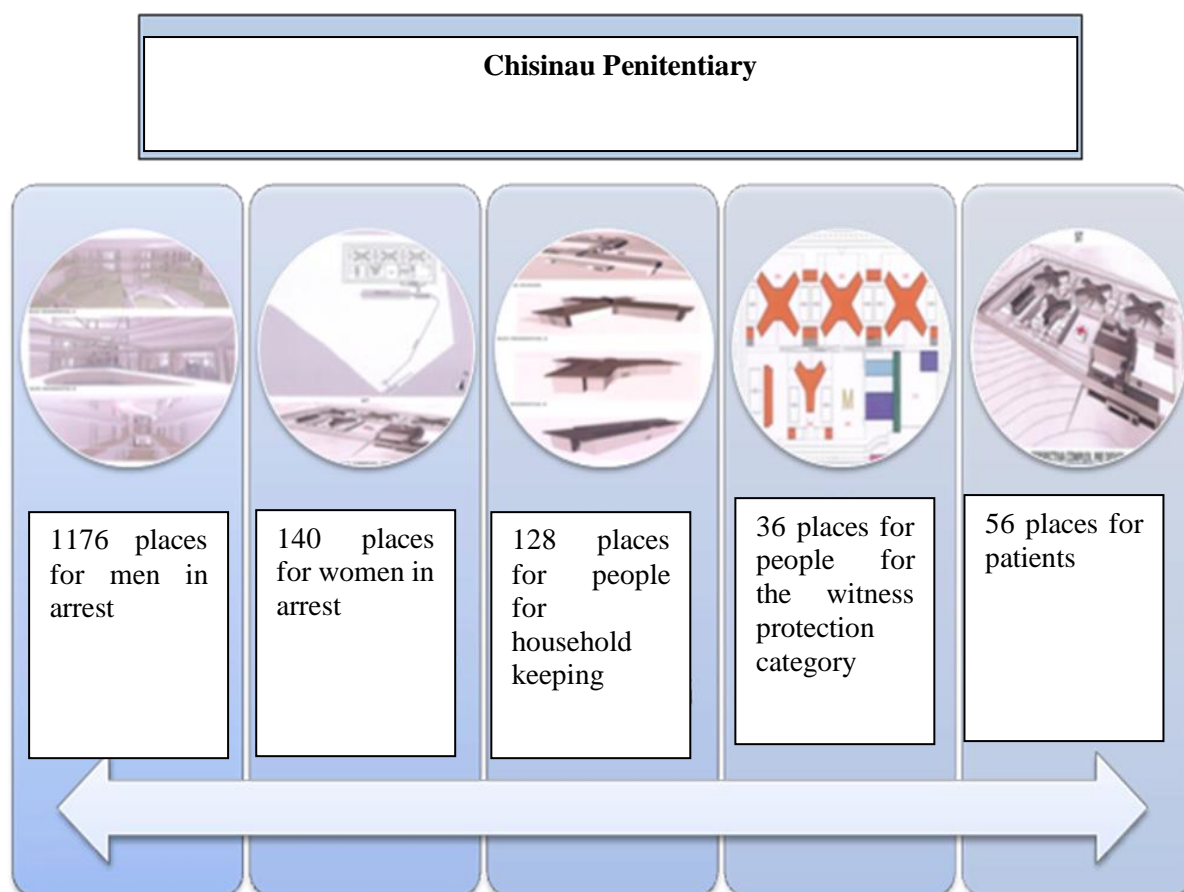
	The right claimed	Explanations
r	Poor detention conditions (P13)	Detainees under protection regime, hunger strikes, or HIV are placed in cold half-basement cells with increased humidity, non-functional sanitary system, ventilation does not work, non - insurance with bed linen, parasitic insects, opaque lighting, mold, etc.
	Right to health	The roentgen devices do not work, either lacking a roentgenologist, lack of specialist doctors, inadequate or delayed medical care; lack of medical assistance; long retention in preventive arrest with acute illness
	Right to food	Inappropriate nutrition, lack of dietary food; non-observance of meals for escorted detainees, the prevented during the escort and decision to apply the preventive measure do not receive food ration.
	The right to external communication	Limiting the ability to make a phone call to relatives in case of transfer; Missing meetings for disciplinary sanctions; delaying the process of challenging disciplinary sanctions; refusal to interview for spouse prisoners who are in

	<p>Right to defense</p> <p>The Right to Physical and Mental Integrity</p> <p>The right to conditional release</p>	<p>different penitentiaries</p> <p>Limited access to case materials; Limited access to lawyers and defense training; limiting the length of meetings with the lawyer (1-2 hours); Lawyers do not have access to client cells; Lawyers cannot take pictures of the place of detention for specific civil action.</p> <p>Maltreatment among detainees</p> <p>The out-of-court procedure is inappropriate and detrimental to the purpose of Article 91 of the Criminal Code. The penitentiary has no power to release before the deadline, respectively the institution may participate as an intervener. Practically, the penitentiary claims the rejection of the request for release, although its role is to prepare and stimulate release from penitentiary and not vice versa.</p>
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Priorities for 2019

According to the Law on the State Budget for 2019, 5 penitentiaries are to be rebuilt next year. To this end, the law provides for spending over 209 million MDL, allocated to the Ministry of Justice under the „Penitentiary System” program. Of the total amount, almost 40 million MDL are provided for the construction of the Balti municipality Arrest House; 2,1 million MDL - Penitentiary number 3 in the Leova city; 4.2 million MDL - finishing the repair at P10 - Goian and 3 million MDL for the renovation of the guarded perimeter at P7 - Rusca. More than half of the total amount - about 160 million MDL, will be spent on the project „Construction of the Chisinau penitentiary”. Of this amount, 14.5 million are money from the national budget, and over 145 million MDL come from external resources. For the same project, 139.6 million MDL were allocated in 2018. According to the draft of the new Chisinau penitentiary, it will consist of five separate functional compartments. The institution will have a residential block, one for transfer, one for securing secondary health services, and the entry and administrative area. Also, two parking lots will be built, one for

the employees of the institution and another for the visitors. The future prison will be located at the entrance to the Bubuieci village, on a 36-hectare plot. Its value exceeds 52 million Euros.



Council Recommendations on Torture Prevention, 2018

Reports available at: www.ombudsman.md

The penitentiary institution	Recommendations	Recommendations implemented
P13 Visit 04.01.2018	P13: 17 recommendations	0
P2 Visit 24.04.2018	P2: 16 recommendations	16
P15 Visit 18.05.2018	NPA: 8 recommendations P15: 18 recommendations	0
P4 Visit 18.07.2018	NPA: 14 recommendations	14 12

	P4: recommendations	12	
P1 Visit 20.08.2018	NPA: recommendations	11	11
	P1: recommendations	11	11
P15 18.12.2018	NPA: recommendations	13	0
	P15: recommendations	16	
	MJ: recommendations	2	
	PG: recommendations	1	

5.5.2. The police

The Police is a specialized state institution under the subordination of the Ministry of Internal Affairs, which has the mission of defending the fundamental rights and freedoms of the person by maintaining, securing and restoring public order and security, preventing, investigating and detecting crimes and contraventions¹⁹². In the process of performing service duties, police officers are empowered by law to apply to persons suspected of committing offenses or administrative contraventions procedural coercive measures which may limit certain freedoms (the right to individual freedom, the right to personal safety, etc.).

In 2018, employees of the Torture Prevention Directorate carried out 36 monitoring visits to Provisional Detention Isolators (IDPs) within the General Police Inspectorate (GPI) Territorial Inspectorates. As I mentioned, the Ombudsman proposed to carry out a wide-ranging monitoring of the decision-making process for detention application; detention of the person by the police; the transportation and escorting of the detained person, as well as the mechanism of placing in detention of detained persons. The Office of the People's Advocate has tried to observe the stages of the deprivation of liberty of the detained person from the first contact with the police employee until his placement in the penitentiary institution, disregarding the activity of monitoring the conditions of preventive detention. In this way, the Ombudsman monitored the mechanism for the implementation of the obligations assumed by the GPI following the „anti-torture reform”.

On March 30, 2018, thanks to the support of Soros Foundation-Moldova, 3 standard operating procedures were developed and approved:

¹⁹² Law number 320 of 27.12.2012 on police activity and police status.

The standard operating procedure for the placement of the detained person in the preventive detention facility (*Order of the GPI number 193/2018*)

The standard operating procedure for escorting and transporting the person deprived of its liberty (*Order of the GPI number 194/2018*)

The standard operating procedure for retaining (*Order of the GPI number 195/2018*)

Operating procedures are to fill in several gaps in the process of apprehending, escorting and detaining the detainees. But on the territory, these procedures were perceived differently. Most territorial Police Inspectorate have accepted them as information. Similarly, the visiting team found the following:

- The Code of Criminal Procedure contains general provisions on the trial, stages and detention procedure. However, for police officers, these procedures must be found in clear, explicit instructions, so that no derogations and deviations are allowed;
- CPT safeguards on the rights of the detained person (notification, access to the defense and examination by a doctor) are largely met by necessity title and less of the content. De facto, the detainee signs all the documents presented / refused, but the essence of detention, rights, etc. are passed to the defense.
- The MIA / GPI have no clear procedures on the procedure and detention process.
- Territorial Police Inspectorates carry out detention in a different way (procedural acts) while maintaining customary traditions;
- Territorial Police Inspectorates do not have standardized and up-to-date reports. Each territorial PI has its own minutes;
- The rate of detentions is relatively small compared to 3 years ago;
- The period of detention in IDP is less than 24 hours. Territorial PIs escort detainees at IUP within the Prisons;
- The PI escorts the prevention;
- IDP do not meet the minimum standards of detention;
- 10 IDPs are in general repair, meanwhile, PI premises are deplorable, thus creating an imbalance between police officers and detainees;
- Territorial PIs do not know / do not have / clear procedures for detaining minors, people with disabilities (especially intellectual, deaf-mute, etc.).

- Territorial PIs lack interpreters (especially from / in mimic-gestural language);
- Territorial PIs do not have sufficient staff (escort, guard and supervision), especially hired doctors, which influences the assurances provided by the European Anti-Torture Convention;
- Territorial PIs, partly have adequate means of transport for quality escort. Even if to some PIs have been assigned transport means (minibus type), they appear to be inadequate (narrow spaces for the seated person); they also do not have room for storing personal belongings;
- Most interviewees reported that they did not understand the reasons for the arrest and that the detention procedure had not been followed:

S Case (IUP Rezina/ 38 years)

- „, on ... at around 9.00 pm, while I was visiting my aunt, I was detained by Police Inspectorate officers.... The police officers put me down and then put on me the handcuffs and they got me in the car they came with. Along the way, until reaching the police inspectorate, I was threatened with the pistol by the police officers from the vehicle.” – „,when we got to the police inspectorate there we were expected by the criminal prosecution officer and the state-guaranteed lawyer”. - „, the state-guaranteed lawyer did not get involved in the minutes of detention, he signed it and left.” - „, the rights and obligations were brought to our attention by the criminal prosecution officer in common with the lawyer.” - „, the policeman has been brought to our attention and the right to silence and not to confess against oneself.”- „, relatives were informed of the detention by the police officers who detained me while we went to the police inspectorate. My brother working at the gas station was informed. - „, the medical examination was carried out by the feldsher of the institution in the guard unit. This examination was more superficial. - „, between 09.00 p.m. and 11.30 p.m. until I was placed in the Provisional detention facility of the Police Inspectorate ..., I was repeatedly assaulted and threatened with the gun by police officers who have transferred me to the police inspectorate dressed in civilian. - the prosecutor who ordered the forensic expertise was notified on the incident. The case is being investigated by the Prosecutor's Office ... who shall expose.

R. case (IUP Rezina/ 27 years)

- „,on ..., the sector police officer presented himself and told us that we needed to go to the Police Inspectorate..., to sign some documents (previously I beat the concubine).”

- „, at the police inspectorate we arrived at 02.00 p.m. until 02.40 p.m. I waited in the corridor near the door of the criminal prosecution officer until the lawyer guaranteed by the state came. The lawyer's actions were superficial, with no objections to my detention.”- „, our rights and obligations have been brought to our attention by the lawyer.” - „, my relatives were not informed of my detention.” - „, the right to silence and not confess against oneself was not brought to our attention by the employees of the inspectorate.”- „, approximately at 03.20 p.m. the retention report was finished.” - „, the medical examination was performed by the feldsher of the institution in the medical cabinet, after which I was placed in the IDP for 3 days.”

I. Case (IUP Cahul/ 17 years)

- On2018, approximately at around 2.00 p.m. the Sector Police of... came home and told me, „You got your identity card and come with us to the police. At home there was no one of the mature relatives, only the younger brother, the mother was gone to...”. From the minor's words, she knew the policemen visually, although none of them showed up. She was transported to the Police Inspectorate.... Approximately at 04:30 p.m. the minor was placed in the Provisional detention isolator of the Police Inspectorate...-„, I know why I was detained. I was given 2 years of probation. I did not present myself, and the Probation Office filed a lawsuit before the court, after which I was sentenced to 1.5 years in prison. That's what the policeman explained to me”. – „From the moment we reached the Police Inspectorate .., the service officer was told – „Do not let this girl go out”, after which they phoned someone and called Mr. ... Movileanu”. - „, The rights and obligations were explained to us by Mr. .. Movileanu (policeman) during preparation of the detention minutes.” „They gave me 4 sheets and a sheet of rights and obligations and they told me to first sign them, then I will read them”.- „, The lawyer guaranteed by the State was present during the drawing up of the minutes”.- The teacher or the psychologist during the detention and the drawing up of the detention minutes was not present.- „They explained to me that I can call my relatives. I did not want to call anyone. Then V. Movileanu called himself from his personal phone to my aunt's”. – „I was examined by the doctor from the Isolator the next day on ...2018”.

D. Case (IUP Cahul)

-„I was detained this year. When they came to detain me, I was alone at home in C village.... I do not remember the date of detention I know it was on a Saturday. I asked why

they detain me - to which they answered „You know why””.- „During the detention I was hit with „dubinka” (rubber stick). On this case, I wrote a complaint to the prosecutor's office. At the moment the complaint is being examined”.- „I was brought to the Police Inspectorate. and I slept for a night in the provisional detention isolator, and then they let me go home. They have not granted me any lawyer, my rights and obligations have not been explained to me by them”.- „The following Saturday they came, gave me some papers, then they brought me to Chisinau at... for carrying out the forensic expertise, where I staid 1 month. The lawyer was only at the Hospital”.- „From .. the police officers came in, took me and brought me to Penitentiary Number 5 Cahul”.- „I was not allowed to call and tell my relatives that I am jailed, neither at the police nor in the penitentiary”.- „The doctor examined me in the inspectorate and in the penitentiary”.

V. Case (IUP Cahul)

- „2 weeks ago I was at home with my friends (we were 3) when eight police officers approached, they told us to get in the car and took us to different police inspectorates. I was taken to the Police Inspectorate...”- „All those 8 police officers took my car and I do not know nothing about it”. – „The retention minutes was written to me in the Police inspectorate The State Attorney participated.” - „Rights and obligations have not been brought to my attention”.- „I signed some papers there, but I do not remember what”. – „I was not allowed to call my relatives and let them know I was detained”.

V. Case (IUP Balti/ 21 years)

- on2018 I was detained at N... at work in the field, people dressed in civilian came who presented themselves as criminal police and took me to the inspectorate in...., they said I had something to sign. Then they took me to court in Ungheni. At the inspectorate they detained me for 72 hours. The lawyer participated in the drawing up of the minutes of detention. The rights and obligations have not been explained to me but I have signed some sheets. The right to silence was not brought to my attention, but the lawyer started to talk with me and told me that „you see how you are going to do it ... the punishment is softer if you admit it”. When I walked into the isolator, the doctor examined me. Also at the inspectorate I was allowed to call.

Three rights of persons detained by the police are considered by the CPT to be of particular importance: the right of the person concerned to notify his detention to a third party of his choice

(a family member, a friend, the counselor), the right to access a lawyer and the right to request medical examination by a doctor chosen by him (in addition to any medical examination carried out by a doctor called by the police authorities).¹⁹³ In the CPT's view, these rights are three fundamental safeguards against the ill-treatment of detainees, which must be applied from the beginning of the deprivation of liberty, regardless of how it is described in the legal system in question (arrest, etc.)

The persons in custody of the police should in particular be informed without any delay of all their rights, including those referred to in paragraph 36. Furthermore, any possibility for the authorities to delay the exercise of one or other of the above rights in order to protect the interests of justice must be clearly defined and its strict application limited in time. In particular, the right to have access to a lawyer and to require medical examination by a doctor other than that brought by the police, the systems by which, exceptionally, lawyers and doctors can be chosen from pre-established lists made with organizations relevant professional, should cease any delay in the exercise of these rights.

The access to a lawyer of persons in police custody should include the right to contact and to be visited by a lawyer (in both cases the confidentiality of the talks must be ensured) and, in principle, the right of the person concerned to be present at the interrogation.

As regards the medical examination of persons in police custody, this should be done outside the hearings, and preferably not in front of police officers. Further, the results of each examination, the relevant statements of the detainee and the doctor's conclusions should be formally registered by the doctor and made available to the detainee and his lawyer.

Concerning the questioning process, the CPT considers that there should be clear rules or principles on how interrogation is conducted by the police. These should include, inter alia, the following issues: informing the detainee of the identity (name and / or number) of those present at the interrogation, the length of the interrogation allowed, intervals between interrogations and interruptions during interrogation, interrogation could take place if the detainee is asked to stand up during questioning, questioning people under the influence of drugs, alcohol, etc. The systematic recording of the time at which the interrogation begins and ends must be requested, of any request made by the detainee during the interrogation and of the persons present during each interrogation.

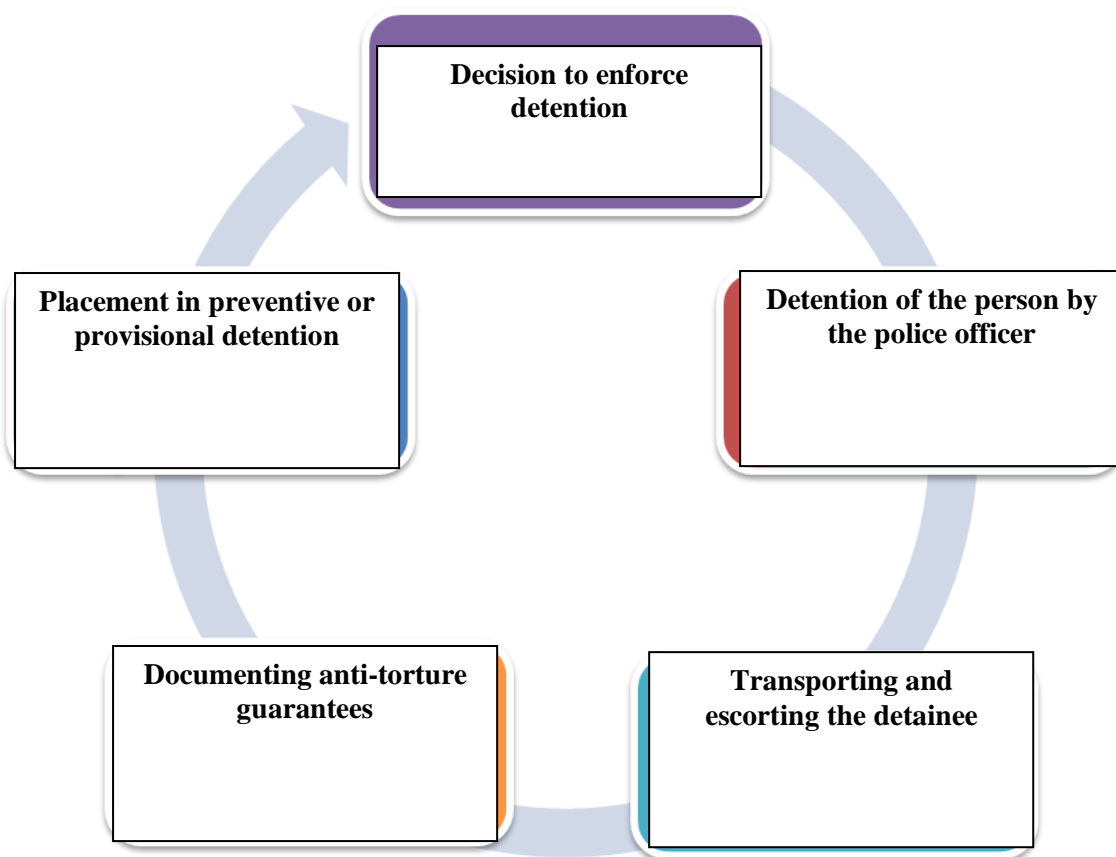
¹⁹³This right was later reworded as follows: the right to have access to a doctor, including examination, if the detained person wishes this, by a doctor of her choice (in addition to medical examination by the doctor requested by the police authorities).

The CPT emphasizes that electronic recording of police interrogations is another useful measure of security against ill-treatment of detainees (and a significant advantage for the police).

The CPT considers that the fundamental protection afforded to the persons in police custody would be strengthened (and the work of police officers could be relieved) if a single complete record of detention would exist for each detainee in which all aspects of detention would be recorded, and the measures taken against them (when he was deprived of his liberty and the reason why this measure was taken, when his rights, signs of injury, mental illness, etc. were raised, when he was visited and contacted by relatives, consultees and lawyers, when he was offered food, when he was interrogated, when he was transferred or released, etc.). For various reasons (for example, objects in the possession of the person, the fact of quoting, calling and giving up rights), the signature of the detainee must be obtained and, if necessary, the absence of a signature must be explained. Further, the inmate's attorney must have access to such a detention file.

The existence of an independent mechanism for examining complaints about the treatment of time spent in police custody is an essential safety measure.

The first contact with the police is a pretty sensitive element. The police worker's professionalism prevents the escalation of incidents when the person is deprived of liberty. It is vital for the detained persons to understand the reasons for deprivation of freedom of movement, duration, place of escort, notification of relatives / close persons and safeguards against abuse. A detention process involves at least five steps, listed below:



In 2018, 7496 people were detained, of which 155 were women and 105 minors. In total, 6289 persons were placed in the preventive detention isolators, of which only 2242 in the Chisinau Isolator.

RECOMMENDATION: The GPI (General Police inspectorate) is to apply the 3 standard operating procedures in practice and to adapt mechanisms to ensure the rights and freedoms of the person during detaining. The procedure and detention process should be uniform. The GPI territorial subdivisions should avoid the formal drawing up of documents. Similarly, the practice of de facto and de jure detention should be regulated so that the retention period does not exceed 3 hours.

Applying CPT „anti-torture” guarantees, *de facto*

Notification of arrest	Medical examination	Access to lawyer
<ul style="list-style-type: none"> - The criminal prosecution officer - The Guard Officer - The detainee personally personifies the relatives - Note in Minutes - Refusal to notify - Mobile phone - Unit of guard - Work phone - The detainee's phone - Formality procedure 	<ul style="list-style-type: none"> - Entry / exist from the isolator; - In the Feldsher cabinet / in the hall / office of the Criminal Investigation Officer (OUP) - Only if he alleges allegations of ill-treatment - 112 service - Center of Legal Medicine - Just one time - If there are visible body injuries - Formality procedure 	<ul style="list-style-type: none"> - List of public advocates - Service lawyers - Generally, public lawyers do not dispute the process of retention / presumption of innocence - Attorneys do not appear in the night and weekends - The Police Inspectorate provides transportation to the attorneys round-trip - Good connotation with lawyers in the territory - Formality procedure

Police custody is, in principle, of a relatively short duration. Consequently, the physical conditions of detention in police custody may not be as good as those in other places of detention where people can be detained for longer periods. However, some basic material conditions must be met.

All police cells must be reasonably sized for the number of people they are housed, adequate illumination (for example: sufficient to read, except for sleeping periods) and ventilation. It would be preferable for cells to have natural light. Then the cells should be equipped with rest facilities (e.g. a fixed chair or a bench) and persons obliged to stay overnight in custody must be provided with mattresses and clean beds.

Persons in custody should be allowed to meet their natural needs at the desired time under decent and clean conditions, be given adequate washing conditions. They should be given food at the right time, including at least a full meal (for example: something more substantial than a sandwich) in every day.¹⁹⁴

¹⁹⁴ Council for the Prevention of Torture (CPT) states that persons held in police custody for 24 hours or more should be offered, as far as possible, daily outdoor exercise.

The question as to what a reasonable size of a police cell means (or other type of dwelling for the detainee / prisoner) is a difficult issue. When making such an analysis, many factors have to be taken into account. In any case, CPT delegations feel the need for general principles in the field. The following dimensioning (seen as a desirable level rather than a minimum standard) is commonly used when analyzing a single-person police station cell for more than a few hours: 7 m² having at least 2 m between the walls and 2.5 m between the floor and ceiling.

Retention of up to 72 hours as a procedural coercive measure shall be ensured in provisional detention facilities, with the exception of the detention of militaries carried out in the garrison or in the military command of the garrison, respecting the fundamental human rights and freedoms and the appropriate conditions of detention¹⁹⁵.

At the same time, the rules of the Enforcement Code stipulate that the persons against whom the preventive arrest was applied¹⁹⁶ or applied the sanction of the contravention arrest,¹⁹⁷ are to be detained in penitentiaries. Thus, it is welcomed the fact of holding in separate spaces in prisons of the persons punished with administrative arrest, given that most people detained after the events of April 7, 2009, who were subjected to ill-treatment, served their administrative punishment in the isolators within the police commissariats.

However, the continued detention in the provisional detention isolators remains actual of the Police Inspectorates of the persons to whom the pre-trial detention was applied on small terms until their transfer to the penitentiary or the arrested persons are transferred from the penitentiaries to the IDP for later being present at court hearings. Under these circumstances, the issue of the constitutionality of the status of the respective places of detention is still unresolved in terms of the normative framework, which, in principle, exists in all District Police Inspectorates.

Only when legalizing the activity of temporary detention isolators and adopting clear placement rules, transferring detained and arrested persons and transparent rules for the conduct of criminal investigations will make it possible to exclude deviations from the rules of the Execution Code.

The first initiative of State Custody Reform started with the Concept of Reforming the Penitentiary System and the Action Plan for 2004-2020 for the Concept of Reforming the Penitentiary System, approved by the Government Decision number 1624 of 31.12.2003, where the construction of the 8 arrest houses was planned. In 2009-2010 these actions were

¹⁹⁵ Enforcement Code Article 175¹.

¹⁹⁶ Preventive arrest is provided by penitentiaries – Article 175 paragraph (9) of the Enforcement Code.

¹⁹⁷ Execution of the sanction of the contravention arrest is ensured by the penitentiaries – Article 313 paragraph (3) of the Enforcement Code.

stopped, one of the main causes being that the edifices to be built needed additional expenses, for which no funds were provided in the state budget in that period.

Isolation repair works started after the adoption of the Government Decision number 511 of 22.06.2010, which allocated 2 200 000 MDL for the repair of 30 provisional detention isolators within the police commissariats.

On December 12, 2016, the Government of the Republic of Moldova and the European Commission signed the Financing Agreement on Police Reform. The policy matrix on the implementation of Budget Support for Police Reform foresees among the objectives set also the reduction of ill-treatment, abuse and discrimination towards the persons in custody of the Police. According to the provisions of the Policy Matrix implementation of budget support for police reform for the years 2017-2020, during the target period, by the police are to be renovated at least 15 provisional detention isolators according to international standards. At least 100 temporary detention cells are to be renovated, at least 25 specialized units have been purchased for the transport of detainees, trained at least 250 police officers on human rights.

Therefore 14 IDPs have been proposed for modernization (*IDP Edinet, Riscani, Balti, Singerei, Ungheni, Chisinau, Criuleni, Hincesti, Anenii Noi, Causeni, Cimislia, Cahul, Comrat*).

According to its findings, in most cases, the premises of the provisional detention facility are still located in the basement of the Police Inspectorate. Therefore, they will never be able to provide detention conditions adapted to the detention of persons placed in provisional detention.

If we compare the material conditions of detention within the IDP in the years 2010-2018, we see a significant improvement in material detention conditions, but not to the extent of complying with international standards. Still substantial material conditions persist; poor cell condition, lack of mattresses, cloths and hygiene items; eating only 2 times / day; lack of feldsher; formal medical examination; lack of privacy in the sanitary block; insufficient artificial and natural light, penetrating odor, moisture; detention over 72 hours.

In the course of time, due to the effects of the reform initiated, the activity of 17 preventive detention isolators was stopped. According to up-to-date data, there are currently 96 detention facilities with a capacity of 242 people. 15 isolators are to be refurbished by 2022, of which 2 isolators include criteria for the detention of people with disabilities.

Generally, the Police Inspectorates observed the minimum detention period (24 hours) of the detainees. They escorted promptly at the receipt of arrest warrants, preventive

measures to the isolators of criminal prosecution. Thus they avoided the practice of keeping them strictly for 72 hours. However, this system has created inconveniences for prosecutors and investigative / prosecution officers who either have to go whenever it requires the interest of inquiries to the Criminal Investigation Isolator or to escort them back to the Police Inspectorate. Moreover, the Police Inspectorate that do not have isolators have been forced to maintain for hours (undocumented) the detained in the hall, in their offices or in the guard unit (chair). At this time, people could not leave the Police Inspectorate, but they were not detained as such. Such practices continue. The situation becomes more difficult when there are a number of witnesses, minors, etc. Everyone is kept in the hall of the institution without an official status. We assume that the GPI subdivisions must be equipped with retention chambers within the Police Inspectorate (except basements) equipped with furniture, drinking water and protection system. It is inadmissible to detain the person in the area reserved for the Guard Unit. Moreover, police employees must avoid keeping people in the Police Inspectorate without any procedural status. At the same time, all persons entering and leaving the Police Inspectorate are to be registered in the access register, with mandatory indication of the time of entry and the name of the employee concerned. Visitors can only find a minimum in the police premises.

Detention over 72 hours in preventive detention isolators is actual. The Ombudsman noticed that the persons were in the Briceni Isolation of the Police Inspectorate (1 person for 6 days and the other for 9 days) over 3 days; Soroca PI (2 persons with arrest warrant), Basarabasca PI (1 person for 4 days); Cahul PI (2-3 months). Among the reasons for staying over 72 hours is the lack of identity papers, in particular, **placement is maintained at the request of prosecutors or judges. Ombudsman emphasizes that such practices are to be abolished immediately. The prosecution and judicial authorities are obliged to respect the law, not to violate it. The detention in police isolators cannot exceed 72 hours, this rule is imperative and is to be respected. No act can exceed the fundamental safeguards.**

Subsequently, the People's Advocate observed the tendency of the GPI Subdivisions to escort the preventives from the penitentiary to the isolator, from the isolator to the court, etc. It seems that NPA is not against this fact, but on the contrary, it benefits from both the staff crisis and the poor quality of the means of transport. The GPI received 20 modern transport units, another 5 being purchased. At the same time, NPA does not have a sufficient car transport base to ensure full escorting needs. In its explanation, the GPI noted that the Law 320/2012 explicitly provides for the mission of escorting persons by the GPI, and NPA can escort only those persons in respect of whom the sentence has not become final.

Analyzing the regulatory spectrum, we observe that Article 21, Letter k) of the Law 320/2012 on police activity and police status expressly states that **police ensure the detention of detainees in detention facilities and their escort**. Therefore, the police's attributions are expressly limited to the detention of the detainees (72 hours) and the escorting of the detainees (to the criminal prosecution isolator). Moreover, the police attribution ceases as soon as the „detained” quality has changed to the „prevented / detained - by arrest warrant” or to his transfer to penitentiary custody. Subsequently, the mission of the penitentiary administration (Government Decision 437/2018), which performs the escort functions of **the convicts, the defendants and the offenders (including from abroad)**. Therefore, there is no legislative barrier to the malfunctioning of this process.

On December 12, 2018, the Law 219/2018 on the General Carabineers Inspectorate entered into force. The new institution replaces the Department of Carabineer Troops within the Ministry of the Interior and is invested with police functions. And in the event of war, it exercises the powers of the Armed Forces. The attributions of identifying, detecting of contravention facts / criminal offenses, in particular retention of persons, is a know-how for this entity. Formed on the old structure with the potential of young people incorporated in the military service (18-20 years), IGC will carry out detention of people, specific to some professionals (officials with special status). The institution of detention in Moldova is quite sensitive. Thus, IGC will invest enormously in increasing and strengthening the potential of carabineers to carry out the detention process and detention procedure. At the same time, the legislator should establish the mechanism of interaction between the carabineer and the police / criminal prosecution officer in the process of detaining people. At the moment, the Law 219 does not contain such provisions. Similarly, the IGC is to conduct training sessions for carabineers, in particular on the prevention of torture and ill-treatment.

5.5.3. Public Custody of Aliens

In 2018, the People's Advocate carried out five monitoring visits at the Center for Temporary Placement of Aliens (3 to the Torture Prevention Council and 2 to the Prevention of Torture Directorate). CPTS capacity is 138 beds. In the middle, 100 foreigners are detained. Placement takes place only through the conclusion of the courts. And, release can also take place through the Migration and Asylum Bureau's decision.

Generally, the material conditions are good. The doors of the chambers are loosened and closed by an electronic system by the supervisors, which in fact implies a similar

detention to the penitentiary institution. The Ombudsman has received allegations of ill-treatment, which have been partially confirmed. For fear of persecution, aliens could not realize their right to defense.

The most serious issue concerns the keeping in custody of asylum seekers (aliens who have filed asylum applications with the CPTS). National and international regulations prohibit the detention of asylum seekers. At the same time, the Migration and Asylum Bureau has argued that asylum seekers actually prevent the return decision, etc. or use it as a means of defending and delaying. Although the custody term cannot exceed 6 months, cases of aliens have been recorded over this term. The BMA avoids applying alternatives to the public detention of aliens.

Similarly, during the visits, the Ombudsman was informed about the detention of a foreign minor with adults. At the time of developing the authorities did not identify a solution to transfer the minor from detention.

The People's Advocate received complaints about the failure to draw up the minutes of detention of foreigners at the border; failure to communicate reasons / insufficient communication about detention, including foreigners' rights; initiating files for illegal crossing despite the request / proposal for protection; foreign detainees are held for long periods in office chairs, on the hallway in the BMA offices until the adoption of the placement solution; etc.

The issue of forced returns will be the subject of monitoring in 2019.

RECOMMENDATION: Courts will supervise the legality of aliens' detention for 6 months (their own placements conclusions). The BMA is about to release the juvenile from custody. The BMA is encouraged to apply alternatives to foreign public detention.

5.6. Local Commissions for Monitoring Places of Detention

In order to ensure the observance of human rights through the adoption of the Law on Civil Control on the Observance of Human Rights in Institutions Enforcing the Detention of Persons Number 235 of 13.11.2008, in each level-two administrative-territorial unit, monitoring committees were set up to monitor the conditions of detention of the detainees and treatment applied to them.

According to the Law number 235, each monitoring committee is to be composed of 7 members on a two-year mandate, representatives of civil society. The nominal composition of the monitoring committee is approved by the decision of the appropriate local council. The quality of member of the monitoring committee can be held by a person who has reached the age of 25, has a worthy behavior in society, has no criminal record and has been

proposed in that capacity by a public association that has been active for at least 5 years, one of its statutory purposes being the protection of human rights. If the public associations do not submit candidates for membership as a member of the monitoring committee, they are proposed by the local council, after prior consultation of the Office of the People's Advocate.

At the same time, the legislation in force clearly establishes that members of the monitoring committees may not be members the persons holding public dignity, civil servants, judges, prosecutors, workers of the national defense bodies, of state security and public order, lawyers, notaries and mediators.

The Commission for the monitoring of places of detention has the following rights:

- a) to assess the detainee's detention conditions and the treatment applied to them;
- b) to have unrestricted access to any sector of the institution that ensures the detention of persons, except for security purposes, at any time of the visit and without prior approval, subject to compliance with the security rules and the regime in the institution;
- c) to request from the administration of the detention facility as well as from the public administration authorities all the information it deems necessary for monitoring, except for information constituting state secret;
- d) to talk with detainees, only with their consent, without witnesses or under the visual supervision of the administration if the security conditions require it;
- e) to refer and send demarches to state authorities to carry out monitoring tasks on the observance of human rights in the institution that ensures people's detention;
- f) to receive complaints about the observance of human rights in the institution that ensures the detention of persons both from detainees and their relatives, as well as from other natural or legal persons;
- g) at the request of the court or the administration of the institution that ensures the detention of the persons, to present their views on the possibility of conditional release of the prisoner in advance, on the replacement of the unexecuted part of the punishment with a milder punishment, on the release of the punishment of minors, punishment due to the change in the situation, the release of punishment due to the change in the situation, the release from punishment of seriously ill persons, the application of the amnesty act, and, at the request of the President of the Republic of Moldova, the possibility of applying the pardon act.

The Monitoring Committee has the task of verifying and supervising the conditions of detention and the manner in which detainees are dealt with in the institution that detains the

persons within the administrative-territorial unit in which the commission was established and its conclusions are expressed in a report on the facts found.

In July 2018, the Office of the People's Advocate conducted a questionnaire that reported the situation as follows:

Local public administration II	Situation up to 2018	The situation in 2018
Anenii Noi District Council		At level of second-level administrative unit there is no local commission for the monitoring of detention institutions.
Basarabasca District Council	Committee established by the decision of the Basarabasca district council number 02/17 of 12.04.2013	
Briceni District Council		The committee was not created
Cahul District Council	Committee established by decision of the Cahul District Council number 01/07-IV of 22.03.2016	
Cantemir District Council		There are no detention facilities
Calarasi District Council	Committee established by decision of the Calarasi District Council number 03/05 of 04.05.2012	In the process of reviewing the composition of the committee
Causeni district council	Local Commission established by decision of the Causeni District Council number 11/9 of 22.12.2009 (repealed) and by the decision number 8/18 of 09.12.2011 the district commission was established	The Commission is not working (it activated during 2012)
Cimislia District Council		The committee was not created due to lack of places of detention
Criuleni District Council		The Council did not need to set up the monitoring committee.
Donduseni District Council		The committee was not created due to lack of places of detention
Drochia District Council		The committee was not created
Dubasari District Council		The committee was not created

Edinet District Council		
Falesti District Council		The committee was not created due to lack of places of detention
Floresti District Council		The committee was not created due to lack of places of detention
Glodeni District Council		
Hincesti District Council		The committee was not created because of the lack of those interested
Ialoveni District Council		The committee was not created due to lack of places of detention
Leova District Council	The local committee was created on the basis of the decision of the District council number .4.2 of 06.08.2009 03.08.2011 – changes in committee composition	Decision to set up in 2018 (draft)
Nisporeni District Council	The committee was created on the basis of the decision of the District council number 3/18 of 21.05.2009	The committee has ceased its activity due to the lack of institutions for the detention of persons
Ocnita District Council		
Orhei District Council		It was not established
Rezina District Council		
Riscani District Council		The committee was not created due to lack of places of detention
Singerei District Council		The committee was not created due to lack of places of detention
Soroca District Council	The committee was created on the basis of the decision of the Soroca District council number 10/11 of 16.08.2016	
Straseni District Council		The committee was not created due to lack of places of detention
Soldanesti District Council	A new committee was created	
Stefan Voda District Council		
Taraclia District Council	The committee was established by decision of	

	Taraclia District Council number 2/5 of 06.04.2016	
Telenesti District Council	Telenesti District Council approved the composition of the commission by the Decisions number 4/2 of 15.07.2009 and number 6/14 of 23.08.2011 (with mandate for 2011-2013)	
Ungheni District Council		The committee was not created due to lack of places of detention
Chisinau Municipality Council		It was not established
Balti Municipality Council	It worked between 2012 and 2014	Since 2015, the commission has not been created due to lack of those interested
Comrat Municipal Council		There are not reasons for the committee's formation because they do not have places of detention.

RECOMMENDATION: The Government is to decide on the need for local monitoring commissions or to modify the legal framework on the attractiveness of this mandate.

IV. HUMAN RIGHTS EDUCATION AND ACTIVITY OF PROMOTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF THE OFFICE OF THE PEOPLE'S ADVOCATE

Human rights education

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and other international treaties stipulate that education must pursue the plenary development of human personality and strengthen respect for human rights and fundamental freedoms.

In December 2011, the UN General Assembly unanimously endorsed the UN Declaration on Human Rights Education and Training, which became one of the international policy papers, which requires States to commit to human rights. This document, in a focused form, contains a number of relevant human rights education and commitment principles. In particular, Article 2 states that right to education and training in the field of human rights is a fundamental right inalienable to the inherent dignity of the human person and is closely linked to the effective realization of all human rights in accordance with the principles of universality, indivisibility and interdependence of human rights.

At the same time, under Objective 4, „Quality Education”, target 4.7 of Agenda 2030 for Sustainable Development, sets that by 2030, it will ensure that „all students acquire the knowledge and skills necessary to promote sustainable development, including others through education for sustainable development and sustainable lifestyles, human rights, gender equality, promoting a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development”.

Since 2005 there is the World Human Rights Education Program, developed by the United Nations, which is being implemented in several countries.

The World Human Rights Education Program focused, in the first phase, on integrating human rights education into primary and secondary education; in the second phase, the integration of human rights education in higher and university education, implicit training in the field of human rights for teachers and educators, civil servants, law enforcement and military personnel. The third phase, which expires in 2019, besides the actions related to the implementation of the objectives of the previous stages, included the promotion of human rights training for media professionals.

In line with the Resolution number 39/3 of the UN Human Rights Council, adopted on September 27, 2018, *young people will be the target group of the fourth round of the World*

Human Rights Education Program (2020-2024). In the resolution, the Member States and their relevant governmental authorities, other stakeholders, are urged to step up their efforts to implement, disseminate and promote universal respect and understanding of the United Nations Declaration on Human Rights Education and Training. States are encouraged to develop action, comprehensive and sustainable national action plans for human rights education and training with dedicated and adequate resources.

The Republic of Moldova has arrears in the implementation of the Global Program for Human Rights Education. There are gaps in the integration of human rights education in higher and university education, implicitly the training in human rights of teachers, civil servants, employees of the law system. Employees of the Office of the People's Advocate have repeatedly encountered situations where civil servants, justice professionals and representatives of different levels of authority have shown a misunderstanding of the role and attributions of the Office of the People's Advocate as a national institution for the protection of human rights, did not know or misinterpreted international standards in the field of human rights. This is deduced from the answers to the approaches and recommendations of the People's Advocates.

Also, the practice of drafting normative and legislative acts, national policies and strategies, based on the Human Rights Based Approach (HRBA) principles, it is not yet rooted in the Republic of Moldova¹⁹⁸. The Office of the People's Advocate has proposed the creation of a human rights training center next to the institution, whose work is to be focused on training of civil servants, including on the application of the Human Rights Based Approach.

Meanwhile, the Office of the People's Advocate has identified several target groups of professionals who will be trained on the principles of the Human Rights Based Approach.

The low degree of knowledge of the mission and functions of the People's Advocates, as well as of the national mechanisms for the protection of human rights, is also apparent from the large number of appeals to the Office of the People's Advocate that do not fall within its competence. Most addressees do not know where to turn to claim their injured rights.

The same has been confirmed in polls made lately. Thus, according to the results of the study „Perceptions regarding the observance of human rights in the Republic of

¹⁹⁸ Human Rights Based Approach is a way of thinking and approaching of the state, of the relations between public authorities and people, as well as the development process centered on people and their rights. Human Rights Based Approach demands that the state, the public authorities pursue the aim of ensuring full human dignity, fundamental human rights, the free development of human personality, social justice and pluralism. Human Rights Based Approach demands that the objectives of the state and of the authorities be „about people” and „for people”, and their activity to focus on creating and expanding opportunities for people.

Moldova” performed at the order of the Office of the People's Advocate in autumn 2018¹⁹⁹, only 10% of respondents think they are well informed about their own rights. More than half of respondents believe that there is a lack of knowledge amongst the population about human rights. Although in 2018, compared to 2016²⁰⁰, when a similar study was carried out, there is a slight decrease in the number of respondents who consider themselves very well informed (10.3% vs. 11.1%), there is an increase in the respondents who consider themselves rather informed (42.6% vs. 41.5%). Also, the share of citizens who consider themselves not informed dropped significantly (12.2% in 2018 compared to 16.5% in 2016). People in socially vulnerable groups are also least well-informed about human rights.

The study also demonstrates the low accessibility of information. More than half of respondents believe that there are some language barriers to human rights information. Bureaucracy is seen as a barrier to free access to human rights information. People are apparently unsure of their human rights knowledge, which can be determined by the way in which human rights messages and information are transmitted, as well as the content of this information.

Authorities are working to change the situation and promote the culture of human rights, but so far without achieving the expected results²⁰¹.

As mentioned in the Study conducted by the NGO Promo-LEX „Education for Human Rights in Pre-University Education in the Republic of Moldova”, made public in 2018, the legal and educational policy framework in our country presents a modern vision of education for rights and is in line with the latest international developments. The implementation of these principles is, however, deficient. In the Republic of Moldova there are, at least theoretically, all the mechanisms recommended by international standards and literature: civic education (including Human Rights Education) in the compulsory curriculum; offering relevant optional courses; cross-cutting approach to all disciplines as well as extracurricular activities. Of these, in practice, the most important mechanisms remain the compulsory course of civic education and extracurricular activities²⁰². The study further states that „the educational environment remains hierarchical, dominated by an authoritative view, largely inadequate to the development of a culture of rights”.

In March 2018, the Ministry of Education, Culture and Research initiated a project to re-conceptualize the Civic Education discipline, which has been implemented since

¹⁹⁹ http://ombudsman.md/wp-content/uploads/2018/12/Perceptii-DO_Romana-1.pdf

²⁰⁰ http://ombudsman.md/wp-content/uploads/2016/12/eng-raport_do_final_pentru_tipar_1.pdf

²⁰¹ In the National Action Plan on Human Rights for the years 2018-2022, Education Development Strategy for the years 2014-2020 „Education-2020” provides for several actions on human rights education.

²⁰² https://promolex.md/wp-content/uploads/2018/11/Raport_EDOM_RO_web.pdf

September 1, the Civic Education discipline was replaced by two new disciplines: Education for the Society²⁰³ and Personal Development²⁰⁴. At the same time, there are optional disciplines with elements related to human rights, such as Education for Human Rights²⁰⁵, Education for the media, Health education for pupils in primary and secondary schools.

Shortly after the introduction of the two new compulsory disciplines, the experts in the field drew attention to problems that might hamper the effective implementation of the given project: insufficient training of teachers to teach the new subjects; the existence of limited educational resources for EDU.

The People's Advocate appreciates the openness of the authorities to apply modern educational standards in this field, encouraging the Ministry of Education, Culture and Research to monitor the situation of teaching new disciplines and intervene with the necessary adjustments if necessary. The authorities will also undertake rigorous actions to ensure the training of teachers involved in teaching new subjects.

The People's Advocate proposes in 2019 the monitoring of the state of affairs regarding the training of the People's Advocate and in the perspective of teaching the subject of national and international mechanisms for the protection of human rights at law schools in the country.

The People's Advocate encourages the Ministry of Culture, Education and Research, other institutions responsible for carrying out the actions foreseen in the human rights education section of the National Human Rights Action Plan for 2018-2022, including the development and application of school and university curricula through gender mainstreaming, school curriculum including human rights modules, integrity, culture of peace and nonviolence, global citizenship and appreciation of cultural diversity.

The People's Advocate emphasizes the importance of widespread cultivation of knowledge and skills to promote sustainable development, cultural diversity, human rights, gender equality, the culture of peace and non-violence in the Republic of Moldova, to build a prosperous society, human rights and human dignity are respected. To this end, the efforts of all actors that can contribute to enhancing the culture of human rights in society: public authorities, national human rights institutions, civil society, citizens remains to be conjugated.

²⁰³ From the Promo-LEX Report: Education for the Society includes all the elements of education for citizenship. For teaching, a mandatory weekly hour is allocated throughout the gymnasium and lyceum cycles.

²⁰⁴ From the Promo-LEX Report: Personal Development will include a variety of themes (self-knowledge, health, careers, personal security, multi-dimensional quality of life, etc.). It will also be mandatory throughout pre-university education.

²⁰⁵ The project „Equality Starts with Education”, implemented by Amnesty International Moldova, in partnership with the Ministry of Education.

RECOMMENDATIONS:

The People's Advocate recommends that the authorities make every effort to establish and implement a human rights education and training program in line with international standards and take best practice in this field from other countries.

The activity of promoting the human rights and freedoms of the Office of the People's Advocate

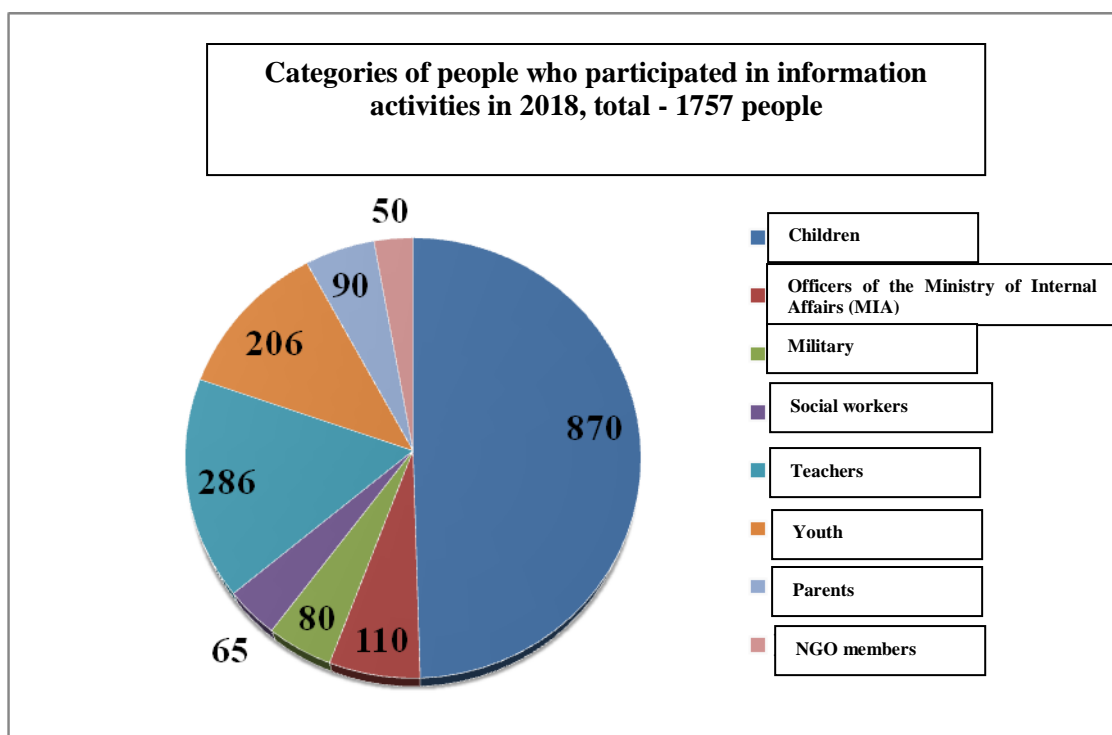
In accordance with the Paris Principles (4.7), national human rights institutions have as their priority direction „to raise awareness of human rights ... to raise awareness of the importance of respect for human rights, in particular through information and education and through the use of all media.” At the same time, Article 28 of Law number 52 on the People's Advocate (Ombudsman) provides that the People's Advocate is conducting activities to familiarize society with human rights mechanisms through information and training actions, drafting and disseminating information material on human rights and freedoms, contributing to the strengthening of education in the sphere of human rights, cooperation with the media.

In order to carry out its tasks of promoting human rights, the Office of the People's Advocate carried out 104 training and information actions, other events involving 3700 people, the promotion of human rights being also one of the priorities of the Office of the People's Advocate in 2018.

Promoting human rights and fundamental freedoms through information actions

In 2018, the Office of the People's Advocate organized 49 information activities (*meetings where lectures, discussions were held*) in the field of human rights, attended by more than 1700 people: children, youth, pedagogues, MIA officers, members of non-governmental organizations, military, social workers, etc.

Among the participants in these activities, children are the most numerous group, with about 870 children participating in about 40 activities. Various topics have been addressed: the rights of the child, the work and attributions of the People's Advocate for children's rights, children's security in the on-line environment, mechanisms for protection against violence against children, children's participation and others. 206 young people participated in several activities focused on their interests and age: social activism and youth rights, realization of youth rights, combating violence, internet security. Within the information activities, 286 teachers were trained, who learned about the activity and attributions of the People's Advocate and the People's Advocate for the children's rights, about the ways of reacting and the existing mechanisms of fighting and prevention in cases of violence in school, as well as the teachers have been informed about the provisions of labor law.



Last year, the Office of the People's Advocate also organized 26 international and national conferences, roundtables, workshops, contests, public awareness activities, with over 1640 attendees.

Several events were held by the Office of the People's Advocate in the context of the International Day for the Rehabilitation of Torture Victims, with the participation of members of the Torture Prevention Council, representatives of NGOs active in the field, the National Penitentiary Administration (NPA).

Thus, a Weekly Torture Week was held on June 25-29. It included roundtables in which members of the Council for the Prevention of Torture (CPT) and employees of the Office of the People's Advocate discussed the situation regarding the prevention of torture with representatives of the Ministry of Internal Affairs, the National Administration of Penitentiaries, the Ministry of Health, Labor and Social Protection, regarding the provision of medical care, the conditions of detention in the places of deprivation of liberty, implicitly within the temporary detention isolators of the General Police Inspectorate (GPI).

During the mentioned period a meeting of ombudsmen Mihail Cotorobai and Maia Banarescu took place with the representatives of the civil society working in the field of combating and preventing torture.

On June 26, the International Day for the Support of Torture Victims, the Office of the People's Advocate organized an Action to Commemorate Victims of Torture and Solidarity Against Torture „Human Chain Against Torture”. The participants - People's Advocates,

employees of the institution, members of the Council for the Prevention of Torture, representatives of NGOs, the National Penitentiary Administration, formed a human chain of torture and support for torture victims. They displayed banners, anti-torture panels, lit candles and launched lanterns in memory of torture victims.

In the context of actions to prevent torture and ill-treatment, the Office of the People's Advocate transmitted to the National Penitentiary Administration 18 panels of informative materials in the field of torture prevention and stickers with the message „People's Advocate-Supervised Space”, which will be located in penitentiary institutions in the country.

Various activities included the Decade on Human Rights, organized by the Office of the People's Advocate on December 3-14. The 2018 edition of the Decade was dedicated to the 70th anniversary of the Universal Declaration of Human Rights.

During this period, at the initiative of the Office of the People's Advocate, in the primary and secondary education institutions were held thematic lessons on the principles and values of the Universal Declaration of Human Rights.

On December 3, the International Day of People with Disabilities, the Office of the People's Advocate, in collaboration with the representatives of the National Youth Council and the Association of the Blind, organized an awareness raising action on the issues faced by people with disabilities related to access to the public space: **„An hour in the life of a blind citizen in Moldova”**. To this end, together with the invited journalists from four TV stations, a blind person from the block where he lives up to the minibus station was taken.

The participants in the activity talked with the blind about the barriers he is facing in order to travel on this segment of the road, but also about the problems related to the lack of physical accessibility in the capital, the social and informational infrastructure. The purpose of the Office of the People's Advocate's work was to raise awareness of the public opinion, municipal decision-makers on the issues of blind people, people with disabilities as a whole, and the importance of creating conditions to ensure their social inclusion.

On December 4, the Office of the People's Advocate co-organized the Annual Conference „Rights of Persons with Disabilities on Both Banks of the Dniester River - Realities and Perspectives” alongside the Center for the Rights of Persons with Disabilities, the Association „Motivation”, the Alliance of Organizations for Disabled Persons, supported by the UN Office for Human Rights and the Joint Venture Swedish Development Partner.

On December 6, the Office of the People's Advocate organized the Forum of Human Rights Defenders. The event was celebrated on the 20th anniversary of the UN Declaration on Human Rights Defenders, the 10th anniversary of the adoption of the Council of Europe

Declaration on Human Rights Defenders, the 70th Anniversary of the Universal Declaration of Human Rights.

At the Office of the People's Advocate Forum, the situation of human rights defenders in the Republic of Moldova was discussed in the light of the UN Special Rapporteur's recommendations on human rights defenders made public on the occasion of his visit to the Republic of Moldova from June 25-29, 2018; the role of the Office of the People's Advocate and of international organizations in the promotion and protection of defenders of rights and values enshrined in the Universal Declaration of Human Rights.

Among the participants were representatives of non-governmental human rights organizations, including from the Administrative Territorial Unit of Gagauzia and the Transnistrian region, the National Confederation of Trade Unions of Moldova, journalists; lawyers, representatives of the Office of the United Nations High Commissioner for Human Rights of Moldova, the OSCE, the Council of Europe, diplomatic missions in the Republic of Moldova.

On International Human Rights Day on December 10, the Office of the People's Advocate presented the results of the sociological study „Perceptions of Human Rights in the Republic of Moldova”, second edition.

The Office of the People's Advocate has proposed to carry out such studies every two years to assess the dynamics of perception of respect for human rights. A similar research was carried out in 2016.

Also in the framework of the Human Rights Decade, in addition to the Office of the People's Advocate, the Anti-Torture Student Forum was established as a platform for students from higher education institutions in the Republic of Moldova. The Mission of the Students Forum is to identify future lawyers and human rights activists who will engage in human rights monitoring activities to prevent torture and ill-treatment in the Republic of Moldova.

Among the more important information activities during 2018 were the presentation on January 19 at a public hearing of the conclusions of the People's Advocate of the Special Report on the results of the case examination of a person with disabilities who did not receive adequate medical assistance in time. At the meeting were invited stakeholders responsible for the reference areas of Parliament, Government, representatives of NGOs.

On the occasion of the European Day for Combating Discrimination against Persons with Disabilities, which was held on May 5, People's Advocates held a public meeting of the Council of Experts to Monitor the UN Convention on the Rights of Persons with Disabilities. At present, the Office of the People's Advocate is at the stage of

reconceptualization of this entity, in the context of the expiry of the mandate of the members of the Council, but also of the changes in the structure of the institution.

Year 2018 was a jubilee year for the National Human Rights Institution, which marked 20 years since its creation. On this occasion, **on September 27-28, the Office of the People's Advocate organized an international conference on the topic „Evolution and Role of National Institutions for the Protection of Human Rights in Modern Society”.**

Among the 80 participants at the international conference were partners from the country and abroad, dignitaries, former ombudsmen, representatives of the scientific community, diplomatic corps and civil society.

The event was attended by the Secretary General of the International Ombudsman Institute, the representative of the European Network of National Institutions for the Protection of Human Rights (ENNHRI), the Ombudsmen of Lithuania and Ukraine; deputies of the People's Advocate in Romania and the Armenian People's Defender

At the conference was discussed the evolution of the institutions of ombudsmen and national institutions for the protection of human rights, including the one in Moldova, a topic addressed during a special session. Issues concerning the role of the institutions of ombudsmen and national institutions for the protection of human rights in the modern society were discussed in order to extend their mandate from the moment of its occurrence until now.

In 2018, it was also 10 years since the institution of the Ombudsman for Children's Rights. The anniversary moment was recorded within the National Conference „10 Years for the Rights of the Child in the Republic of Moldova” and the Children's Forum, organized on November 24, by the People's Advocate for the Children's Rights. The national conference was also occasioned by the 25th anniversary of the entry into force for the Republic of Moldova of the UN Convention on the Rights of the Child. The National Conference and the Children's Forum gathered over 100 participants, including over 40 children.

On the occasion of the 10th anniversary of the institution of the Ombudsman for Children's Rights, a drawing competition „10 rights in colors” was organized, attended by more than 600 children. The winners (30 children) were invited on September 15 to an event that took place at the National Art Museum, where they were awarded the most successful works.

An important field in the work of the Office of the People's Advocate is the promotion and protection of children's rights.

In 2018, the People's Advocate for Children's Rights organized with the financial support of UNICEF Moldova two regional forums to discuss the issue of violence against children.

Thus, on 28 November, such a meeting took place in Comrat, attended by 47 children from several localities in the south: Congaz, Chirsova, Dezghingea, Tomai, Avdarma, and on November 17 in Balti with the participation of 50 adolescents from the northern districts of Moldova. Within them, a dialogue with the children was initiated on the proposals that they can submit to develop a plan of action to prevent violence in the school environment, but also in the family.

The pupils learned more about the Children's Ombudsman, what attributions he has, how he can help children when their rights are violated, they have been informed about national tools and mechanisms for preventing and examining cases of violence against children.

Traditionally, on the occasion of the International Children's Day, June 1, the People's Advocate for the Protection of Children's Rights organized in Stefan cel Mare si Sfant Park a raffle dedicated to children entitled „Know Your Rights”. At the same time, on May 14, 2018, on the occasion of the International Family Day, at the Chisinau Municipal Library „B. P. Hasdeu”, the People's Advocate for the Children's Rights initiated public debates on the topic „Family in the Republic of Moldova environment friendly to the child?”.

Considering the concern of the Children's Ombudsman to respect the rights of children in penitentiary institutions together with their mothers, on July 31, 2018, in collaboration with the „Vitae” Public Association, the People's Advocate for the Children's Rights organized the National Conference with the topic „Respecting the rights of the child who are in penitentiary institutions together with their mothers in terms of international standards and good practices. An exchange of views on this issue was carried out in order to identify the solutions for the problems existing in the Republic of Moldova in the field.

Promoting human rights through training

Promoting human rights through training has become a priority for the Office of the People's Advocate over the past years. The training offers the opportunity to bring human rights knowledge of a certain level to the target audience of this activity, and training activities involve serious training of trainers, activities are geared towards meeting the identified needs of target groups of trained people.

In order to successfully implement the training programs, which will be designed on the basis of the training activities methodology developed by the Office of the People's

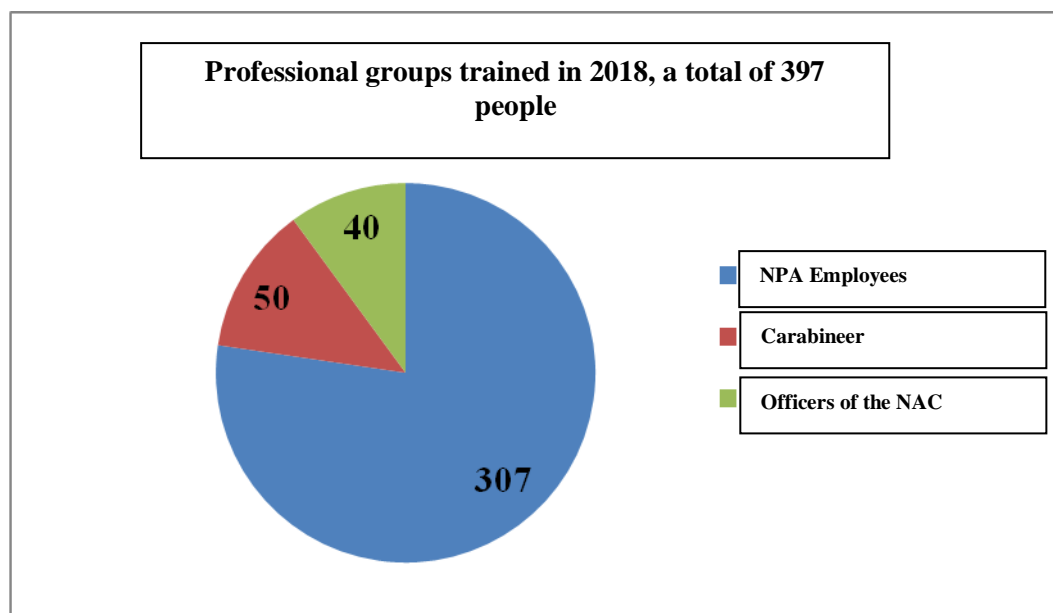
Advocate (OPA), it has become necessary to strengthen the skills of the Office of the People's Advocate as trainers.

In 2018, the Office of the People's Advocate strengthened its human rights training capacities and at the beginning of the year staff training was organized. The objective of the activity was to establish and develop the training capacity of the Office of the People's Advocate.

Besides the elaborated methodology, the process of organizing the training activity was regulated by several institutional acts that establish the procedure and the steps of the training activities. The purpose of these documents was to regulate those activities and establish an internal institutional procedure to deal with both the external demands and the implicit risks from the outside and the inside of the planned training activity, by virtue of the complexity of both the process and of the activities itself.

In order to achieve the proposed objectives, the representatives of the Office of the People's Advocate worked in 2018 in the framework of several training partnerships: with the National Administration of Penitentiaries, the Department of Carabineer Troops, the National Anti-Corruption Center.

In 2018, the employees of the Office of the People's Advocate organized 29 training activities with the participation of 397 people.



Significant results have been obtained in this area, in the collaboration of the Office of the People's Advocate with the National Penitentiary Administration (NPA). As a result of joint efforts by the Office of the People's Advocate (OPA) and the NPA Training Center, the human rights protection curriculum for the penitentiary system has been prepared. Thus, the Office of the People's Advocate (OPA) trainers trained several categories of NPA staff: new

employees during an initial training course and other employees in continuous training, including the heads of penitentiaries or their deputies.

Besides the introductory notions of the human rights mechanisms that operate within the penitentiary system, the trainees have acquired initial or appropriate knowledge of the level of professional training in the field of respecting and defending the rights of the child within the penitentiary system, about the phenomenon of torture, ill-treatment, inhuman and degrading treatment, combating and preventing them. Namely this professional group was the core auditor of the Office of the People's Advocate, these courses allowed the practical implementation of the developed methodology and the testing of the methods used by the trainers. With certainty of the need to continue working with this professional group, to increase the training of the trainers, the teaching and the quality of the taught material, this can be considered precious to the Office of the People's Advocate (OPA) through the accumulated experience.

In 2018, a Collaboration Agreement with the Department of Carabineer Troops (DTC) was signed which provides for a series of human rights training activities, especially in the light of changes in legislation that concern carabineers' work. In order to achieve the agreement provisions, the Office of the People's Advocate (OPA) staff has organized several focus groups with the DTC staff. The purpose of these actions was to establish the training needs of this group of professionals in accordance with the established internal methodology and procedure. This exercise was attended by the Office of the People's Advocate (OPA) trainers and other employees; the work took place under the guidance of the expert. Subsequently, the Office employees analyzed the results obtained in the focus groups and started developing the training program for carabineers.

Also, the Office of the People's Advocate, as a result of a collaboration agreement with the National Anticorruption Center, participated in several trainings with different groups of professionals on the topic „Internal and external mechanisms for reporting / warning of corruption cases”.

According to the results of the questionnaires proposed for completion in the trainings, the rate of persons who have improved their knowledge of the training constitutes 66%.

Promotion activity through the development and dissemination of informative materials on human rights and fundamental freedoms

The development and dissemination of information material is one of the ways of human rights propagation used by national human rights institutions.

In 2018, the Office of the People's Advocate published 10 titles of informative materials: the Report on the Observance of Human Rights and Fundamental Freedoms in the

Republic of Moldova in 2018; the English summary of the Report on respect for human rights and fundamental freedoms in the Republic of Moldova in 2017; Report on the observance of child rights in the Republic of Moldova in 2018; Brochure - the National Institution for the Protection of Human Rights in the Republic of Moldova at the age of 20 (in Romanian and English versions); the leaflet „Universal Declaration of Human Rights - 70 years, the Office of the People's Advocate - 20 years”; The recommendations (final remarks) of the UN Committee on the Rights of the Child issued during the examination of the fourth and fifth periodic combined reports; „Who is the People's Advocate?”, „Who is the People's Advocate for the Children’s Rights?”.

Collaborating with the mass media for information and raising awareness of the importance of respect for human rights

People's Advocates held three press conferences (on the findings of ombudsmen on the observance of human rights in 2017, on the occasion of the International Street Children's Day, on the situation of children in detention), in the country's mass media there were just over 400 appearances on the work of ombudsmen or the Office of the People's Advocate.

In the reference period, the People's Advocates have responded to several mass media signals about possible violations of human rights. They referred as bases to issues such as respect for the right to assembly, freedom of the press and freedom of expression, condemnation of hatred and intolerance, excessive application of arrest, People's Advocate's reactions in the cases of Sergei Cosovan and David Davitean, the decision of the authorities on expelling a group of Turkish citizens.

In order to strengthen the relationship with the mass media, the Office of the People's Advocate aims to create a network of journalists specialized in human rights issues, while remaining open for collaboration with all journalists interested in human rights issues.

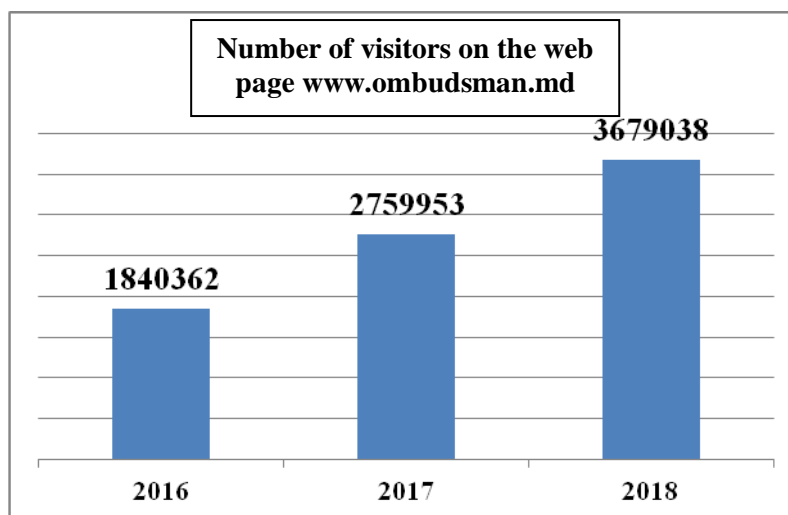
Website of the Office of the People's Advocate

In 2018, the Office of the People's Advocate produced a new version of the institution's web site within the project „Strengthening the technical capacities of national institutions for the promotion and protection of human rights” funded by the Ministry of Foreign Affairs of Denmark and implemented by the United Nations Development Program.

With the same dedicated address www.ombudsman.md, the official page of the institution has acquired a new image through design and new content. The site has all the arsenal of adaptations needed for visually impaired people, the text can be seen in contrast, black and white, and can be heard. The new site comes with an optimized structure based on the experience of several years and several versions of the site. In addition, the site will function traditionally in the three languages: Romanian, Russian, English.

Traditionally, the Peoples Advocate for Children's Rights has its own homepage with its own menu, where the reports, important documents, and Children's Page will be placed in a functional and adapted version for the age of children.

In 2018, the site had 973 085 more visitors than the previous year, **reaching the 3 679 038 visitors.**



The official website of the Office of the People's Advocate, the site www.ombudsman.md, also ensured in 2018 the communication of the institution with the society, informing it in the field of human rights. The material published on the site in 2018 reflected the work of the institution, the most important events, provided the public with useful information in the field. Thus, through the official website, the Office of the People's Advocate has achieved the objectives of promoting human rights.

External cooperation

In 2018, the People's Advocates and the Office of the People's Advocate as a whole actively collaborated with the institution's external partners. The Ombudsmen participated in most events held by the international security profile structures to which the Office of the People's Advocate (OPA) is a party or by international institutions of human rights, such as the Global Alliance of National Institutions for the Protection of Human Rights (GANHRI), the European Network of National Institutions for the protection of Human rights (ENNHRI), the Association of Mediators and Francophone Ombudsmen (AOMF), the International Ombudsman Institute (IOI) and the European Ombudsman Institute (EOI), European Network of Ombudsmen for child protection (ENOC), ECRI, OSCE. People's Advocates also participated in events organized by their counterparts in Armenia, Georgia,

France, Bulgaria, presenting information on the human rights situation in the Republic of Moldova and the challenges faced by ombudsmen in their work.

For the first time, the institution hosted an event organized by an international organization - the European Network of National Institutions for the Protection of Human Rights (ENNHRI). The event took place on March 5-7, in Chisinau, in the framework of a project funded by the European Union and implemented by ENNHRI with the support of the Danish Institute for Human Rights. The seminar was attended by 14 representatives of the national human rights institutions from 11 ENNHRI member countries.

Also, the representatives of the institution actively participated in the activities of the ENNHRI working groups in the field of the protection of the rights of persons with disabilities, communication, on the role of national institutions for the protection of human rights in conflict and post conflict situations.

Established partnerships

In 2018, the Office of the People's Advocate signed a cooperation agreement with the Human Rights Commissioner of Ukraine, cooperation agreements with the civil society organizations RCTV „Memoria”, the Institute for Democracy of Comrat and the „Media Center” Association of Tiraspol. Cooperation partnerships have been established with the Department of Carabineer Troops; the National Anti-Corruption Center, the Interethnic Relations Bureau and the Council for the Prevention and Elimination of Discrimination and Equality.

V. ACTIVITY OF THE OFFICE OF THE PEOPLE'S ADVOCATE IN 2018

Managing and investigating applications

Realizing its mission set out in the Strategic Development Program for the years 2018-2022 to contribute to the consolidation of democracy and the rule of law by monitoring the work of public authorities and institutions and providing support to ensure a government aimed at respecting human rights and fundamental freedoms in the Republic of Moldova, the Office of the People's Advocate, and in 2018 received and examined from citizens requests for violations of human rights and freedoms.

The Law on People's Advocate (Ombudsman) Number 52 of 03.04.2014 in Article 16 provides that one of the duties of the People's Advocate is to examine the applications on the violations of human rights and freedoms.

In accordance with the Principles on the Statute of National Institutions for the Promotion and Protection of Human Rights (Paris Principles), namely: „A national institution may be authorized to hear and examine complaints and petitions relating to individual situations. The cases may be brought to the attention of individuals through its representatives, third parties, non-governmental organizations, trade union associations or any other representative organization”.

According to the said law, the People's Advocate examines the application of individuals, regardless of their nationality, age, gender, political affiliation or religious convictions, who live permanently, are temporarily in the territory of the country, whose rights and freedoms are allegedly violated by the Republic of Moldova. The People's Advocate does not substitute thought its powers for public authorities, law enforcement bodies and courts and examines requests for decisions, actions or inactions of public authorities, organizations and businesses, irrespective of the type of property and legal form of organization of non-commercial organizations and persons with functions of liability at all levels which, in the petitioner's view, violated his rights and freedoms.

There exist several conditions for the application to be accepted and taken for consideration by the People's Advocate: the application is filed until the expiration of one year from the day of the alleged violation of the petitioner's rights or freedoms, or from the day he learned of the alleged violation; the name, surname and domicile of the petitioner, the brief description of the circumstances of the case, the name of the authority or the name of the person in charge of the actions and / or inactions in which the violation of the rights or freedoms occurred, if that person is known; if the facts relied on in the application were

subject to examination by other authorities, copies of the replies of those authorities should be attached on the application. According to the Law of the People's Advocate (Ombudsman) number 52 of 03.04.2014, the Ombudsman is obliged not to divulge the confidential information as well as the personal data communicated in his / her activity, except with the consent of the person to whom he / she refers, not to disclose the state secret and other information and data protected by law, so the petitioner's consent is required in writing for the request to be handed over to the competent body.

The applications transmitted to the People's Advocate are made personally or by post, fax, e-mail or other means of communication.

In 2018, the Office of the People's Advocate (OPA) drew up a new web page of the institution with a known address: www.ombudsman.md, which gives the citizens the possibility to submit online requests.

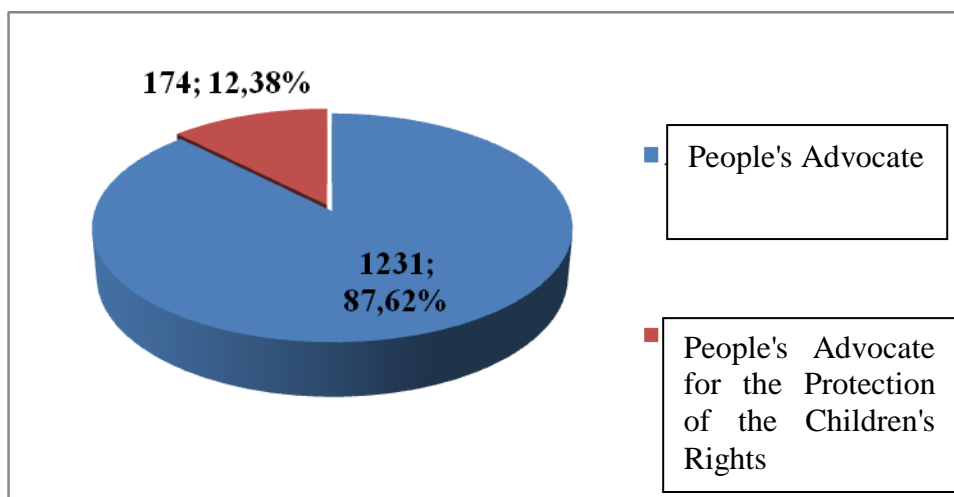
Thus, the process of investigating and managing applications once again confirms that the Office of the Peoples Advocate, as an extrajudicial mechanism to ensure respect for human rights, is an alternative to settling amicably the conflicts between the petitioners and public authorities, organizations and enterprises irrespective of the type of ownership and form of organization, by non-commercial organizations and by persons with positions of responsibility at all levels.

However, the People's Advocate may not receive the application for review which is in court proceedings for substantive examination, except for requests for actions and / or inactivity of the judge; the examination of which falls within the competence of other bodies (the initiation of criminal prosecution, the explanation of the court decision); on an adjudicated case, on which there is a sentence or a court order on the merits; which contains defamation and insults, discredits the state authorities in general, local authorities, citizens' associations and their representatives, who incite national, racial, religious and other actions for which liability is prescribed by law.

The application may also be filed by a representative of the person injured in its rights, by non-governmental organizations, trade unions and other representative organizations on behalf of the person. It is worth mentioning that the application from a person in detention, a person which is in the criminal investigation isolators, from the military in the military units is not subject to censorship and is sent by the administration of the respective institution to the People's Advocate within 24 hours. Also, according to Article 36 paragraph 2 letter b) of the Law number 1402 of 16.12.1997 the complaints and requests of the patients from the psychiatric stations are presented without censorship to the People's Advocate or, as the case

may be, to the People's Advocate for the Protection of the Children's Rights. Applications to the People's Advocate are exempt from state tax.

In 2018, the Office of the People's Advocate received **1405 applications**. Of the total number of applications (1405) received during the year 2018, **1231 (87.62%)** were addressed to the People's Advocate and **174 (12.38%)** addressed to the People's Advocate for the Protection of the Children's Rights.



Of the 1405 registered applications, 328 (23.25%) were accepted for examination (234 applications accepted for examination by the People's Advocate and 94 applications were accepted for examination by the People's Advocate for the Protection of the Children's Rights), with the procedural actions under Article 25 of the Law number 52. Reaction documents were issued during the examination process, the competition of the institutions and of the responsible persons was requested, the necessary information, documents and materials were requested, the monitoring visits were carried out, the proposals for amending the legislation were put forward, etc.

About 69 applications (4,89%)²⁰⁶ have been handed over to the competent authorities for examination under their jurisdiction.

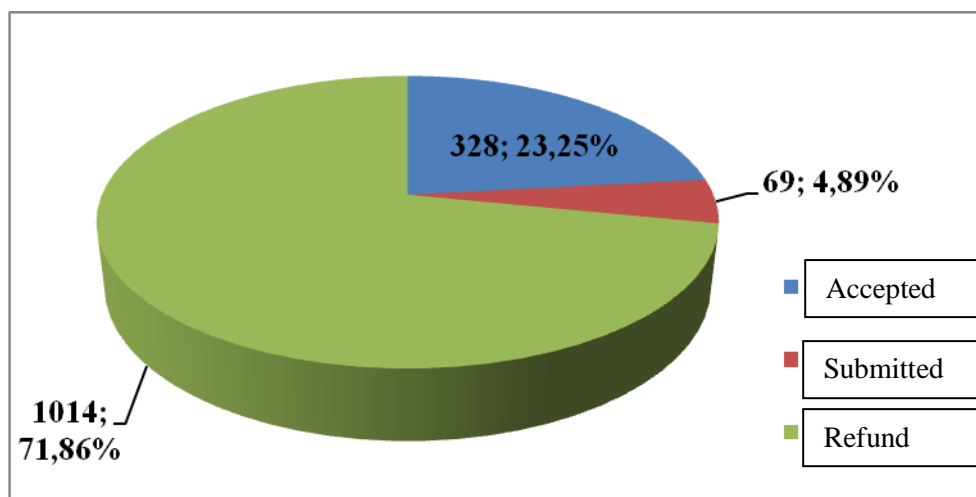
Other 1014 applications (71,86%)²⁰⁷ have been restituted under the provisions of Article 18, 19, 20 of the Law number 52, to the petitioners indicating the procedures they are entitled to use to defend their rights and freedoms. These applications were returned because they are not within the competence of the People's Advocate. The large number of addresses in this category reveals the low level of legal culture of the population and the fact that people do not know which of the authorities is empowered to solve the problem they are

²⁰⁶ 58 applications handed down by the People's Advocate and 11 applications handed down by the People's Advocate for children rights.

²⁰⁷ 945 applications returned by the People's Advocate and 69 returned by the People's Advocate for children rights.

facing. In this case, the petitioner is explained the procedure he / she has to follow to solve his / her problem.

Classification of requests, depending on the decision taken



In accordance with the applications received, the most frequently invoked rights are constituted:

Right to life and to physical and mental integrity – **271 applications received**. The issues addressed by the petitioners are the following: detention conditions; acts of torture; the right to life; actions of the administration of the place of detention; conditional release or amnesty; reviewing the criminal case; transfer to another penitentiary. Of the number of such application addressed, **61 applications** have met the conditions of admissibility and have been accepted for investigation.

Another right allegedly violated is the ***free access to justice*** – **237 applications**. The addressed issues are: the public character of judicial debates; the presumption of innocence; non-retroactivity of the law; the contradictory principle; the right to an effective appeal; delays in examining cases; the right to compensation for the damage; the binding nature of court judgements; failure to comply with court rulings; disagreement with the court judgement / sentence; are considered innocent and disagree with the final sentence, complain about police action or sector inspector; complain about the prosecutor's actions; calls for the interpretation or revision of the legislation; the actions of the bailiff; compensation for damage. Of these, admissibility and content conditions were met only by **11 applications** which were accepted for investigation.

The right to information was invoked in **203 applications**. The issues addressed are: receiving information - the vast majority of the addressees requested the sending of copies

of the People's Advocate Reports on the monitoring of the conditions of detention in the penitentiary institutions in the country; distribution of information. Of the total number, **13 applications** were accepted for investigation.

Intimate, family and private life was invoked in **114 applications**. Most of the problems being addressed are the protection of children. Of these, admissibility conditions were met by **37 applications** which were accepted for investigation.

The right to private property and its protection was invoked in **101 applications**. The problems being addressed are: obtaining private property; possession of private property; use and disposal of private property. Of these, **11 applications** were accepted for investigation.

Right to social assistance and protection was invoked in **98 applications** addressed. The economic crisis and permanent increases in prices and tariffs on consumer goods and services continue to affect the standard of living of the population as a whole and lead to the deepening of the poverty of the most vulnerable groups. The issues addressed were: recalculation of the pension; requests the granting of financial or material aid; the impossibility of paying communal services. Of these, **31 applications** were accepted for examination. People are still dissatisfied with the low level of income, social benefits that do not cover even the minimum subsistence level; the retirement system; the manner of granting social assistance / aid for the cold period of the year and other social benefits.

Right to defense has been invoked in **81 applications**. The issues raised were: the right to defense in the event of detention or arrest and the right to defense in the case of judicial review. Of these, **18 applications** were accepted for investigation.

Another right allegedly violated is the *Right to health protection* - **62 applications received**. The problems being addressed are: minimum of medical insurance; the right to adequate treatment and the attitude of the medical staff towards patients. **46 applications** have been accepted for investigation.

Right to education has been invoked in **40 applications**. The problems raised being the study conditions, the choice of the educational institution and the choice of the language of study. Of these accepted for investigation – **12 applications**.

Right to work and work safety were invoked in **34 applications**. The issues raised are the conditions of employment, working conditions, redundancy conditions. Out of them were accepted **9 applications** for investigation.

Classification of appeals according to the allegedly injured right, as compared to 2015, 2016 and 2017, 2018

<i>Themes of Addresses</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Free access to justice	259	296	171	237
Right to life and to physical and mental integrity	195	230	316	271
Right to social assistance and protection	91	133	96	98
The right to private property and its protection	80	49	61	101
The right to information	75	116	88	203
Right to work and work safety	48	74	33	34
Intimate, family and private life	65	72	81	114
Right to defense	35	35	63	81
Right to education	4	20	32	40
Right to petition	19	8	9	9
The right to free movement	8	2	4	19
Right to health protection	33	40	62	62
Personal liberties	7	5	3	13
Right to administration	6	6	22	20
Right to citizenship	2	2	19	13
Right to vote and to be elected	-	-	-	-
The right to a healthy environment	4	6	4	2
Other	9	8	72	89

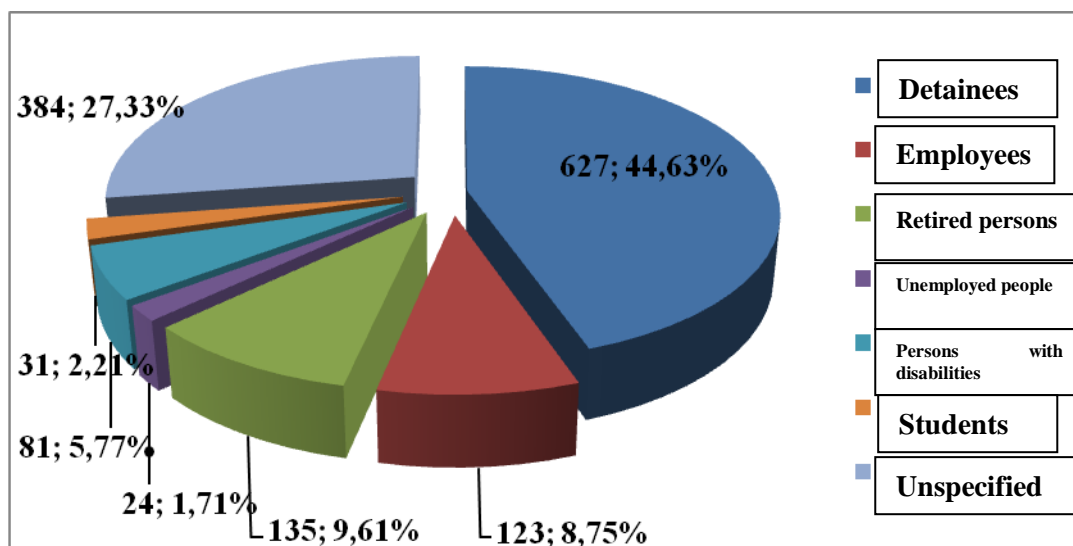
Note: „Other” includes applications where no violation of a constitutional right is invoked and cannot be included in the automated bookkeeping system addressed to the Office of the People's Advocate, such as consumer rights, requesting legal consultations, and so on.

Of the total number of persons who during the reported period were addressed to the Office of the People's Advocate **627 are detainees; 135 pensioners; 123 employees; 81 persons with disabilities; 31 pupils, unemployed persons 24 as well as other less numerous categories.**

For many years, the detainees are at the top of the list of people addressing the Ombudsman. The problems that this category addresses are the following: detention

conditions, medical care, food products quality, insuring with clothing. A special topic in the detainees' inquiries in 2018 is related to the entry into force, as of 01.01.2019, of the amendments to Article 385 paragraph 5 of the Code of Criminal Procedure, which reduced the penalty: 2 days of imprisonment for a day of preventive arrest. This has generated a series of requests to provide the texts of reports on ombudsman's visits to places of detention and the national mechanism for preventing torture. Detainees request these documents to file an application with the court to reduce the term of punishment for detention in inhuman or degrading conditions, which they hope to demonstrate, including through the requested reports. The response to this request was a challenge for 2018, because the (physical) volume of the requested exceeded the institution's capacities. However, the Office of the People's Advocate has found a solution - it has been ensured that a reasonable number of reports for the years 2010 to 2018 were printed that were distributed with NPA involvement in all prisons in the country by placing them in the library.

Analysis of the requests received according to the categories of petitioners:



During 2018 the People's Advocate was notified in 12 cases and the People's Advocate for the Children's Rights reported in 22 cases.

In the process of investigating the applications accepted for examination, the People's Advocate is empowered to undertake certain procedural actions and to issue certain types of acts, specific to the mandate as follows:

***Dynamics of procedural actions / reaction acts,
compared to 2015, 2016 and 2017***

<i>Procedural actions</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Report with recommendations on the measures to be taken for immediate restoration of rights of the petitioner (Article 24 of the Law number 52 of 03.04.2014)	62	65	129	57
Demarche (for initiating a criminal / disciplinary proceeding in respect of the person in charge of committing the offenses that caused the considerable damage to human rights and freedoms (Article 25 paragraph (1) letter b) of the Law number 52	4	9	13	9
Referral to the case of violation of service ethics, delay and bureaucracy (Article 25 paragraph (1) letter d) of the Law number 52	11	19	6	9
Actions in court / intervention in the process to submit conclusions (Article 25 paragraph (2) and (3) of the Law number 52	2/2	9/7	13	1/11
Conciliation agreement (Article 23 paragraph (3) of the Law number 52	1	2	2	1
Proposals to improve the operation of the administrative apparatus pursuant to subpoint 6 of point 7 of Chapter II of the Regulation on the organization and operation of the Office of the People's Advocate (OPA)	2	1	4	-
Request for carrying out judicial expertise (Article 11 letter m of the Law number 52)	1	1	-	-
Proposals and recommendations for improvement of legislation (Article 27 letter (a) of the Law number 52)	8	15	14	12
Referral of the Constitutional Court in order to control the constitutionality of the normative acts (Article 26 of the Law number 52)	2	3	3	-
Opinions on draft normative acts (Article 27 letter (b) of the Law number 52)	60	80	59	42
TOTAL	155	211	245	142

Throughout 2018, the Office of the People's Advocate organized the audience of people, daily from 09.00 a.m. to 03.00 a.m. The same regime is organized for the audience of citizens within the representations. Throughout 2018, the Office of the People's Advocate received 3244 people.

Prosecution actions of the People's Advocate:

Report with recommendations on the measures to be taken for immediate restoration of rights of the petitioner (Article 24 of the Law number 52 on the People's Advocate (Ombudsman))

According to Article 24 of the Law number 52 / 03.04.2014, in cases where there are violations of the petitioner's rights or freedoms, the People's Advocate shall submit to the authority or person responsible, whose decision, action or inaction, in his / her opinion, violates human rights and freedoms, an opinion which will include recommendations on the measures to be taken for immediate restoration of rights of the petitioner. The authority or accountable person who received the opinion is required to examine it within 30 days and to communicate it in writing to the People's Advocate on the steps taken to remedy the situation.

If the People's Advocate does not agree with the measures taken, he is entitled to address a hierarchical superior body to take the necessary measures to comply with the recommendations contained in his opinion and / or to inform the public. The hierarchically superior body is obliged to communicate about the measures taken within 45 days.

In the year 2018, the People's Advocate did not use the right to address the hierarchically superior body, given that the licensed authorities followed the recommendations submitted by the notices sent. In this respect, 57 opinions were drafted containing recommendations on the measures to be taken for the immediate restoration of rights of the petitioner, which were sent to the central and local public authorities as follows:

Institutions targeted in the People's Advocate's reactions acts:

The institution concerned	2018
Ministry of Health, Labor and Social Protection, including subordinate institutions	6
Ministry of Education, Culture and Research and subordinate institutions	9
Ministry of Internal Affairs, including the subordinated institutions	5
Ministry of Justice, including the subordinate institutions	27
Local public authorities	5

The judiciary system	1
General Prosecutor's Office	1
State Enterprise „Post Office of Moldova”	1
SIS	1
The People's Assembly of Gagauzia	1
Total	57

Of the total number of opinions containing recommendations on the measures to be taken for the petitioner's immediate restitution was filed to the:

Ministry of Justice and subordinated institutions - 27 opinions. The proposed recommendations relate to: improving the conditions of detention and ensuring the minimum standards of detention, right to health protection of persons in custody of the state; the establishment of a mechanism for reducing sexual aggression among minors detained in detention facilities; elaboration of internal regulations for the standardization of penitentiary administration actions regarding the provision of detainees arriving in prisons with the right to a phone call; taking decisive and effective measures to prevent and reduce trafficking, consumption and uncontrolled proliferation of psychotropic or narcotic substances, precursors, ethnobotanics, analogues and other illegal substances in penitentiary institutions; the implementation of international standards in opioid addiction drug methadone treatment; the standardization of the procedures for granting the right to interview the detainees, between which there is a marriage relationship.

Ministry of Culture and Research Education, subordinated institutions - 9 opinions. The recommendations proposed are: re-assessment and eradication of violence against children and establishment of a continuous training program for teachers and auxiliary teachers in the field of prevention and response to violence; paying attention to the requests of the penitentiary institutions to provide the necessary support for the reintegration of minors from state custody into the educational process; internal teacher training in conflict management situations and the reduction of violence among students.

Local Public Authorities - 5 opinions. The submitted recommendations concern: undertaking measures to initiate and conduct procedures to control the degree of implementation of the rules on land fencing of educational institutions; to take urgent measures to ensure that all pupils in urban areas are provided free and affordable transportation to rural education institutions; ensuring the right to social assistance and poor living conditions, ensuring access to information, ensuring access for people with disabilities to the physical environment, special protection of children at risk and separated children from parents.

Ministry of Health, Labor and Social Protection, including subordinate institutions - 6 opinions. The recommended submitted relate to: Adopting the necessary measures to carry out health expertise on food products and the estimation of drinking water used in the diet of children in some educational establishments; issue a circular addressed to all public health care institutions regarding the obligation to comply with the provisions of the National Immunization Program for the years 2016-2020; providing social assistance and social protection to vulnerable families with many children; ensuring the physical access of disabled people to public bodies in the social sphere, ensuring the right to a decent living, ensuring respect for the right to information of citizens, guaranteeing the protection of people with disabilities, respecting the right to private property, non-payment of the paternity allowance, ensuring adequate education conditions in the educational institutions, restoring minor children in their rights, ensuring the right to social protection for children at risk and separated children from parents.

Ministry of Internal Affairs, including subordinate institutions - 5 opinions. The proposed recommendations relate to: remedying the situation with regard to detention conditions in provisional detention isolators within the Police Inspectorates.

In most cases, the institutions concerned have taken into account the People's Advocate Recommendations and have taken the recommended measures, within the limits of the financial resources allocated, or have assured themselves that they will make efforts to meet the recommendations made.

Demarche for bringing disciplinary proceedings or criminal liability on official person who committed violations that led to violation of the human rights and freedoms (Article 25 letter b) of the Law Number 52 on the People's Advocate (Ombudsman))

According to Article 25 letter b) of the Law number 52, on the basis of the results of the examination of the complaint, the People's Advocate has the right to intervene with the competent authorities in order to institute a disciplinary or criminal proceeding in respect of the person responsible who has committed violations which have caused the violation of human rights and freedoms.

Thus, in 2018, the People's Advocate demanded the initiation of disciplinary or criminal trials in 14 cases involving persons with responsibility who committed violations that caused the violation of human rights and freedoms.

- General Prosecutor's Office and District Prosecutor's Offices – **7 demarches** to initiate a disciplinary or criminal proceeding in respect of the accountable persons who have committed violations that have caused the violation of human rights and

freedoms. In all cases, ordinances for refusal were issued in the initiation of the criminal proceedings or the initiation of disciplinary proceedings.

- National Penitentiary Authority, including subordinated institutions – **3 demarches** in which it was requested to initiate disciplinary proceedings in respect of the accountable persons who have committed violations that have caused the violation of human rights and freedoms. In all cases, service inquiries were initiated in accordance with the provisions of the Law number 300 of 21.12.2017 „on the penitentiary administration system”, which resulted in the persons with a responsible position being strictly warned about the observance of their service duties.
- Ministry of Internal Affairs – **2 demarches** on the initiation of disciplinary proceedings against persons with responsibilities who have committed violations that have inflicted the damage to human rights and freedoms. In both cases, service inquiries have begun and responsible persons have been alerted on the compliance with service obligations.
- National Anticorruption Center – **1 demarche** to initiate a criminal proceeding against those responsible for the criminal offense who have committed violations that have inflicted damage to human rights and freedoms. As a result of the examination of the demarche, no indications of committing a contravention or criminal offense were issued by the persons with responsible positions and the control was stopped.
- National Center for Personal Data Protection – **1 demarche** to initiate a disciplinary or criminal proceeding in respect of persons with liability who have committed violations that have caused the violation of human rights and freedoms. As a result of the examination of the request, the contravention procedure was initiated.

Notification of persons with responsible functions of all levels on the cases of negligence in service, on the breach of service ethics, delay and bureaucracy (Article 25 letter d) of the Law Number 52 on the People's Advocate (Ombudsman)).

According to Article 25 letter d) of the Law number 52, the People's Advocate has the right to notify persons with responsible positions at all levels on the cases of negligence in service, breach of service ethics, delay and bureaucracy.

Based on this provision, 3 notifications were submitted in 2018:

- **National Penitentiary Authority** - 1 demarche on the conduct of the internal investigation into a case of negligence in the service. As a result of the intervention of the

Ombudsman Penitentiary number 10 Goian informed the Prosecutor's Office of Chisinau municipality on the situation regarding the „removal of an attempted escape from Penitentiary Number 10 Goian”.

- **Local public administration** – 1 notification on the conduct of internal investigations into the case of negligence in service that is under examination.

- **Council for the Protection of Child Rights of Causeni** - 1 notification on the conduct of the internal investigation into negligence in the service. As a result of the Ombudsman's intervention, the situation being remedied.

During the year 2018 at the Hot Line „Child's Phone” at the Office of the People's Advocate were recorded **143 telephone calls**. Out of the total number of calls, **140 came from adults and 3 from children**. **6 cases** were taken into consideration, including domestic violence / violation of a parent's appointment schedule / refusal to support the child / termination of guardianship allowance. It is necessary to note that often at the Hot Line „Child's Phone” the persons who call, require legal advice. All those who have called have received the required legal advice and necessary assistance.

**Calls received to Hot Line „Child's Phone”
for the period 01.01.2018 – 31.12.2018**

The allegedly infringed right	Adult	Child	Urban	Rural	Total
Right to life and to physical and mental integrity	2		2		2
Individual freedom and personal security					
Right to defense	11		7	2	11
The right to free movement					
Right to intimate, family and private life	37	1	30	8	38
Inviolability of the home	1			1	1
The Secret of Correspondence					
Freedom of creation	1		1		1
The right to information	4		2	2	4
Right to education	20	1	10	11	21
Right to health protection	3		3		3
Right to work	1			1	1
The right to private property and its protection	3		2	1	3

Right to social assistance and protection	27	1	14	14	28
Protection of the family and orphaned children	9		5	4	9
Right to petition	1			1	1
Right to the child's opinion	1			1	1
Protecting abuse and neglect	18		11	7	18
Torture and deprivation of liberty	1		1		1
Total -- 143					

HUMAN RESOURCES MANAGEMENT

The structure and human potential of the Office of the People's Advocate team

From a structural point of view, the Office of the People's Advocate is constituted by the People's Advocate and his deputies, the People's Advocate for the Rights of the Child, the Secretary General, the structural subdivisions with the status of directorates, sections, services and territorial representations. The organizational and administrative work of the Office is led by the Secretary-General.

According to Article 34 of the Law on the People's Advocate (Ombudsman) number 52 of 03.04.2014, the Office of the People's Advocate provides organizational, legal, informational and technical assistance to the People's Advocate for the exercise of his / her duties. On the territory, the activity is carried out through the 4 representative offices: the Balti Representation, the Cahul Representation, the Comrat Representation, the Varnita Representation.

By the Law number 164 of 31.07.2015 for the approval of the Organization and Functioning Regulation of the Office of the People's Advocate, the institution's limit effective was approved in the amount of 65 units. The limit effective can be modified by the Parliament on a reasoned proposal by the People's Advocate.

In 2018 the organizational structure of the institution was modified, a new state of personnel was approved and implemented. Currently, the organizational structure includes:

Structural subdivisions:

1. Directorate of Public Policy and Legislation;
2. Directorate for Monitoring and Reporting;
3. Directorate for Prevention of Torture;
4. Directorate of the Rights of the Child;
5. Directorate for managing and investigating applications;
6. Directorate for the Promotion of Human Rights and Communication;
7. Financial-administrative section;
8. Internal Audit Service;
9. Internal management support service;
10. Human Resources Service;
11. Legal Service;
12. Secretariat service.

Territorial subdivisions:

1. Balti Representation;

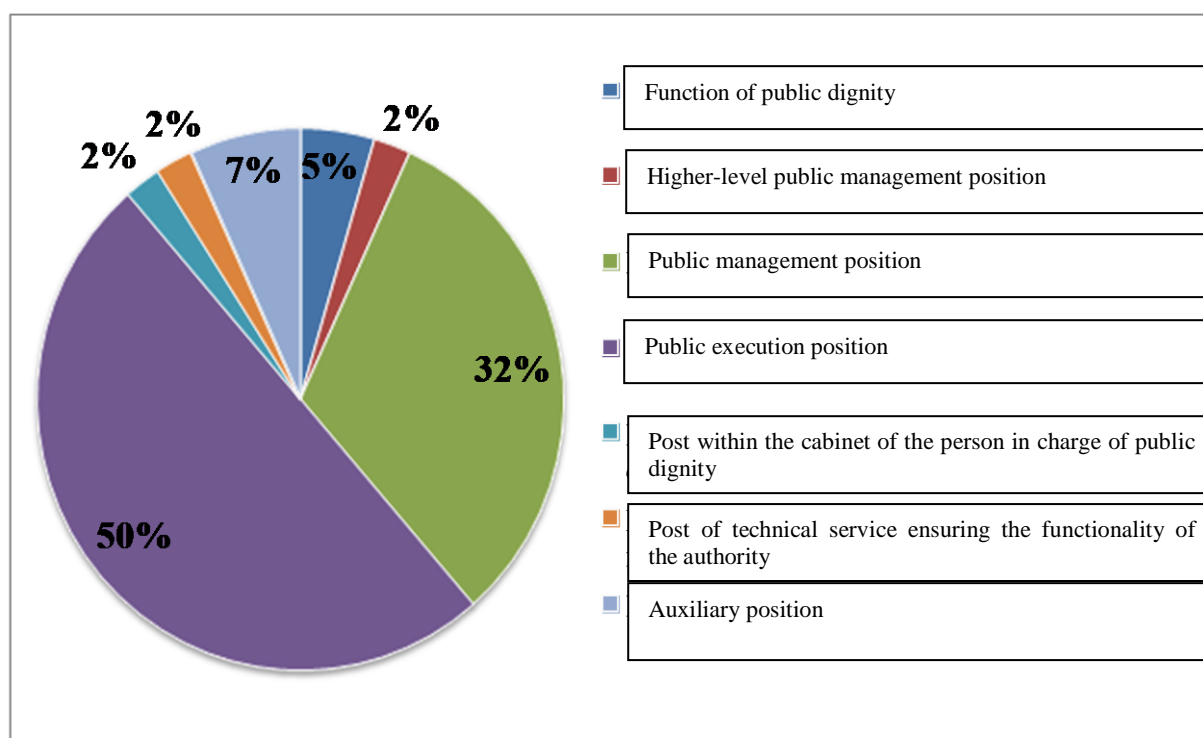
2. Cahul Representation;
3. Comrat Representation;
4. Varnita Representation.

At the end of 2018, 44 people worked in the Office of the People's Advocate. The staff of the Office is composed of civil servants, personnel in the Office of the People's Advocate, technical service staff and other staff.

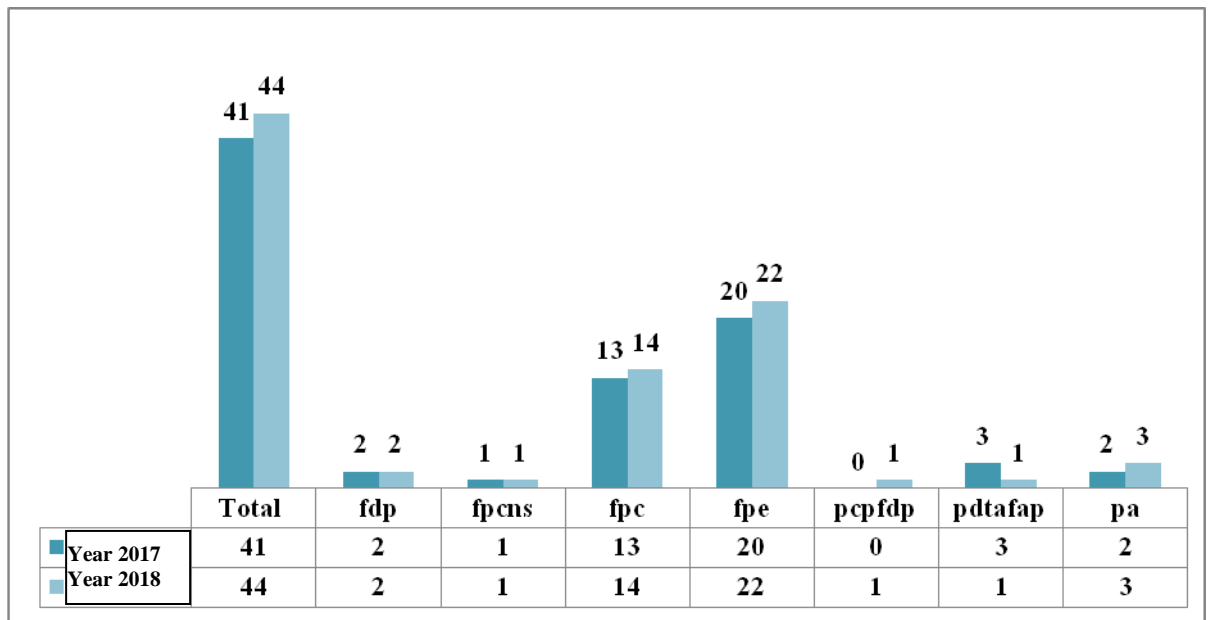
Staff structure by socio-professional categories

Category of public position / post	Number of people in 2018
Officials holding public dignity functions (fdp)	2
Higher-level senior civil servants (fpcns)	1
Management civil servants (fpc)	14
Execution civil servants (fpe)	22
Personnel assigned to the People's Advocate cabinet (pcpfdp)	1
Technical service staff to ensure the functioning of the Authority (pdtafap)	1
Auxiliary staff (pa)	3
Total	44

Structure of functions and posts within the Office of the People's Advocate

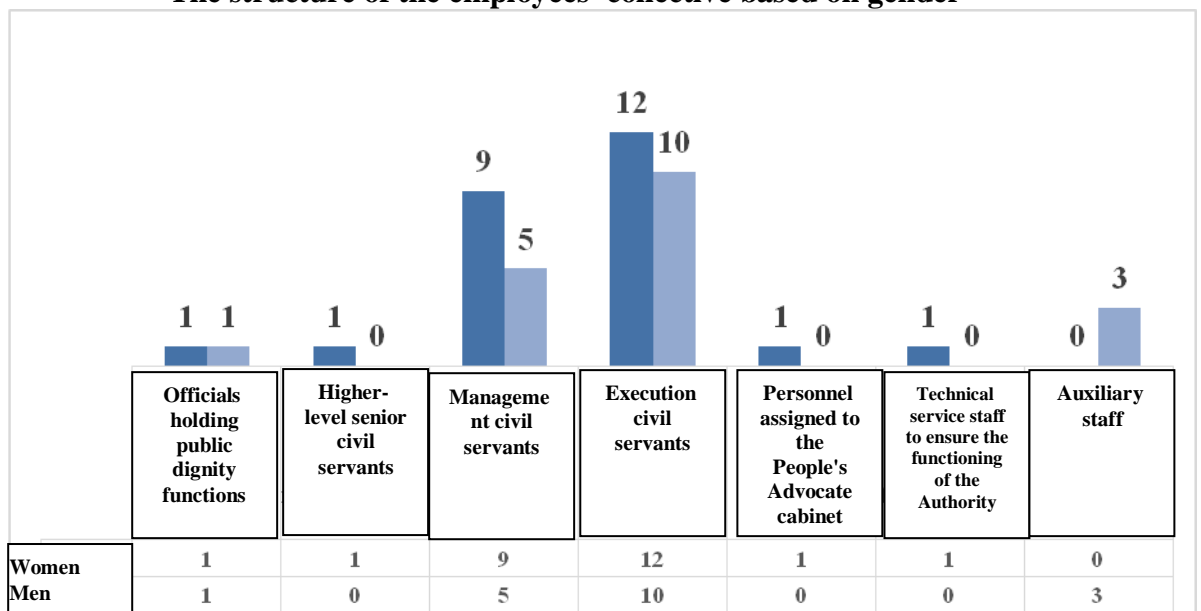


The analysis of assurance of the Office of the People's Advocate with human resources implies the dynamic analysis of the number of employees per total and by category, year 2018 compared to 2017:



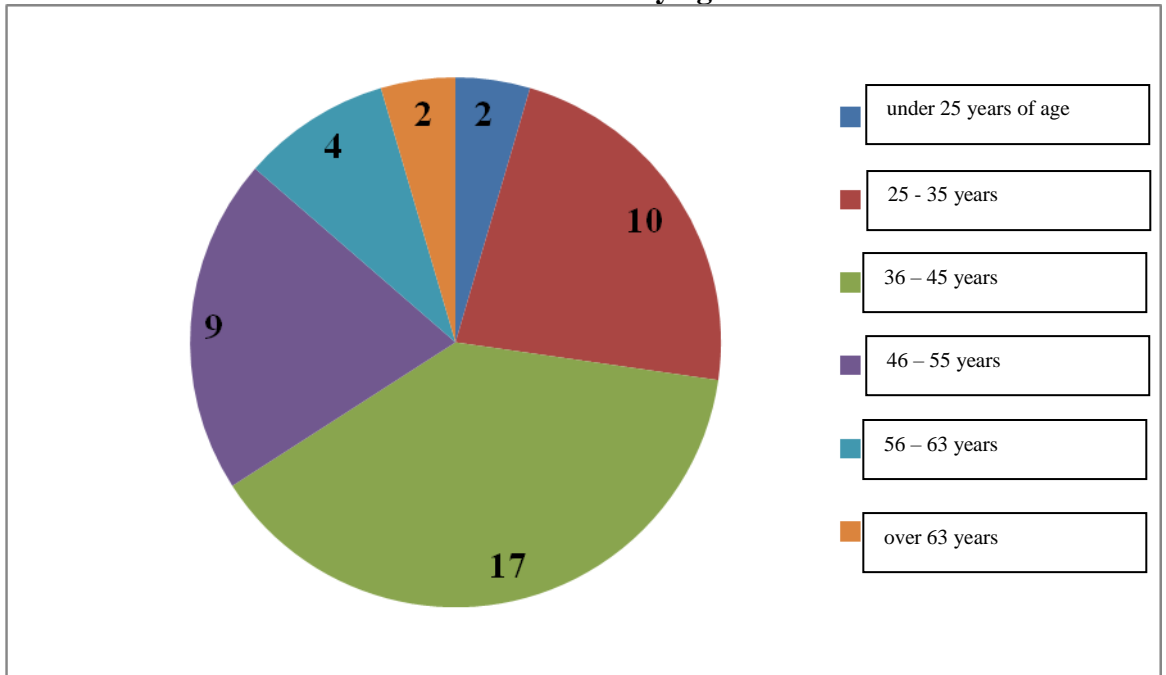
The analysis of the structure of the employees' staff is evidenced by the fact that, according to the gender structure, the women predominate in the institution, the number being 25 compared to 19 men.

The structure of the employees' collective based on gender

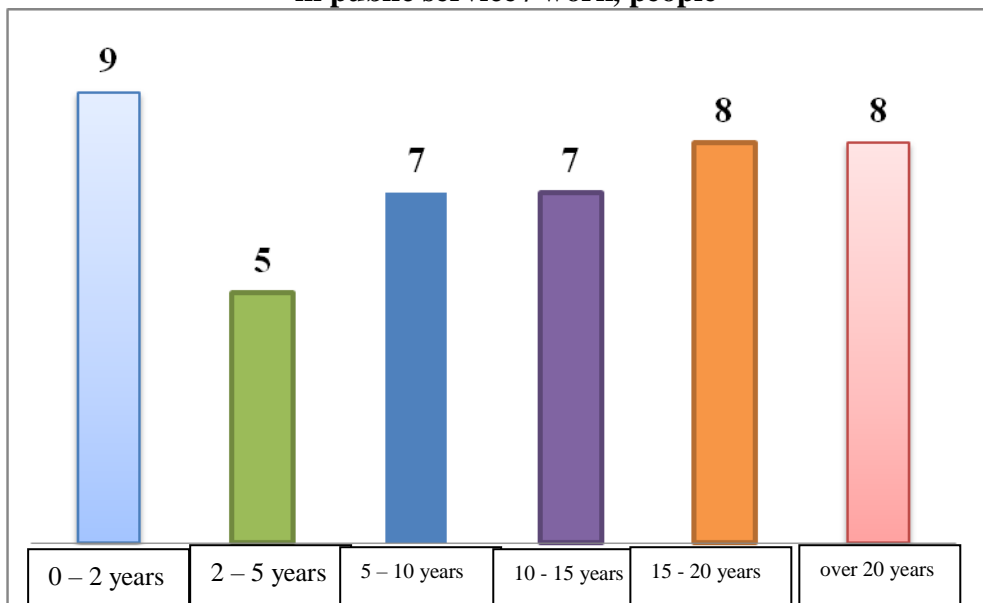


Analysis of the staff structure by age shows a numerical dominance of people aged 35-45 years.

Structure of the staff team by age criterion

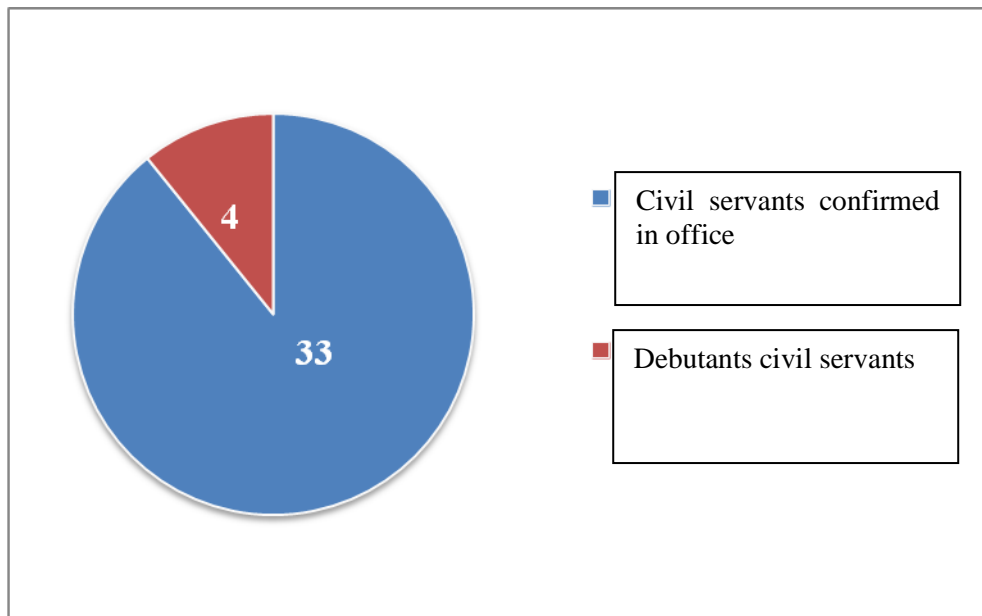


Staff structure based on length of service in public service / work, people



There are 37 civil servants employed by the Office of the People's Advocate, out of which 33 have qualification degrees and 4 are debutant public debtors

There are 37 civil servants employed by the Office of the People's Advocate, out of which 33 have qualification degrees and 4 are debutant public debtors.



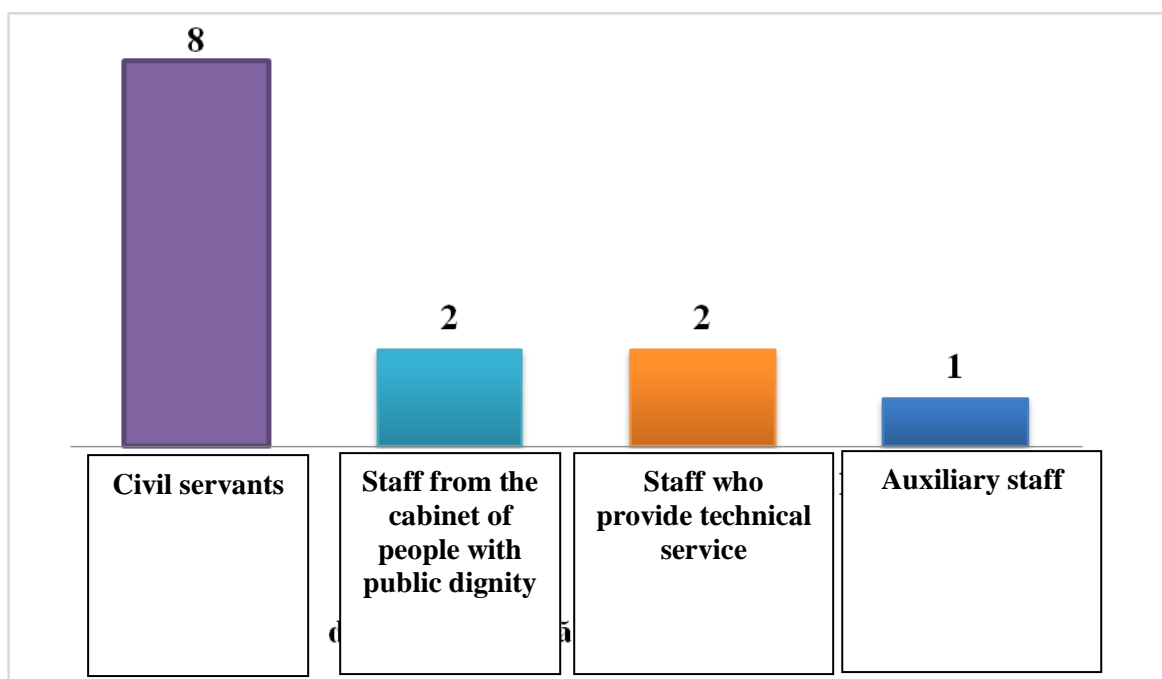
The occupation of public functions is carried out in accordance with the provisions of the Law number 158 of July 4, 2008 on the public function and status of the civil servant, of the Government Decision number 201 of March 11, 2009 on the enforcement of the provisions of Law number 158-XVI of July 4, 2008 on the public function and the status of civil servant.

Employing staff on other socio-professional categories is done in accordance with labor law legislation.

In the year 2018, 10 competitions were held and carried out for occupation of public vacant offices / temporary vacancies; 3 contests out of the 10 announced were in the impossibility of full realization: 1 - due to the lack of candidates, 2 - the skills / capacities of the candidates were insufficient to fill the public positions.

Thus, during the reference period, 13 persons were appointed / employed, of which:

- by competition, 8 civil servants were appointed - 1 senior civil servant and 7 executive civil servants, 4 of whom were debutant public officers;
- in accordance with the provisions of the Law number 80 of May 07, 2010 on the status of staff in the cabinet of persons with public dignity functions, two persons were appointed in the Office of the People's Advocate for the Rights of the Child (with a status of service);
- 2 people were employed to provide the technical service of the institution;
- 1 person was employed in the auxiliary staff category.



During 2018 the service / labor relations were terminated by resignation, dismissal, releasing from office with 11 persons, so the turnover rate of the personnel during the year 2018 constituted 25%.

Employee training increases the level of achievement of the public authority's strategic mission / objectives.

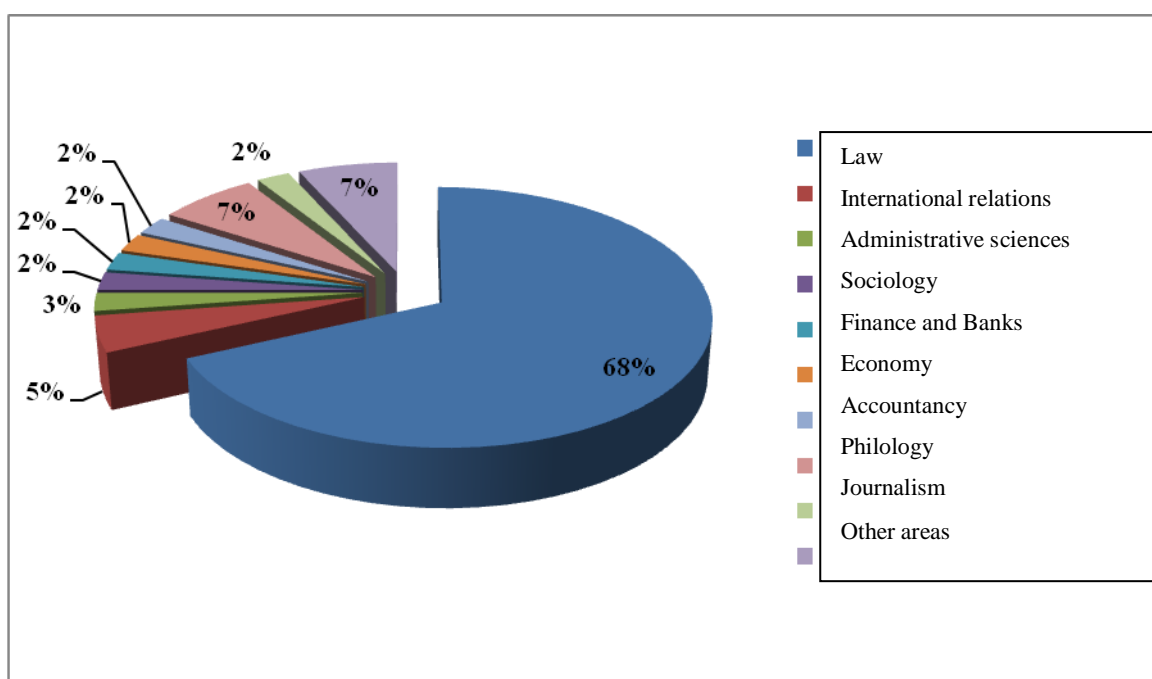
The institutional development of the Office of the People's Advocate, the improvement of procedures and work systems, depends to a large extent on the initial training of employees and their continuous professional development.

Within the Office of the People's Advocate, in the category of positions / posts, only the auxiliary staff have studies in technical vocational education, the other categories have higher education degrees, the first cycle and the master's degree studies, the second cycle:

Number of employees with vocational training in technical vocational education	Number of employees with a single training area in higher education	Number of employees with more than one training area in higher education	Number of employees with vocational training in higher education licentiate and master degree	Number of employees with more fields of vocational training in higher education licentiate and master degree
2	17	1	22	2

Depending on the field of vocational training, the standings rule:

Number of criterion	Vocational training, first cycle - higher education licentiate degree	Number of employees
1.	Law	30
2.	International relations	2
3.	Administrative sciences	1
4.	Sociology	1
5.	Finance and Banks	1
6.	Economy	1
7.	Accountancy	1
8.	Philology	3
9.	Journalism	1
10.	Other areas	3



The continuous professional development process within the Office of the People's Advocate is organized and carried out in accordance with the following principles:

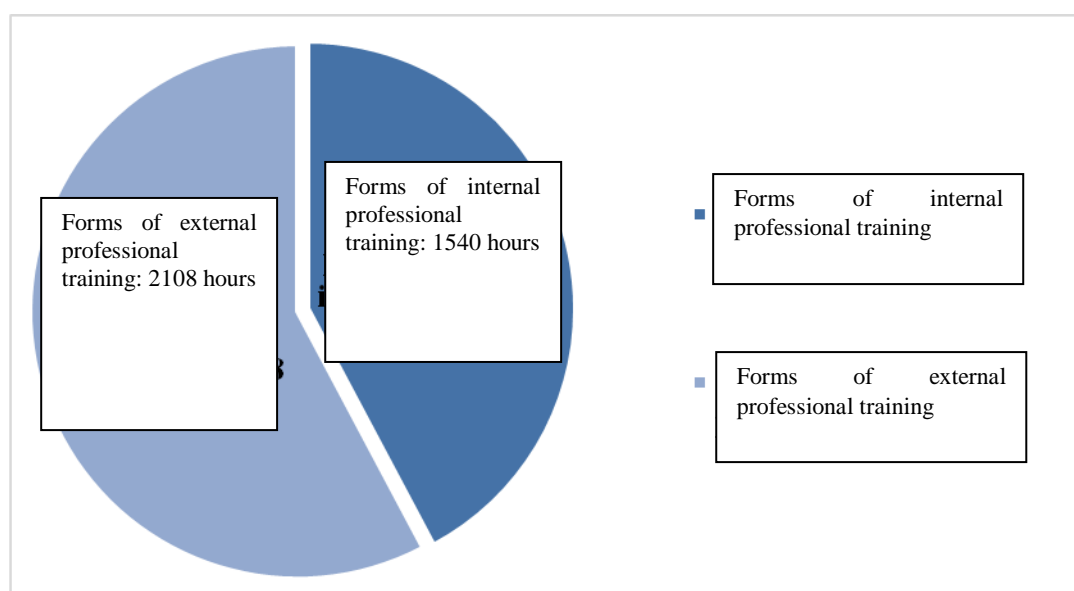
- respecting the civil servants right to professional development;
- the obligation of professional development;
- orientation towards training needs;
- decentralizing the continuous professional development process;
- liberalization of training services.

The continuous *professional development* of employees of the Office of the People's Advocate is carried out through training activities of various types and forms, in order to deepen and update the knowledge, develop skills and model the attitudes / behaviors necessary for the effective exercise of the job duties.

Vocational training is the activity carried out in order to acquire theoretical knowledge and practical skills capable of ensuring that the employees of the Office of the People's Advocate to fulfill their tasks in the performance of a job, especially in the field of human rights.

Vocational training is the most informative activity in order to broaden and update the knowledge, develop skills and model the attitudes necessary for the employees, to increase the quality level of their professional activity.

In 2018, the Office of the People's Advocate motivated and stimulated the participation of 37 employees in training activities, amounting to 3648 hours of external vocational training (2108 hours) and internal (1540 hours).



In order to effectively carry out the public authority's strategic mission / objectives, the Office of the People's Advocate sets important requirements for training programs.

Depending on the professional development needs of the various categories of employees, concrete objectives are set, for which training programs are needed:

- of a **general nature**, including regarding the public function and the status of the civil servant, offered, in large part, by the Academy of Public Administration.
- of a **specialized nature**, especially in the field of human rights. The main partners of the Office of the People's Advocate in the process of professional development in the field of human rights are the Council of Europe, the United Nations Development Program - in the framework of institutional development projects.

In order to streamline the professional development process of the institution's employees, in 2018, the Capability Plan of the Office of the People's Advocate was

developed. The capability plan is the document establishing the key institutional competences required for the effective implementation of the People's Advocate / People's Advocate for the Rights of the Child Mission and the Office of the People's Advocate.

In order to achieve the mission and functions of the People's Advocate Institution, the following 5 institutional competencies are decisive:

- 1) Monitoring and reporting skills (internal / external) on respect for human rights in the light of international standards;
- 2) Competencies to influence public policies and the regulatory framework to comply with international human rights standards;
- 3) Enforcement / development competencies of human rights protection mechanisms through individual case management;
- 4) Competences to develop the capacities of professional and human education groups on human rights;
- 5) External communication skills with beneficiaries / partners / media to build sustainable partnerships.

The capability plan is the reference document in the operational processes for planning and providing professional / competent personnel; development and professional training of staff; management and performance evaluation; career development and managerial succession.

The capability plan may be supplemented and / or revised in line with the changes made to the functions and duties of the institution as well as / or in relation to the established external requirements.

The institutionalized and manifested competencies of the Office of the People's Advocate are an essential factor in the institution's international accreditation process and the maintenance of status A, obtained in 2018.

FINANCIAL MANAGEMENT AND CONTROL

According to the limits of the approved budget for 2018, **12458.0 thousand MDL** were allocated to finance the activity of the Office of the People's Advocate. These have been distributed to cover two-component expenditures:

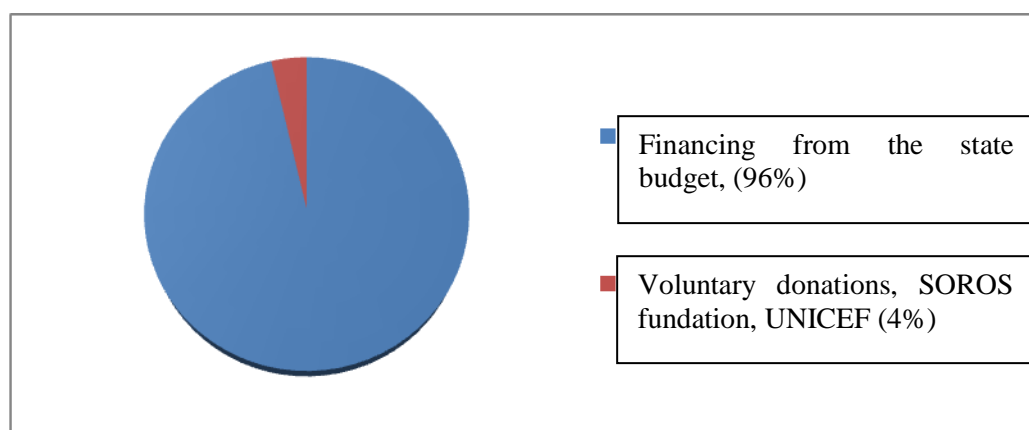
- Control over respect for human rights - allowances amounting to - 12062.6 thousand MDL

- National Mechanism for Prevention of Torture (7 members) - allowances amounting to - 395.4 thousand MDL.

In addition, during 2018 the institution benefited from voluntary donations from the side of the:

- the SOROS Foundation (amount of 331435.4 MDL) for the implementation of the grant project „The Management of Retention and Detention in the Police Inspectorates of the Republic of Moldova”;
- UNICEF Moldova (amounting to 137150 MDL) according to the cooperation agreement 2018/09, signed by the parties on 03.07.2018, entitled „Strengthening the capacity of the People's Advocate for the rights of the child to monitor and report on the situation and needs of children from vulnerable groups of the Republic of Moldova”.

Funding of the Office of the People's Advocate, 2018



The level of execution of the Office of the People's Advocate (OPA) budget at 31.12.2018 is 90.8%. Execution on each budget line is thus represented:

Name of costs by component	Planned, thousands of MDL	Executed, thousands of MDL	% of execution
Control over observance for human rights			
Staff expenditure	6939.5	6903.1	99,6
Goods and services	3796.1	3183.0	83,9
Membership fees in international organizations	96.1	87.7	91.3
Procurement of fixed assets and circulating materials	1699.5	1410.3	83.0

Total on the component	12531,2	11584,0	92,4
National Mechanism for Torture Prevention			
Goods and services	56,5	-	0
Paying the salary for the members of the MNPT Council	291,7	124,2	42,6
Stocks of circulating materials	47,2	25,5	54,0
Total per component	395,4	149,7	37,9
TOTAL	12926,6	11733,7	90,8

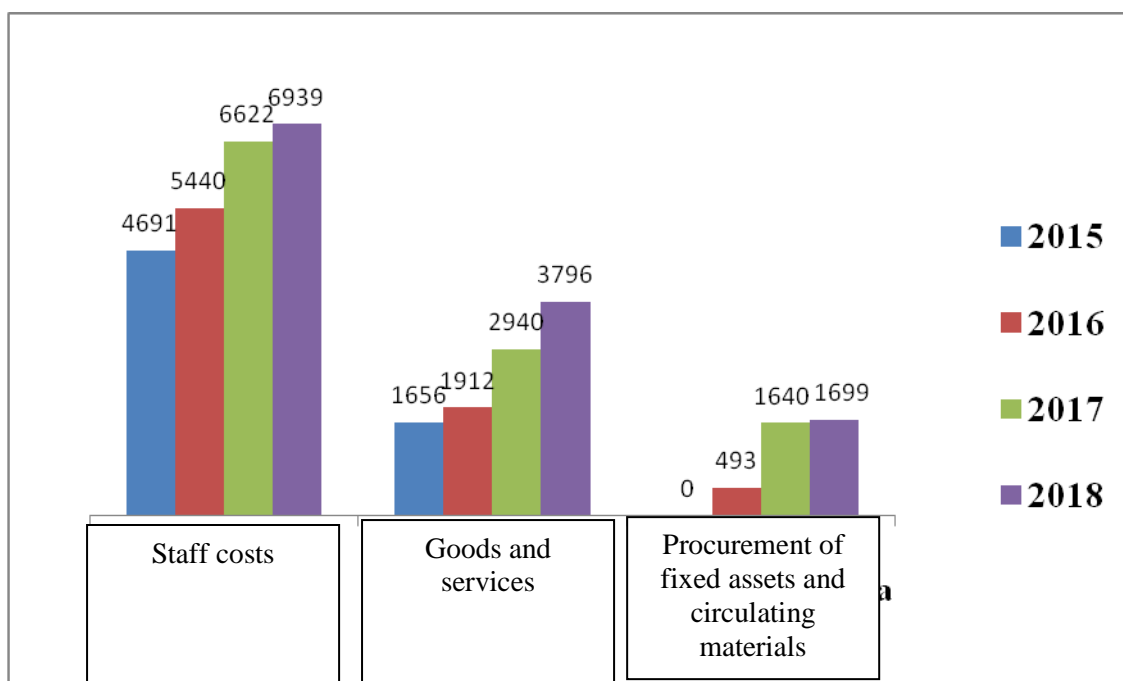
Throughout the year, the financing of the institution's activities and needs was carried out operatively within a few calendar days so that all payments to employees, the state budget, debts to suppliers were made in the established terms. During both the year and the end of the year, there are not any debts with expiration date.

It is worth mentioning that in 2018 the allocations for financing the institution increased significantly and at the same time the allocations for financing the activities of the People's Advocate and the People's Advocate for the rights of the child in the exercise of the duties provided by the Law number 52 from 6.4 million MDL in 2015 to 12.9 million in 2018 or 101.7%.

Dynamically, this increase is represented as follows:

Name of the allowances, thousands of MDL	2015	2016	2017	2018
Control over the observance for human rights				
Staff expenditure	4691.7	5440.2	6622.3	6939.5
Goods and services	1656.5	1912.3	2940.2	3796.1
Procurement of fixed assets and circulating materials		493.7	1640.3	1699.5
Membership fees in international organizations	62.5	116.8	95.6	96.1
Total per component	6410.7	7963	11298.4	12531.2
National Mechanism for Torture Prevention				
Goods and services		436.6	5	56.5
Paying the salary for the members of the MNPT Council		83.5	118.3	291.7
Procurement of fixed assets and circulating materials			131.1	47.2
Total per component	0	520.1	254.4	395.4
Total allowances	6410.7	8483.1	11552.8	12926.6

Funding of the Office of the People's Advocate in Dynamics (thousand MDL)



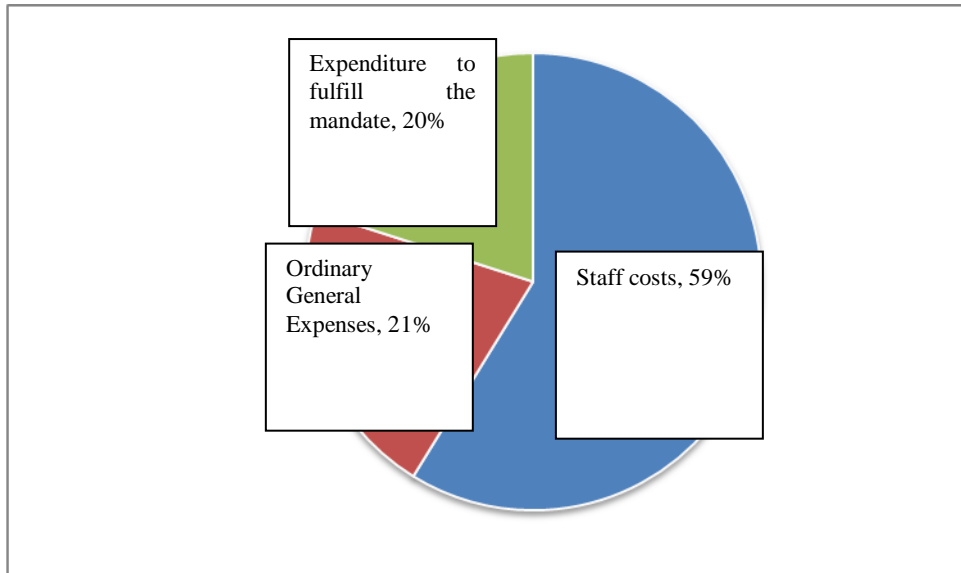
The increase in the institution's allowances contributed to the improvement of the institution's financial situation as well as to the fact that, following accreditation, the institution was granted *status A* because, according to the Paris Principles, one of the conditions for granting *status A* to a promotion and defense institution of human rights is its sufficient financial autonomy.

During 2018 the Office of the People's Advocate had expenditures in the amount of 12271.6 thousand MDL. They can be grouped into three large groups, namely:

- **Staff costs** - represents about 59% of the total expenditures (remuneration of employees' work, payment of contributions and bonuses in the state budget, payment of benefits for the benefit of employees according to the legal provisions). Payment of wages to employees is carried out according to legal provisions in the budgetary system;
- **Ordinary general expenses for the activity** - about 21% of total expenses (maintenance of the headquarters of the institution - electricity, heating, water, security, rental, repair, cleaning, logistics of furniture, technical equipment, office supplies, etc.)
- **Expenditure for fulfilling the mandate of the People's Advocate and the People's Advocate for the rights of the child**, including the National Torture Prevention Mechanism - about 20% of total expenditure (editing of informative materials,

training for target groups, elaboration and presentation of thematic studies, procurement of fuel for monitoring visits in penitentiaries, psychiatric hospitals, schools, procurement of supplies, promotional materials for various promotional activities, trips, payment of membership fees in international organizations, etc.).

Distribution of the Office of the People's Advocate costs



Sufficient funding for mandate activities has increased the visibility and credibility of the institution and contributed to the implementation of the institution's Annual Work Plan. The volume of financial resources in 2018 allowed the institution to cover its needs for maintenance of the institution's headquarters (electricity, heating, water, security, repair, cleaning, etc.), remuneration of employees' work and the need for financial means provided for the fulfillment of the mandates of the People's Advocate and the People's Advocate for the Rights of the Child.

PEOPLE'S ADVOCATE RECOMMENDATIONS

The People's Advocate reiterates his earlier recommendations urging the state:

- To continue the efforts to reform the justice system to ensure its accessibility, independence, efficiency, transparency and integrity;
- To take firm action to implement the recommendations of regional and international human rights protection bodies that relate to the justice system and have been exposed above;
- To adopt comprehensive legislation to criminalize hate crimes in line with the UN Convention on the Elimination of Racial Discrimination.
- To apply alternative measures to preventive arrest in such a way that it is applied as an exceptional measure;
- To develop alternative measures to preventive arrest;
- To enhance the professional competence of the judiciary in order to improve the motivation of the decisions adopted.
- The People's Advocate recommends the authorities to take into account the development partners' recommendations on the right to vote.
- The People's Advocate recommends the authorities to fulfill the recommendations of the Committee of Ministers of the Council of Europe, Rec (2018) 11 on media pluralism and transparency of media ownership (increasing transparency in media ownership and reducing ownership concentration on mass-media);
- The People's Advocate recommends the authorities to ensure the implementation of the Audiovisual Media Services Code of the Republic of Moldova, the National Media Development Concept in the Republic of Moldova, the Law on attracting foreign investments in the field of film production and other audiovisual works and the Information Security Concept of the Republic of Moldova in the spirit of the European traditions and in accordance with the recommendations of the international partners of the Republic of Moldova;
- The People's Advocate recommends the authorities to continue the process of improving the legal framework on the mass-media and to adopt the Law on Advertising, to amend the Law on Access to Information, the Law on Freedom of Expression, the Law on the Protection of Personal Data following appropriate consultations with civil society;

- To fulfill the United Nations Human Rights Council recommendations to Member States in the Resolution number 39/6 on „Journalists' Security” of September 27, 2018;
- To meet the recommendations of the CoE Committee of Ministers - CM / Rec (2016) 4 [1] of April 30, 2014 on the protection and security of journalists and other media actors;
- To adopt as a matter of urgency the set of draft laws on hate crimes and bias (according to the list of criteria protected by the national law and the ECHR) and ensure that these provisions are fully implemented in order to prevent new cases of hate speech and bias;
- To investigate promptly and effectively all the crimes against journalists committed by state or non-state actors, to hold accountable for intimidation, harassment of journalists, threatening discourse against them;
- To rally to the European standards and norms Law number 133/2011 on the protection of personal data; Law number 171/1994 on commercial secret; Law number 245/2008 on state secrecy, with clear provisions on the category of information that is of public interest;
- To ensure access to information of public interest, including through modern electronic means, by eliminating the abusive interpretation of the national and international legal norms on state and commercial secrecy, the protection of personal data, to refuse the submission of requested information by persons or journalists;
- To ensure the training of central and local public authority staff to ensure transparency and access to information.
- The People's Advocate recommends that the authorities ensure freedom of assembly as stated in its recommendations and by the UN Human Rights Committee: without undue restrictions and obstacles in law and practice, and take appropriate action to ensure that organizers and participants in the meetings do not face intimidation, including interference from the police before organizing assemblies.
- Develop appropriate health policies for rare diseases;
- Initiating control over financial resources for the early diagnosis of rare diseases;
- To develop the methodology of rehabilitation and resocialization of patients diagnosed with rare disease;
- Establishment by health institutions of policy and institutional procedures to respect patient rights;

- Performing regular monitoring on compliance / implementation by healthcare professionals and managers of public medical and sanitary institutions of the normative acts in force in the field of health (laws, orders, regulations, clinical protocols);
- Developing an effective regulatory framework for the investigation and resolution of cases of medical errors and malpractice;
- Organization of initial and continuous training of health workers in the field of healthcare legislation and human rights in order to ensure respect for patients' rights in the medical act;
- Organizing and providing communication training as well as educating patients with a higher degree of responsibility for their own health;
- Revision of state policies from the perspective of the human rights based approach;
- Implementing the recommendations of international and regional human rights organizations.
- Proper implementation of the recommendations of international human rights monitoring bodies;
- Implementing the recommendations previously exposed by the People's Advocate in its reports;
- Ensuring a level of social security benefits (old-age pension, unemployment benefit, temporary work allowance due to habitual illnesses or work-related accidents) so that their minimum amount equals, at least, with the set minimum subsistence level;
- It is advisable to examine the opportunity to ratify Article 23 on the right of the elderly to social protection and Article 30 on the right to protection against poverty and social exclusion from the content of the European Social Charter (revised).
- Establishment of an efficient mechanism for the implementation and control over compliance with the requirements for accessibility at all stages, design, authorization, construction and operation of constructions.
- Implementation by the authorities of the measures to ensure accessibility of persons with disabilities to social infrastructure.
- Development and approval of an efficient accountability mechanism for non-observance of normative and legislative acts guaranteeing the right of persons with disabilities to accessible social infrastructure.
- Reviewing the strategies and policies to ensure respect for the rights of people with disabilities;
- Makes the public aware of issues related to the rights of people with disabilities;

- Ensure the participation of people with disabilities in the development of policies and laws that target them;
- Implementation of the recommendations of international human rights organizations in the field of ensuring the rights of persons with disabilities.
- Legislation needs to be adjusted to remove all barriers faced by citizens at birth registration so that all children are registered immediately, regardless of the region in which they were born.
- The executive must improve the existing regulatory framework in the areas of civil status documents, identity documents, as well as the determination of citizenship of the Republic of Moldova for the inhabitants of the left bank of the Dniester River.
- The State should encourage the work of civil society organizations and initiative groups in the localities on the left bank of the Dniester River and to develop clear mechanisms for the protection of persons conducting activities promoting and defending human rights in the administrative-territorial settlements on the left bank of the Dniester River and Bender municipality (Transnistria).
- The Government is to take measures aimed at intensifying the human rights dialogue at expert level for human rights issues in the localities on the left bank of the Dniester River.
- The People's Advocate reiterates the importance of implementing the international recommendations on the protection of human rights that refer to the region of the left bank of Dniester River and Bender municipality.
- The People's Advocate recommends that the authorities make every effort to establish and implement a human rights education and training program in line with international standards and to take best practice in other countries.

RECOMMENDATIONS OF THE PEOPLE'S ADVOCATE IN THE FIELD OF PREVENTION OF TORTURE

- The People's Advocate recommends NPA and GPI to implement correctly and in line with the CPT's suggestions, the content of medical examinations, in particular, on the part of allegations of ill-treatment in retention or detention. NPA will integrate the CPT's recommendations throughout the penitentiary system as specific to its subdivisions.
- The People's Advocate recommends NPA and GPI to adapt their internal rules on the transportation, escorting of persons held in accordance with international standards in the context of implementing the initiated reforms. In the course of time, the

Ombudsman's Office will monitor the conditions of transportation of detainees in order to comply with the criteria highlighted.

- The People's Advocate recommends the Government of the Republic of Moldova to execute the judgments of the European Court. It is also recommended to apply the Court's conclusions in public policies on the reform of the judiciary sector and the penitentiary system and police systems.
- The NPA / Government / Prosecutor General's Office should identify a solution to ensure a favorable working climate as well as employee protection mechanisms.
- The NPA must urgently step up efforts to prevent and repress acts of violence and intimidation among detainees, paying particular attention to the causes and origins of the phenomenon; to take the necessary steps to ensure that prison staff are no longer based on the informal hierarchy of detainees in order to maintain order and security and to take the necessary measures to ensure that the right of detainees to make complaints is effective, these complaints do not cause pressure from the penitentiary staff; to initiate an in-depth examination of the staff, in particular the security service, and to review the number of staff units of the penitentiary institution in order to extend it and ensure the appropriate number of oversight staff; to undertake measures to train prison staff in security and safety, including the concept of dynamic security, enforcement of force and means of coercion and confrontation of violent detainees, taking into account preventive and neutralization techniques, such as negotiation and mediation.
- The NPA should elaborate and approve the program for the reduction of the violence in the penitentiary environment, established by the NPA Order number 82 of June 14, 2018. Similarly, NPA is to plan training activities for the staff of the security sections, penitentiary and social reintegration.
- Penitentiary authorities should provide the detainee with appropriate treatment for the health condition with which he or she was diagnosed and prescribed by a competent physician, and in the event of disagreements with regard to the treatment necessary to adequately insure the prisoner's health, it is necessary for the penitentiary authorities, in order to comply with the positive obligations laid down in Article 3 ECHR, to obtain additional recommendations from a specialist / expert in the profile; to ensure the medical check-up / examination of all detainees upon arrival in the penitentiary, paying particular attention to: signs of serious mental illness; suicide risk factors; history and signs of alcohol or drug addiction and symptoms of abstinence; contagious diseases; mental or physical disabilities; to

ensure the medical check-up / examination of detainees without undue delays and to take immediate measures to protect the health of detainees.

- The People's Advocate argues that NPA is to approve a clear and unified operational procedure for physician's / healthcare professionals in line with the recommendations of the relevant actors regarding the identification and reporting of the sanitary-hygienic situation in all living, serving, bathing, canteen, medical, warehouses sections, etc. Doctor's reports are to be thoroughly and seriously analyzed by penitentiary directors.
- Penitentiary authorities should ensure that diagnosis and medical care for detainees is prompt and appropriate, and the lack of food provision according to quantitative and qualitative nutritional indices and specific health requirements may endanger the health of the person; to promptly undertake the necessary measures to identify and keep a comprehensive record of detainees with special needs in favor of a food regime / special diet due to health disorders, those who have special dietary preferences such as vegetarians or those who have special needs prefigured in religious reasons; the special food regime / diet cannot be equated / associated with the supplemental food ration;
- Penitentiary authorities: to take decisive and effective measures to prevent and reduce, trafficking, consumption and uncontrolled proliferation of psychotropic or narcotic substances, precursors, ethnobotanics, their analogues and other illegal substances in penitentiary institutions, and pay more attention to the evaluation of health status and to the processes of establishing and administering the optimal individual dose in cases involving methadone pharmacological treatment of opiate addiction.
- Avoid placing the patients with HIV (other infectious diseases) in the basement of isolators within the penitentiary institutions.
- The Ministry of Justice: to establish without delay a mechanism for the release from the application of the preventive measure in the form of arrest and the execution of punishment, applicable to all detainees, irrespective of the person's procedural status and the moment when the disease is counteracted. Revision of Order Number 331 is imperative. Detention of prevented patients with serious illness should be avoided. NPA shall facilitate access to medical committees that decide to release the person.
- The GPI (General Police Inspectorate) must apply the 3 standard operating procedures in practice and adapt mechanisms to ensure the rights and freedoms of the person to detention. The procedure and detention process should be uniformized.

The GPI territorial subdivisions should avoid the formal drawing of documents. Similarly, the practice of de facto and de jure detention should be regulated so that the retention period does not exceed 3 hours.

- Courts have to supervise the legality of aliens' detention for 6 months (their own placements conclusions). The Migration and Asylum Bureau is about to release the minor from custody. The BMA is encouraged to apply alternatives to the public detention of foreign.
- The Government should decide on the need for the functioning of local monitoring committees, or modify the legal framework on the attractiveness of this mandate.

RECOMMENDATIONS OF THE PEOPLE'S ADVOCATE FOR CHILDREN'S RIGHTS

- Carrying out and promoting activities involving the participation of all children in areas that concern them;
- Modification of the normative framework and adaptation to current social realities related to children on the segment of freedom of expression and freedom of assembly;
- Modification of the normative framework regarding the sanctions of persons / organizations irrespective of the legal status and the organizational form that attract children in the activities without respecting the legal conditions;

- To introduce information and education programs for the public to raise awareness among the general public, children, young people, parents and professionals about the right of children and young people to participate;
- To promote the support for information networks among children and young people to build up their capacity to exercise their right to participate;
- Developing of mechanisms of submission of complaints from children;
- Identification of financial sources for fitting appropriate health blocks in all educational institutions and providing the necessary hygiene products;
- Ensuring each educational institution with a specialist in psychology or psychologist;
- Ensuring the social / educational inclusion of children with disabilities, taking into account the problematic aspects outlined above.
- Identification of a clear procedure for non-admission of non-vaccinated children to education institutions and the right to education for children not admitted to education institutions.
- Strengthening the respect of the child's best interest principle in ensuring the child's right to life;
- Enhancing the knowledge of families and the community about the signs of danger to the life and health of the child health;
- Creating / strengthening family planning services and parenting skills for children growth and education;
- Implementation of minimum quality standards for early intervention services;
- Ensuring the realization of prenatal screening;
- Development of quality medical services by providing medical institutions with adequate equipment and continuing training of medical staff;
- Changing the policies and family-friendly legal framework.

- MSMPS will reassess the financial policy on the diagnosis of rare diseases;
- Providing quality services to children with rare genetic diseases by training professionals in the area of medicine and education;
- Supporting in parents' training in therapies and caring for their own children;
- The Ministry of Education, Culture and Research will ensure respect for the right to education of non-vaccinated children by applying alternative forms of education;

- Ministry of Health, Labor and Social Protection to intensify campaigns to promote immunization campaign in order to convince parents of the benefits of vaccination;
- The Ministry of Health, Labor and Social Protection, through the subordinated institutions, will ensure the monitoring during the pre- and post-vaccination periods of the children;
- The Ministry of Health, Labor and Social Protection will strengthen the mechanism of informing the population thus ensuring the patient's right to information;
- Parents of children who are not vaccinated the Children's Ombudsman reminds them of their priority obligation to ensure the child's right to health and education.
- Ministry of Education, Research and Culture to develop the legal framework for setting up, functioning and evaluation of early private educational institutions;
- Inter-sectoral cooperation between authorities to ensure that all children have access to guaranteed compulsory education;
- Enhancing awareness-raising and information campaigns on the phenomenon of violence in schools;
- Strengthening the cooperation of all institutions responsible for preventing, reporting and monitoring cases of abuse, violence, trafficking and neglect of children;
- Intensification of thematic inspections in the educational institutions regarding the verification of the implementation of the Procedure for organizing institutional and intervention of the education workers in the cases of abuse, neglect, exploitation, child trafficking and providing the necessary assistance.
- Identifying the financial sources for fitting appropriate health blocks in all educational institutions and providing the necessary hygiene products;
- Ensuring each educational institution with a specialist in psychology or psychologist;
- Ensuring the social / educational inclusion of children with disabilities, taking into account the problematic aspects outlined above.
- Identifying a clear procedure on the non-admission of non-vaccinated children to education institutions and on the right to education of children not admitted to education institutions.

- Enhancing the safety and security of children in custody of the penitentiary system;
- Raising the level of professionalism, strengthening the communication capacities of the penitentiary, medical and psychological system interacting with the children;
- Training of all penitentiary institutions staff in the field of human rights / child rights in the light of international standards.
- Re-assessment of job courses with consulting children's opinion in such a way that they are attractive and competitive;
- Reassessing of budget policies to insure the children with food, with hygiene products and medicines for children aged 0-3 and pregnant women in penitentiary institutions;
- Improving the feeding of detained children by enriching the fruit and vegetable menu.
- Designing playrooms suitable for the age of children to ensure their protection and safety;
- Training of children aged 0-3 years in leisure activities outside the penitentiary;